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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration between
 THE CITY OF MILWAUKEE
 -and-
 THE PROFESSIONAL POLICEMEN'S
 PROTECTIVE ASSOCIATION

Case - CXLVII
No. 18451 - MIA-119

Decision No. 13167-B

On March 20, 1975, 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 (jm) of the Wisconsin statutes. On April 5, 1975, 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 May 8, 1975, and was conducted for twenty (20) days between that date and July 12, 1975. A complete transcript of the hearing was made and a copy furnished to the arbitrator. A record of 3,168 pages was developed in the hearing. The Association submitted 43 exhibits, the City submitted 16 exhibits, and 4 exhibits were submitted jointly.

On August 26, 1975, the parties filed post-hearing briefs summarizing the positions about the issues in controversy. At the final day of hearing, July 12, 1975, the parties agreed that the undersigned arbitrator will retain jurisdiction in the event there are disputes over the interpretation of this award.

APPEARANCES

For the Association

Gerald P. Boyle, Esq.
Jerome Dudzik, President and Witness
William Ward, Vice President and Witness
Robert Kliesmet, Secretary-Treasurer and Witness
Donald Abbot, Trustee and Witness
George Cayo, Trustee and Witness
Raphial Piontek, Trustee and Witness
Thomas Barth, Trustee and Witness
John Schurrer, Trustee and Witness
Thomas M. Schmidt, Trustee and Witness
Judge Christ T. Seraphim, Witness
Judge John Coffey, Witness
Hugh R. O'Connell, Witness
Judge Victo Manian, Witness
George E. Kelling, Witness
Edward R. Kiernan, Witness
Peter L. Danner, Witness
Richard M. Nelson, Witness
Walter Biesada, Witness
Lakshmi Kant Bharadwaj, Witness

For the City

Thomas E. Hayes, Esq.
William S. Kelly, Assistant Labor Negotiator and Witness
Robert J. Ziarnik, First Deputy Inspector and Witness
Andrew Busalacchi, Captain of Police
Fred Bau, Personnel Analyst and Witness
Joe Ellis, Personnel Analyst and Witness
Raymond A. Dahl, Witness
Robert L. Barnes, Witness
Richard Daskais, Witness
Jon Weitzel, Witness
Edwin C. Whitney, Witness
Richard Heaps, Witness
Maurice Weinrobe, Witness

BACKGROUND AND POSITION OF THE PARTIES

When the Arbitrator met with the parties on April 5, 1975, he learned that the parties had been in negotiations since November of 1974, and that there were a number of issues which were still unresolved. The Arbitrator asked the parties to meet and to try to reduce the issues prior to the next formal meeting for the arbitration hearing, which was held on May 8, 1975. At this time an agreement, or a chart, jointly agreed to by the parties was introduced as Joint Exhibit #3, which shows where the parties were agreed and the open issues before the arbitrator. By the time of the conclusion of the arbitration hearing on July 12, 1975, there were twenty-five (25) issues which had been presented to the arbitrator.

In his award dated August 15, 1973, Arbitrator Martin Wagner clearly and succinctly outlined the historical background of the employment relationship between the City of Milwaukee and the Association dating back to 1961. As a part of the hearing before the undersigned arbitrator, the award by Arbitrator Wagner which includes this historical background was introduced as Joint Exhibit #2. Therefore, in regard to a summary of the historical relationship between the parties, such is contained in Joint Exhibit #2.

The City sets forth the institutional setting and the situation as concerned with collective bargaining as a result of the institutional framework. It notes that under Section 111.70 (4) (jm) 2, Wis. Stats. (1973), the W.E.R.C. is empowered to order final and binding arbitration

upon a finding the parties have reached an impasse on matters relating to wages, hours and conditions of employment on which there is no mutual agreement. The City submits that because arbitration is an extension of the collective bargaining process, the limitations on that process are equally applicable in proceedings before the Arbitrator.

In its brief the City mentions limitations on the collective bargaining process in the Matter of the petition of City of Beloit, Case V, No. 16732 DR(M) Decision No. 11831-C, dated September 11, 1974. A second limitation on collective bargaining as cited by the City is enumerated in prohibited practices as set forth in Section 111.70(3) Wis. Stats, also Section 111.70(3) (a)4, which provides that it is a prohibited practice for an employer to contribute financial support to a labor organization apart from reimbursing its employees at their prevailing wage rate for time spent conferring with employees, officers or agents of the employer and Section 111.70(3) (a)4 makes it a prohibited practice for parties to enter into a collective bargaining agreement exceeding three years in duration. The City claims that by far the most significant limitation on collective bargaining under Section 111.70, Wis. Stats (1973), is a limitation resulting from the imposition of statutory governmental obligations on the municipal employer by the Wisconsin Legislature. It says because of this the Wisconsin Supreme Court has stated that it is necessary for one applying Section 111.70 to harmonize it with existing statutes placing governmental obligations upon the municipal employer. It cites Board of

Education v. WERC, (1971) 191 N.W. 2d 242, 53 Wis. 2d 625, where the Supreme Court reversed the W.E.R.C. decision on the ground that it had failed to harmonize Section 111.70 with existing statutory obligations of the School Board.

The City contends that many of the proposals of the P.P.P.A. would infringe on the performance of statutory responsibilities, wholly independent of Section 111.70, Wis. Stats. It says that since Section 111.70 is to be interpreted to harmonize with existing statutory obligations, these proposals would be beyond the parameters of the collective bargaining process.

The City says that since submission of the dispute to arbitration is authorized pursuant to statute, the Arbitrator is strictly confined by the powers the statute gives him in resolving the dispute. The City maintains that this in turn makes certain of the proposals of the P.P.P.A. beyond the scope of the Arbitrator's authority.

Two proposals in which the City says fall outside the jurisdiction of the Arbitration is the Association proposal that a uniform and equipment committee be created to make binding recommendations on items of uniform and equipment and a proposal that the Arbitrator provide for arbitration during the term of the contract over interpretation of departmental rules. The City maintains that although the Arbitrator has authority to establish the terms of the contract not agreed upon by the parties, none of the powers enumerated under the statute confer upon the Arbitrator the authority to delegate his powers to another

third party created by the contract. Therefore, the City contends that the proposals of the P.P.P.A. fall outside the jurisdiction of the Arbitrator.

The City says the criteria to be employed by the Arbitrator in determining the issues before him in the proper exercise of his powers are set forth in Section 111.70 (4) (jm)5 & 6., Wis. Stats.

In addition, the City submits that Section 111.77, Wis. Stats, contain enumerate criterias to be applied by the Arbitrator. Section 111.77 (6) Wis. Stats, (1973) provides as follows:

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

"(a) The lawful authority of the employer.

"(b) Stipulations of the parties.

"(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

"(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

"1. In public employment in comparable communities.

"2. In private employment in comparable communities.

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

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

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

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

The City throughout the proceeding has maintained that Section 111.70 (4) (jm), Wis. Stats., does not preclude the Arbitrator from using the criteria set forth in Section 111.77, Wis. Stats., in resolving the dispute. The City has maintained that if the Arbitrator would apply Section 111.70 (4) (jm) in a manner as to preclude the use of these criteria, Section 111.70 (4) (jm) would, as applied, constitute an unreasonable classification between municipalities in violation of the special legislation prohibition of the Wisconsin Constitution.

The City's position in reference to this point is emphasized when one considers the evidence in the record in comparison to the statutory criteria set forth in Section 111.77, Wis. Stats., that the Arbitrator take into account the City's ability to pay. The City of Milwaukee of all the 18 larger cities within the state of Wisconsin and all other municipalities in the SMSA has the least financial ability to pay increased costs for public services. To preclude the City alone of all the cities in the state from availing itself of consideration of its ability to pay in the determination of the level of employee compensation would constitute an arbitrary classification.

Significant precedent in regard to the City position on this question is established by the award of Arbitrator Martin Wagner. In reaching his decision, Arbitrator Wagner placed weight on all of the factors contained in Section 111.77, Wis. Stats.

Finally, relative to Section 111.70 (4) (jm), Wis. Stats. (1973), it is to be pointed out that the Arbitrator in the exercise of his powers and in the determination of the issues before him is to accept only propositions of fact established by the preponderance of the evidence in the record.

It is the position of the Association that the demands it has made all come within the preview of 111.70 (4) (jm). The Association contends that upon reading subsection 4 of that law, that each and every demand that it has made comes within that subsection and, furthermore, that there is before the Arbitrator sufficient evidence for the determination of proper compensation. The Association says it feels, in regards to subsection 8, that they have established by a preponderance of the evidence, all those matters that they are asking for.

The Association says if necessary the issues such as residency, grievance procedure, third party arbitration within the contract terminology, forced carry of a weapon off duty, the right to work off duty can be taken to court to construe the Arbitrator's award if he does in fact rule on these issues. The Association says that on the other hand if the Arbitrator does not see fit to make an award in the areas as

aforementioned because of the ostensible conflict between 111.70 and the laws of 1911 it will accept that decision.

As to the City's argument on the question of "its ability to pay", the Association responds that there is nothing in the law that in any way suggests that the Arbitrator must take into account the City's ability to pay in determining the award. It points out that the source of funds that the City has at its disposal, in order to meet its needs are established by the budget. It notes that there are other types of income that, along with the property tax, bring about the amount necessary to meet the budget. Further, the Association points out that the police have nothing to do with the establishment of the budget.

The Association asks what would prohibit the City from changing the ordinances and saying that the monies that were not used for the operation of a given department (not for wage and fringe benefits) be then used on the "expenditure portion" rather than on the "source of funds" portion. It notes that the citizens pay property taxes and in paying the same are really paying a portion of these taxes for the operation of the various departments. It says that the unused portion from any given year goes into the next year's budget as a "source of funds" when, in fact, the tax is gathered with the understanding that the monies will be expended. The Association says that it knows the amount of money that goes into capital improvements and also realizes the need for capital improvements. However, it says it does not feel

that capital improvements have any way near the necessary priority as does law enforcement protection.

The City says that statutory responsibilities of the Chief of Police for the enforcement of the law, the preservation of the peace and the efficiency and general good conduct of the department are such that they are at the root of the maintenance of government and order in a civilized society. It says these responsibilities, therefore, cannot be abdicated in terms of either the law or public policy.

In stating its position, the City emphasizes that it does not maintain that all rules and regulations of the Milwaukee Police Department fall outside the collective bargaining process. As indicated, the specific grant of authority to the Chief of Police to make rules and regulations for the government of the Department goes beyond those regulations which are necessary and appropriate to the performance of statutory responsibilities. Rules and regulations that do not fall within the Chief's statutory responsibilities, therefore, may appropriately fall within the sphere of collective bargaining.

The City states that the P.P.P.A. has made a number of proposals that properly fall within "Matters under the Control of the Chief of Police." The parameters of the Arbitrator's authority in resolving these issues are determined by the demarcation as to which of the issues bear on matters which are necessary and appropriate to the Chief's implementation of his statutory responsibilities.

The P.P.P.A. has made a number of proposals designed to remove off-duty restrictions on members of the bargaining unit. P.P.P.A. representatives have stated their belief that an officer's life off duty should be of no concern to the Department, and consequently, there should be no off-duty restrictions.

The City says that many of the off-duty restrictions in the Milwaukee Police Department exist by virtue of law and by virtue of the fact that crime is not a planned event. Under law, it is the statutory duty of police officers to apprehend all persons found in violation of the law and no distinction is made in terms of whether the officers happen to be outside of their regularly-scheduled shift at the time they observe the violation. The ability of police to apprehend violators and prevent crime from occurring is dependent not so much on their working regularly-scheduled shifts as on their presence when a violation is occurring. Restrictions as to residency are necessary and appropriate to assure the presence of the officer at the scene of violations of the law occurring in the City of Milwaukee. The City argues that restrictions relative to carrying the service revolver when off duty are necessary and appropriate to assuring the capability of the officer to handle any situation involving a violation of law, should the need arise. Thus, both restrictions may be viewed as an attempt by the Chief to assure the efficiency of members of the bargaining unit in the fulfillment of their sworn responsibilities under law.

The City argues that the P.P.P.A. argument relative to off-duty restrictions is directed primarily to the provisions of law designating police officers as public officers rather than employees and prescribing sworn duties upon such police officers at all times. Absent a revision in the law limiting the scope of the police officer's duties, the changes sought by the P.P.P.A. in regard to carrying a weapon and residency cannot be accomplished without infringing upon the statutory duties of officers to enforce the law and responsibilities of the Chief for the efficiency of police officers in the pursuit of these obligations. Inasmuch as the law has not been so modified, it follows that the proposals of the P.P.P.A. are outside the parameters in which the Arbitrator may resolve the current dispute.

The City maintains that restrictions on political activity by police officers also arise by virtue of law. The purpose underlying Chapter 586 of the Laws of 1911 was to insulate police officers and the Police Department from political influence in the political process. It was the policy judgment of the Legislature in enacting the law that the interests of effective law enforcement in the community would be better served by such insulation. With this in mind, it can be seen that restrictions on the active police officer running for political office are both necessary and appropriate to fulfillment of the statutory purpose and the P.P.P.A. proposal is beyond the parameters in which the dispute may be settled.

The City argues that the issue relative to outside employment may be viewed in much the same way. Outside employment in relation to licensed premises presents an out-and-out conflict of interest with police officers' sworn duty to enforce the law. Certain outside employment may be in conflict with officers' performing their duty to make arrests. Arrests necessarily involve unscheduled overtime and court appearances. If these court appearances are likely to be scheduled at a time when officers are supposed to be at their second jobs, officers would be unable to fulfill their commitments to both their employers. Long periods of outside employment prior to their regularly-scheduled shift may cause fatigue and even injury. If this occurs, officers would be unfit to perform their regularly-scheduled duties.

The City says that it can be seen that some restrictions on outside employment are both necessary and appropriate to assure efficiency and good conduct on the part of officers in the performance of their duties. It follows that the proposal of the P.P.P.A. that all off-duty restrictions on outside employment be removed cannot be achieved consistent with the Chief's statutory responsibilities.

As to the P.P.P.A., proposals for the creation of a health and safety committee to make binding recommendations in the articles of uniform and equipment, it has proposed that an Arbitrator be established with authority to determine disputes over interpretation of rules and regulations as well as disputes over application of rules and regulations.

The City says the P.P.P.A. proposals would transplant rule-making authority from the Chief of Police to a third party. This would sever responsibility from command. This would be contrary to the express statutory grant of authority for the Chief to make rules and regulations for the government of the Department. Thus, it can be seen that the P.P.P.A. proposals cannot be achieved without legislative action and that the proposals therefore fall outside the parameters for resolving the dispute.

The P.P.P.A. has also proposed the establishment of strict departmental seniority for such things as work assignments, shift assignments, district assignments and overtime. In addition, it has proposed a past practices clause whereby "general conditions" in effect at the time of signing the agreement shall remain in effect.

The City says the Legislature has recognized that police perform a vital service, at times dealing with matters of essential community security. It has recognized that police work is not an exacting science and performance is related to adaptation to the exigencies of the situation and development of peculiar individual talents. As a result, the Legislature has elevated police efficiency over the preferences of employes. From this, the City submits that the P.P.P.A. proposals cannot be accomplished without abrogating the statutory responsibilities of the Chief.

The City notes that in the award, Arbitrator Wagner responded to

P.P.P.A. proposals relative to a uniform committee, outside employment, political activity and residency, and stated they must be resolved through the political process rather than through arbitration proceedings.

In conclusion, the City says that many of the restrictions which the P.P.P.A. seeks to have removed are restrictions which are necessary and appropriate to fulfill statutory responsibilities under law. So long as the law places duties upon police officers, both on and off duty, and the Chief is made responsible for their efficiency in performing these duties, these restrictions cannot be removed through arbitration. Hence, they fall outside the parameters for resolving this dispute.

RESIDENCY

The Milwaukee Police Department rules apply regardless of whether an officer is on his regularly assigned tour of duty. The City submits that Milwaukee is not unique in this regard. In an exhibit the City points out that a survey of eight North Central region cities of comparable population to Milwaukee reveals that all of the cities require police officers to exercise their police powers and to adhere to the rules of the Department while off duty under penalty of discipline.

The City maintains that all of the proposals of the P.P.P.A. relating to off-duty restrictions would require the Chief to modify rules currently in existence in the Department. It says that the Association proposal relative to residency would require modification of a Charter Ordinance as well. (City Exhibit #7, Item XV)

The City points out the Rule 29, Section 8, requires officers to reside in the city. (City Exhibit #4, Item 26) They say that this rule is an implementation of the Charter Ordinance under which all City employees, with the exception of 58 nurses and doctors, must live in the city. (Association Exhibit #4) The Association proposal is that officers be allowed to reside in Milwaukee County and any county contiguous to Milwaukee County.

On the matter of residency, the City says that the residency requirement is important in that it requires police presence and

thereby augments by three times the force available to deter crime and apprehend violators at any given time. The City states that since the state shares income tax receipts with its municipalities, police officers' presence within the city means additional revenue is returned to the City. The City says that because their presence encourages officers to spend their resources in the community, it stimulates economic activity.

The Association submits (Association Exhibit #4) that many metro-Milwaukee police departments do not have a residency requirement. It says that further there has been case law that supported a municipalities right to require residency. Despite this the Association says that Association Exhibit #4 shows that many other major municipalities throughout the country do not have the same requirement of residency that Milwaukee imposes.

AWARD -- RESIDENCY

The Association proposal is supported by evidence that travel time to central police headquarters on expressways is less from certain outlying area in the county than from some locations in the city. Although the evidence indicates shorter travel times from locations outside the city, but within the county than for certain locations inside the city, it does not show less travel time from surrounding

counties also included in the Association proposal.

Comparative data from eight North Central cities submitted by the City reveals that four of the cities, including Milwaukee, require officers to live in the jurisdiction they serve. One of the remaining four cities has a restriction along the lines proposed by the Association. It is noted that none of the cities has a restriction on residency.

The Association introduced comparative data consisting of nineteen municipalities selected from the metropolitan area. Many of these communities were small in area and population.

The Arbitrator notes that a number of large suburban municipalities do have residency requirements.

The residency requirements are applicable to all City employees and it cannot be made inapplicable to the police at this time. The comparative data is such that it in fact does support the residency rule.

AWARD

The Union's request for a change in the residency requirement is denied.

OFF DUTY EMPLOYMENT

The data introduced by the City indicates that from the eight cities in the North Central region of comparable size reveals that Milwaukee is the only city which precludes all off-duty employment. It notes that all of the cities surveyed require their chief's approval for off-duty employment and place prohibitions on the amount and type of off-duty employment. The Association introduced data from some fifty-six cities, all of which allowed off-duty employment, some of which have restrictions.

The City maintains that outside jobs present hazards and when injury occurs the Department can be deprived of able-bodied men and problems are presented in the administration of injury pay and sick leave benefits.

The Union states that the police are at a disadvantage in comparison to firemen and other City employees who are eligible for outside employment. The City submits that the Association has overlooked the police officers opportunities for overtime in the Department. The City states that the record reveals that police receive forty-nine percent of all City overtime while firemen receive only seventeen percent of City overtime.

The Association points out that the Milwaukee Police Officer could have the right, as does every other City employee and every other municipal police officer locally and nation-wide, to work off duty.

However, the Police Association says in fact that if their wage proposal were granted that it would not be necessary for them to supplement their income earnings by off duty employment.

AWARD -- OFF DUTY EMPLOYMENT

Taking into consideration the overtime opportunities available to police officers, and the potential conflicts of many of the outside jobs, the Association's request for the right to work off duty is denied. The Arbitrator also notes the wage increase received in this arbitration as a consideration as compared to that received by other city employees.

OFF-DUTY RESTRICTIONS

The Association has requested that there be a lifting of certain off-duty restrictions. Their original demand was to lift all off duty restrictions. However, this was modified to an issue which is in three parts:

1. That the Chief of Police adopt the political activity rights as stated in the City ordinance which was introduced into evidence in Exhibit #31.

2. That an officer be given a leave of absence to run for political office, which the Association notes other City employees enjoy.

3. That there be a lifting of the restriction on off duty employment.

The Association states that it is not asking for an absolute right to political activity, only that which the City has realized by the passage of its ordinance which states in part "...nor shall any member of the police department be engaged in political activity except when off duty and not in uniform." It is asking for the right of membership, if one so desires, to leave the active service without pay and in the event of the potential candidate's loss in the election to be able to return to active duty, without a loss of any accrued rights.

The Association says its exhibits demonstrates that other City

employees can take a leave of absence to run for political office without the prior consent of their superiors, and asks why then, should the police be treated differently?

The City points out that Rule 29, Section 23, prohibits certain types of political activity and at the same time guarantees to officers the right to express their views privately and to attend political meetings. The City contends that the Chief's rule represents the implementation of a model rule proposed by the International Association of Chiefs of Police. It points out that Secretary-Treasurer Kliesmet participated in the formulation of the model rule so it can be said that the rule represents the collective judgment of management and labor relative to the subject matter. Here, the Association has proposed that that portion of the rule prohibiting an officer from becoming a candidate for public office be removed.

The City submits that comparative data from eight cities of comparable size in the North Central region reveals that with the exception of Minneapolis, all of the cities have restrictions on political activity similar to Milwaukee's restrictions. The City notes that all of the comparative cities prohibit an officer from running for political office.

AWARD -- OFF-DUTY RESTRICTIONS

In light of the comparative data in other cities an officer cannot

be granted a leave of absence without the permission of the Chief of
Police.

GUN ALLOWANCE

Rule and regulation, specifically Rule 46, Section 5, requires police to be equipped with their service revolver at all times. The Association demand is for one of the following: (1) make it optional to carry a weapon off duty to \$2 per day, or \$730 per annum.

In support of its proposal the Association points out that the gun has rarely been used off duty. However, the City points out that the testimony of Inspector Ziarnik and Ray Dahl is that an officer must be equipped with a gun while off duty if he is to be expected to enforce the law.

The Association submits that no other municipal employee is under this same type of restriction in the course of his or her employment. Further the Association states that the savings to the City by agreeing to the demand would result in a savings of some \$187,600 per annum.

The City states that the comparative data from eight cities of comparable size in the North Central region reveals that the majority, including Milwaukee, require officers to carry their gun while off duty, and that only one of those cities, Milwaukee, provides a gun allowance.

AWARD -- GUN ALLOWANCE

The Association has proposed an increase in gun allowance as an

alternative to the off-duty restriction. That being the case the
gun allowance shall be increased by \$25 the first year of the contract,
and an additional \$25 the second year.

HEALTH AND SAFETY COMMITTEE

The Association requests that a Health and Safety Committee be established consisting of the Chief of Police or his designate within the Police Department, a member of the City Purchasing Department, and two officers designated by the Association to comprise the make-up of the committee.

The Association proposal calls for this committee to make binding recommendations on the articles of uniform and equipment. If the Committee cannot agree, the proposal calls for submission of the dispute to an arbitrator who would make a final and binding determination.

The Association submits that although it realizes that the Chief of Police or management has the right to designate the type of equipment and uniforms that one should wear, it feels that when the designated uniforms create a health and/or safety problem, then those wearing the same should have some rights in making sure that they are equipped with the best uniform and the best equipment for their own health and their own safety. One example is the problem with the shirt worn by Milwaukee Police Officers. The Association states that under vapor street lights it shows up to be a very light color and is a potential threat for possible sniper attack. In addition, the Association states that the uniforms are heavy in the winter time, and further it is necessary for a lining to be worn since the cost does not provide sufficient warmth.

The City position relative to the Union proposal for a committee

to make binding recommendations on items of uniform and equipment is that the uniform and equipment are primarily management tools. The City acknowledges the Union concern over the cost of the uniforms but believes it is a minimal consideration in view of the fact that the initial uniform and equipment is provided by the City and an allowance is provided for replacement items.

The City notes that its comparative data from eight North Central cities of comparable population and in those cities without exception, the Chief has the final say on items of uniform and equipment.

AWARD -- HEALTH AND SAFETY

The interests of all concerned may be best served by a continuance of the advisory committee for the duration of the next contract and uniforms or equipment items directly or indirectly destroyed in the line of duty shall be paid for by the City.

GRIEVANCE PROCEDURE

It is the demand of the Association that there be third party arbitration in the Grievance Procedure to determine not just the application of a rule and regulation of the Chief of Police, but that the third party Arbitrator "shall have the authority to interpret rules and regulations."

The Association feels that if presently or in the future there may be a rule and regulation which an officer feels an infringement upon his rights under 111.70 the person grieved should be able to bring the matter to third party arbitration. The Association says the reason for the demand is that when there is a change or proposed change in any rule and regulation there is a meet and encounter provision in the rule and regulation so that the Association can air its thoughts to the Chief and vice-versa. The Association states that it is absolutely clear from the record that the Chief has the final say in any event, both as to his proposed rule and as to the Association's proposed rule. The Association realizes that the Chief of Police has a right to run his department. The Association says the only thing it is asking for is that there be some third party within the contract that can make a determination of whether or not the rule is fair and equitable and not an infringement upon the Associations' rights and its members rights under 111.70 as it relates to working conditions. Therefore, the Association is asking that the arbitrator

award the language stated above that "interpretation of rules and regulations" can go to third party arbitration. The Association submits that if the rule and the interpretation of the same is fair and equitable and not an infringement upon persons rights, under law, then the City should have no quarrel with the procedure.

The City submits that the present negotiation procedure with respect to departmental rules provides an acceptable accommodation between the Chief and the Union while preserving the Chief's authority under law. It says that through this procedure, the Association can voice its objections to the appropriateness of any rules, and any ambiguity which needs clarification can be brought to the Chief's attention.

The City submits that comparative data it introduced reveals that no city of comparable size in the North Central region allows for arbitration on disputes over interpretation of rules, much less arbitration as to whether the rules are appropriate.

AWARD -- GRIEVANCE PROCEDURE

The grievance procedure established under the previous contract gives the Association the opportunity to grieve any rule, both in terms of its application and whether or not it is in violation of the specific provisions of the contract. This is a standard contractual requirement which shall be continued in the present Agreement.

MAINTENANCE OF PRESENT STANDARDS

The Association outlined its demand as it relates to maintenance of standards in Association Exhibit #25. Its argument as testified to by Trustee Abbott was that for the period of this Agreement, the City shall maintain all benefits, compensation, and general conditions at not less than the highest standards in effect at the time the Agreement is signed.

The Association is demanding that any of the benefits the members now enjoy which are not spelled out in the contract will continue without unilateral change by the City or the Chief of Police.

The Association argues that since the Chief of Police can promote, promulgate and change rules, there is nothing that would prohibit him from removing a rule or regulation that is considered to be a present benefit. The Association included in its presentation example of three municipalities that have such contractual language and submits to the Arbitrator that this demand be granted for the protection of the membership.

In response the City says that the Association has made a number of proposals designed to restrict the rights hitherto reserved by the Chief and by the City. In other matters the Association has proposed a maintenance of standards clause designed to maintain "general conditions" at their highest level. The Association has proposed

a seniority clause applicable to district, shift, work and overtime assignments and super-seniority clause for Board members and shift representatives which would also apply to the selection of vacations and off time. As the City views it, the Association asks that the Chief and the City be prohibited from assigning work which does not fall within the job description on file for members of the unit.

The City opposes all of the above proposals and has proposed the maintenance of the current language with one exception. The City would specify that all trade-offs must be authorized by the City. The City notes that this proposal does not represent a substantive change from the present practice.

The City submits that it would be a relatively simple matter for the Association to propose incorporation of benefits in the contract through specific proposals. The City says that the particular clause which the Association has proposed refers only to "general conditions at the highest standard". In short, the City concludes that an adoption of the proposal could result in endless arbitration in order to give definition to the meaning of the clause.

AWARD -- MAINTENANCE OF PRESENT STANDARDS

The parties have long enjoyed a close cooperative arrangement in the matter of department efficiency and effectiveness and any matters under the Agreement to which an officer might feel his

rights have been violated under the Agreement can be grieved under the Grievance Procedure. Working conditions will continue to be studied and reviewed. However, to maintain the existing arrangement, it is not necessary to insert in the contract a "General Condition" clause which for all practical purposes can be met under existing language.

SENIORITY

In the matter of seniority, the Association has divided the issue into three parts:

1. The City states that it is not workable,
2. The Association states that it is workable,
3. The law governing these proceedings gives the Arbitrator the right to establish a seniority system.

The Association says that seniority is already working within the police service, but in a restrictive manner, seniority for layoffs, seniority for transfers to the day shift and seniority for vacations. The Association says that seniority exists for the day shift, and it would follow that all the most experienced officers are on the day shift, but this is not a fact. The Association says it is asking for a flexible seniority system. It is asking for seniority as to assignments to districts, shifts, and job assignments among other things.

The Association says as far as its demand is concerned, the key clause is "as far as practicable" and then if someone were to feel that he or she were unjustly treated, that that person would be able to bring the question up through the grievance and arbitration procedure as set forth in the contract. The Association says a flexible seniority system would not jeopardize proper police functions because

the Association absolutely realizes the right of the Chief to run his department in the best interests of the citizens of the City of Milwaukee. It points out that if a flexible seniority system would infringe upon the Chief's rights and duties, then his powers would override a flexible seniority system.

The Association raises the question as to why a senior officer is not given the right to earn overtime pay when he is as capable of performing that function as an officer less senior to him. It points out that without question that seniority exists in many sectors of private and public employment. It emphasizes throughout that it is requesting a "flexible seniority system" which can be operated within a well run police department as exists in the City of Milwaukee.

The City submits that work assignments are currently made at the district level by immediate supervisors and that Central Police Headquarters is not staffed to make work assignments, the creation of a departmental seniority system for work assignments would require the creation of an administrative staff at the Central Police Headquarters at a substantial cost to the City and would result in an appreciable diminution of the responsibility of work supervisors in the field.

As to seniority as a basis for scheduled overtime, the City states that a departmental seniority list would not provide for appropriate officers to work overtime, and it would not allow for working out of

shift. The City says that experience has shown the most efficient use of manpower occurs when officers are held over from their regularly-scheduled shift or called in early.

AWARD -- SENIORITY

The decision is to leave the present system for making assignments unchanged and if there is in fact favoritism and unfairness in making assignments, the officer has recourse through the grievance procedure.

JOB DESCRIPTIONS

The Association has made a proposal which would limit members to duty specified in the job description. The testimony of Inspector Ziarnik is that officers are not required to perform janitorial duties except in the case of an emergency.

AWARD -- JOB DESCRIPTIONS

Job descriptions cannot be encompassing in nature and in fact should relate only to the professional responsibilities of the officer. Any isolated problems in assignments other than those of a professional nature can be adjusted through the grievance procedure.

TRADE-OFFS

The City has proposed amending paragraph 2 of the Management Rights clause to require management authorization for trade-offs.

AWARD -- TRADE-OFFS

In the interests of efficiency and within the Agreement trade-offs are to be authorized by the management.

ASSOCIATION REPRESENTATION -- ASSOCIATION BUSINESS PRIOR TO ROLL CALL

The Association demands that there be a lifting of any limitations upon the Association's activity as stated in the prior contract, which provided that no Association member or officer shall conduct any Association business on City time. This was presented in Association Exhibit #5, but in effect, what it is calling for is the right to have authorized Association representatives, liaison men, and trustees access to police department roll call areas as districts and bureaus prior to the start of any shift.

The Association's request is that shift representatives be able to investigate grievances during working hours. The argument of the Association is that the work of the Association representative would not in any way interfere with the normal operation of the Police Department.

In its submission the Association included an example of a clause from the State of Hawaii which was inserted for language purposes as well as other clauses that exist in two other police contracts.

The City position as indicated in their exhibits and for the eight North Central cities of comparable population is that none of the cities allow grievance preparation on city time. The documents reveal that only three of the cities surveyed allow union representatives into roll call areas prior to assembly and of those, allows this only

on special occasions.

AWARD -- ASSOCIATION BUSINESS

This accommodation to the Association is denied. The Association officers have numerous opportunities to communicate with Union members, including the bulletin board, the Union newspaper, and the Union offices. In addition, this Arbitrator having experienced such requests and situations in industrial plants can only add that for an organization as well run and with such highly competent officers, that these matters should not be dealt with at the outset of an assignment, unless there is an "emergency" or a derogation of the contract.

ORDINANCE AND RESOLUTION REFERENCES -- SCHEDULES A and B

As stated by the City Schedule "A" first appeared in the 1969-70 contract and was designed as a summarization of the benefits contained in various ordinances and resolutions, was intended that in the event of a conflict between the ordinances and resolutions and Schedule "A" the ordinances and resolutions would prevail.

The City submits that in 1973, the Association took the initiative and proposed a change in Schedule "A" whereby the contract would prevail in the event of a conflict between the language of the Agreement and the ordinances and resolution. In his award, Arbitrator Wagner concluded that the clause should be omitted in its entirety.

The City proposes the following:

G. ORDINANCE AND RESOLUTION REFERENCES

1. Schedule "A" attached hereto and made a part of this Agreement contains those benefits provided for under the terms of this Agreement. The City shall administer these benefits in accordance with ordinances, resolutions, and procedures established for this purpose. These ordinances, resolutions, and procedures shall not be deemed a part of this Agreement unless the parties shall mutually consent thereto.

2. Schedule "B" attached hereto is not made a part of this Agreement, but is included for purposes of convenience and information only. It contains a summarization of various changes in pension benefits which have occurred as a result of collective bargaining in the past and which have become vested and guaranteed to employees through enactment into law.

To implement the City proposal, the City has proposed deletion of all resolution and ordinance references from the various paragraphs

of Schedule "A" and revision of the various paragraphs to include all aspects of the various benefits.

In response to the Association's objection to the City definition of "active service" because it does not include time spent on duty disability, the City says the Association objection is well taken and the City would agree to include time spent on duty disability within the definition of "active service".

AWARD -- ORDINANCE AND RESOLUTION REFERENCES, SCHEDULES A and B

Not unlike the previous Arbitrator the undersigned is not persuaded that this specific issue is one of great magnitude in the light of the procedures that are followed in preparing both instruments. The language in the 1972-74 contract will be continued.

BASE SALARY

The Association has proposed an increase in base salary of thirteen percent for the first year and twelve percent for the second year. The City has proposed four percent for the first year, and four and one-half percent for the second year.

The City states that the Association is unrealistic as compared with the eight and nine percent pattern established by other City unions, the Association proposal would give Association members 162 percent more in the first year, 133 percent more in the second year, and 150 percent more over the term of the contract.

The City points out that in a comparison of the eight cities mentioned in terms of total compensation per hour worked, Milwaukee ranks second (City Exhibit #16, Item 6, pp. 14-15). The City says that on the other hand the data for fourteen cities selected by the Association suggests that Milwaukee does not fare well by comparison. The City submits that among the fourteen jurisdictions the Association has included, six have a population in excess of 1 million people, and according to the B.L.S. cities with a population of over 1 million pay on the average nearly 19 percent more for patrolmen at maximum salary than cities with a population ranging from 500,000 to 1 million. The City also states that the inclusion of cities from West and Northeast B.L.S. statistical regions tend to lower the City's relative position. In addition the City says the Association has excluded sixty

cities falling within the population range between the smallest city selected by the Association and the largest city selected by the Association.

The City submits that acceptance of the P.P.P.A. proposal would create an inequity between the police and other City employees. It says because of its cost, acceptance of the proposal would require the lay-off of substantial numbers in the bargaining unit. It says for those not laid off, the proposal would result in an increase far in excess of that necessary to maintain their standard of living. The City says that on the other hand, a settlement not to exceed eight percent would leave the Milwaukee policeman in a comparatively favorable position with his counterparts in other cities and would be in accord with the settlements which have been reached both locally with other city employees and nationally in major collective bargaining units.

The Association states that the very nature of police work in keeping the City of Milwaukee in the status of "the most crime free city in America". For this the Association maintains that the officers are not paid enough. It argues that anything less than thirteen percent the first year and twelve percent the second year will put the Police Officer in a very drastic position as far as economics are concerned.

Enough comparables justify the Association's request for a higher

rate of pay than that offered by the City, or that settled with other city unions.

It is noted that the Police Officers are not presently allowed opportunities for outside compensation. In addition, the Arbitrator feels that the Police Officers are entitled to an increase in wages to compensate for the inordinately inflationary increases in cost-of-living over the past year. Notice is also taken of pronouncements issuing from the federal government to the effect that the inflationary spiral will continue to haunt us in the years to come.

AWARD -- BASE SALARY

The Police Officers are granted ten percent (10) in wages retroactive to November, 1974, of the contract, and nine (9) percent for the second year of the contract.

VACATIONS

Under the previous contract Association members enjoyed ten work days of vacation after twelve months of serve, fifteen work days of vacation after eight years of service, twenty work days after fifteen years of service and twenty-five work days after twenty-five years of service.

Under the Association proposal, vacations would not be increased for employees with 1, 8, 15 and 25 years of service. However, for employees between these bench marks, vacations would be increased at the rate of one day for each two additional years of service.

The City has proposed to maintain the present vacation benefits.

AWARD -- VACATIONS

For vacations, officers with twenty-four years of service shall receive twenty-five (25) vacation days effective upon receipt of this award.

OVERTIME

The City states that because of the differing nature of police overtime, public policies, which normally dictate imposition of premium for overtime, are not present in many instances in the case of police officers. The City maintains that because much police overtime is beyond management control of the employee in certain circumstances, this may in many instances be provoked by the police officer.

Under the previous contract, overtime was defined as all time, excluding trade-offs, outside of the officer's regularly scheduled eight-hour shift. Overtime earned as a result of "court time", "civil emergency time", "training time" and "roll call time" was compensated at straight time rates. However, a minimum of two hours overtime at straight time rates was paid for each court appearance. Overtime earned as a result of an authorized eight-hour shift in whole or in part outside of the officer's regularly scheduled shift which did not fall on a regularly-scheduled vacation day or off day and for which one week's advance notice was given was compensated for at straight time rates. All other overtime was compensated at 1-1/2 times the straight time rates.

The Association demands that if an officer is required to stay longer than the two hours within the concept of "Court Time Minimum" that he be paid at time and one-half. The demand is spelled out

in Association's Exhibit #6. The Association suggests that in some way or another, either the Courts, the State of Wisconsin, the plaintiff in criminal cases, should not be held accountable for this cost. It may require legislation for the City to get the reimbursement for the overtime demand from the State, County or the Courts. It feels that it is the responsibility of the City that an officer should not be penalized and have to work over and above his 80-hours in a paid period without proper overtime compensation at the rate of time and one-half as those in the private sector would receive from their employer had they been called upon to work over and above their shift time. The Association says that the testimony indicates that most other city employees do, in fact, receive time and one-half for all overtime worked in excess of their normal working hours. It says Exhibit #6 contains a portion of the Fire-Fighters contract with the City of Milwaukee where there is a more liberal overtime policy than the Police enjoy. The Association is not asking for time and one-half for overtime for standby time, roll call time, training time, or civil emergency time, just time and one-half after "Court Time Minimum".

The overtime demand also requests that the officer be compensated either in pay or in compensatory time off.

The City introduced comparative data from the eight cities in the North Central region of comparable population and the Association

introduced comparative data from the same fourteen cities for which it introduced comparative data relative to base salary.

AWARD -- OVERTIME

The Arbitrator has read the decision on overtime by Arbitrator Wagner with care and believes that his examination of the matter is sufficient for now, therefore, the overtime provisions in the previous contract shall be continued in the present Agreement.

PENSIONS

As the City says police officers belong to two pension systems. Those hired before July 30, 1947, are members of the Policeman's Annuity and Benefit Fund. Those hired thereafter belong to the Employes' Retirement System. Over 1,800 members of the bargaining unit belong to the ERS (Tr. p. 2225). The rest belong to the PA & BF. The issues in these proceedings concern the ERS.

The ERS provides pension benefits for all city employe groups. Benefits are provided for both management and labor. These benefits are vested and contractual between the ERS and the employe. Special benefits in the form of early retirement, increased benefit formula and a more liberal final average salary are provided for police and firemen (Tr. p. 2115).

Under the Pension Act, employes and the City are obligated to make contributions toward the funding of benefits. The amount of police employe contributions are set forth in the law at 7 percent of covered compensation. With amendments to the law resulting from negotiations, the City currently pays 6 percent of the 7 percent employe contribution. The amount of City contributions are certified by the Annuity and Pension Board based on annual valuations as of the first of each year (Association Exhibit 28, pp. 28-9). Amounts certified are payable the first of the year following the certification

based on the previous year's valuation.

In the City presentation it says that annual contributions are made to the ERS as a percentage of base salary for each employe. Because police employes enjoy special benefits, the City is required to make annual contributions on behalf of police which the City says are approximately 79 percent higher than the contribution for general City employes (Tr. p. 2117).

Based on the January 1, 1974, valuation, the City was required to contributing 20.19 percent of covered compensation (base salary) in January, 1975 (Tr. pp. 2122-23). When the 6 percent of cover compensation which the City pays on behalf of the employes was added, the total City contribution came to 26.19 percent. This percentage represented an increase from previous years.

Periodically, the Annuity and Pension Board and its actuary are required to evaluate their assumptions (Association Exhibit 28, p. 43). The last reevaluation resulted in changed assumptions effective January 1, 1973 (Tr. p. 2118). These changes in assumptions are one of the reasons that between 1971 and 1974, police pension costs increased 70 percent while police covered compensation increased 23 percent (base salary) Tr. p. 688).

Under the current method of funding, past service liabilities are amortized over 47 years. Mr. Barnes for the City testified that substantial improvements in benefits were made in 1971 as part of an

overall updating of the system and that a fifty-year amortization schedule was adopted at that time to defer recognition of substantial increases in past service liability which occurred as a result (Tr. p. 2356). Since the typical employe in the bargaining unit has twelve-years of service, one can readily see that the current amortization schedule defers the cost recognition of benefit improvements beyond the working life of employes who receive those improvements, indeed, in some cases beyond their death (Tr. p. 688).

Mr. Daskais, in testifying on behalf of the City, was critical of the past service amortization schedule currently in effect. He noted that the Pension Reform Act enacted by Congress in 1974 requires a forty-year amortization of past service liabilities in effect at the time of passage of the Act and a thirty-year amortization for past service liabilities resulting from improvements following passage of the Act (Tr. p. 2278). While this Act does not affect public employe pension systems, it is important because it serves as a barometer of current thinking in actuarial circles and costs would substantially increase if the Pension Reform Act were to be extended to public employe pension systems. In costing present benefits and proposals, Mr. Daskais recommended use of a thirty-year amortization for past service liabilities (Tr. p. 2196).

The City says that Mr. McLaughlin, testifying for the Association, was even more critical of the current amortization schedule. He pointed

out unfunded liabilities have increased from \$100,000,000 to \$190,000,000 in the last three years (Tr. p. 687). He expressed concern for the stability of the fund as a result of continued postponement of the recognition of current costs into the future (Tr. pp. 687-89). Mr. McLaughlin recommended a fifteen or twenty-year period for amortization of past service liabilities (Tr. p. 689).

However, Mr. Daskais was critical of their assumptions used by the Board. Using the thirty-year amortization period which he recommended and assumptions which he considered more realistic than those employed by the Board, Mr. Daskais concluded that a realistic current contribution by the City toward funding of present benefits would require a level annual contribution of 28.20 percent of covered compensation (base salary) or an additional contribution of 2.01 percent over the rate last certified by the Pension Board (Tr. p. 2199). Mr. McLaughlin for the Association was also critical of other assumptions used by the Board. Using his recommended 15-20 year amortization and other assumptions he considered realistic, Mr. McLaughlin concluded that the realistic City portion of cost of current benefits was 29.45 percent of covered compensation (Base salary). Adding the 6 percent contribution by the City on behalf of the employe would bring the City's cost to 35.45 percent.

The City argues that in evaluating the cost of the present benefits

and the cost of the P.P.P.A. proposals, the Arbitrator should not succumb to the temptation of relying on costs which are based on overly optimistic assumptions. Mr. Daskais stated the case well on pp. 2203-04 as follows:

"No, the liability of the City is fixed by the benefit provisions of the plan, the use of what be (sic) considered optimistic assumptions, merely defers the recognition of that liability and results in greater costs for future generations of taxpayers.

"* * *

"No, I don't think it is in the City's--in the interests of the City if the costs of the system are understated. The taxes will have to be increased in the future to pay the costs for pensions that should have been recognized now. The taxpayers don't have an unlimited ability to pay taxes. If there are higher future taxes to pay for the pension promises that are being made today, there is going to be less future tax money available to provide wages and benefits for employees of the City in the future."

The City has proposed a ten-year moratorium on pension benefit improvements in order to allow the system to fund recent benefit improvements (Joint Exhibit 3a, p. 43). This moratorium will allow the City to make contributions during the period toward amortization of the unfunded liability. It will also allow the City to absorb increased costs accruing as a result of changes in the amortization schedule and assumptions employed by the Board which will be forthcoming as a result of periodic reviews by the systems actuary and may be forthcoming as a result of amendments to the Pension Reform Act.

Once unfunded past service liabilities are reduced and the annual costs of current benefits are recognized, the parties will be in a position to determine whether increased benefits are feasible in light of current costs and the economic climate within the City. If increased benefits for some employes will mean lay-offs for younger employes or reduced benefits for new employes, at that time, the City and the Union may choose not to increase existing benefits. If benefits continue to be increased in the meantime, the choice will not be theirs to make.

The Association has made a number of proposals for changes designed to redefine the career for policemen (Tr. p. 2209). The Association has proposed normal retirement after 25 years of service with no minimum age. In lieu of the City paying the full cost for the increased benefit, the Association has alternatively proposed that Association members increase their payment of the employe contribution from 1 percent to covered compensation to 5 percent of covered compensation. As yet another alternative, the Association has proposed that members be eligible for normal retirement age 50 with 25 years of service.

The City claiming that Mr. Daskais testified that the Association proposal for retirement after 25 years of service with no minimum age would lower the average retirement to age 52. In assisting the City Attorney in formulating revised costs occasioned by the Association's

last-minute changes in pension demands, Mr. Daskais has advised the City that changing retirement eligibility to 25 years of service at age 50 would lower the average retirement age to age 54.

The City argues that for any number of reasons, not the least of which are the present unfunded liability and the increased cost attributable to the Association proposals, the City is of the opinion that financially it cannot bear the burden of the Association proposals. It says one need only look to the experience of the City of Detroit for an explanation of the City's fears. Because of expenditures to employes which had to be made to support Detroit's retirement eligibility of twenty-five years of service with no minimum age, the City of Detroit was required to increase the minimum age for retirement for employes hired after January 1, 1969 to age 55 in order to prevent its retirement system from becoming bankrupt (City Exhibit 12, Item 10, p. 3).

The Association argues that as to supervisorship benefits, Detective Thomas Barth testified and had introduced into evidence Association Exhibit #19. That exhibit contains certain materials which clearly present the Associations' position in this demand.

For the Association, Mr. McLaughlin's report is Association Exhibit #21, and a supplemental explanation contained in Association's Exhibit #21(a).

As to survivorship benefits the Association is asking that there

be an increase in the present benefits from \$140 per month and \$280 per month, to \$175 per month and \$325 per month. The distinction between the two numbers is that the \$175 per month would be granted to a surviving widow without children but the same would not commence until the widow reached the age of 62. The higher figure reflects the sum that a surviving widow with one or more children would receive until the child or children reached the age of 18. When the children all reached the age of 18 the benefit would cease until the widow reached the age of 62.

The Association says that the testimony clearly shows that although the survivorship program is included in the pension area, it is a self sustaining type of program, because the members, both in the Police Department and Fire Department, whether they be married or not, must contribute an equal amount with the City, per month, for the survivorship fund. It is the Association's position in this area that the amounts presently available can take care of this demand. Further, it contends that since it is a mutually participating type of program, and since it presently has a surplus, the demand should be granted in order to give proper protection to a widow and/or her children. The Association finds it extremely inconsistent that the City has not endeavored to make any offer in this area, especially as it relates to the surviving widow without children who cannot receive the benefit until she is age 62, when the City has in fact

reduced the eligibility age to age 57 as it relates to the surviving widow of a Fire Fighter.

The Association is asking in our demand for a reduction of the age of a surviving widow of a Police Officer from age 62 to 52, but most assuredly, it should be on the same level of benefits as the Fire Fighters in this area when their contract with the City provides for a reduction to age 57.

The Association says that from the evidence it is clear that an officer must make an election prior to the time of his eligibility for retirement, to elect one of several options as it relates to pension benefits. If an officer upon retirement or at the time the option must be selected wishes to provide that his wife will have his pension benefit in case of his death, he is then required by virtue of that election suffer a loss of pension benefits.

The Association information is contained in Association Exhibit #18. It contains an example of what happens to the erosion of pension income when the 5 percent spouse option is elected.

The Association says that it would appear that an officer who makes a career of public service should not suffer any penalty, likewise, neither should his widow, if that be the case. Since there is no escalator clause for retirees and since it has dropped that demand in Arbitration, the Association asks in the alternate that there be an elimination of the spouse option. It refers the Arbitrator

to Association Exhibit #18 for explanatory materials.

YEARS OF CREDITABLE SERVICE TOWARD RETIREMENT

This position is stated in Association Exhibit #16. This demand affects only five members within the bargaining unit. The Association's position is that the years of creditable service needed to meet retirement eligibility shall be those years of service as an employee with "police powers" but shall include those years of service as a civilian employee of the Police Department if that employee at some time during his years as a civilian employee, is then granted "police powers". This does not include what has been stated as "police aide" time.

As to ordinary disability, the demand of the Association is contained in Association Exhibit #17.

It says there are so very few men on ordinary disability. What we are asking for is that one on ordinary disability should not be limited to 50 percent of his final average salary. Our position is clearly stated in the aforementioned exhibit. The rest of the exhibit shows the tragedy that may occur to an officer with 18 or 19 years on the job who suffers a non/duty related disability and even though he has made a career of police service is limited as to his earning capacity by virtue of the fifty percent restriction. The exhibit attests to that fact that the Officer loses his pension rights.

The Association proposes three alternatives for normal retirement eligibility:

1. Twenty-five years of active service with eligibility for the same being reduced from age 52 to age 50 with the same formula presently existing,

2. Twenty-five years of creditable service with no minimum age with the same formula presently existing, or

3. Twenty-five years with no minimum age with an added contribution for those within the bargaining unit of 4 percent.

The Association argues that Policemen should not have to work until the age of fifty-two in order to achieve retirement benefits. If it be true that the average age of officers coming into active service are 24.2 years of age, then why should they have to take a deferred pension until they reach the age of 52? The exhibit presented by Inspector Ziarnik establishes the average age. The Association argument contains much to support the argument that the stress placed on police officers is such that they should be able to retire at an early date.

The Association says if it be just a matter of money to finance the same, it again reiterates that the responsibility does not rest upon the police officers, it rests upon the total system that was set up by the City many years ago. The Association says the testimony is quite clear. It does not have social security rights because of off-duty restrictions. It does not enjoy rights that other municipal

employees enjoy, nor what other major Police Department enjoy.

The Association is asking for health insurance for those who can retire, only during the term of this contract, to be given the opportunity to have their health insurance picked up by the City. Many of those who are eligible to retire are not within the police bargaining unit. The Association is only bargaining this issue for those within the bargaining unit. If they go out, and they will, obtain other employment which provides health insurance that no employer will be the "primary" carrier. That means then that the City will not have to pay. However, if there is no carrier for those that retire during the term of this contract, the City, the Association submits, should carry the full burden of providing for medical care for the retired officer and his dependents, just as the military does.

The Association is asking that only those who are presently within the bargaining unit and are eligible for retirement be given the opportunity to retire between now and the time that the contract expires to assure that they will not be deprived of income from the pension system because of necessary payments for health insurance coverage.

AWARD -- NORMAL RETIREMENT ELIGIBILITY

Under the circumstances, a reduction of normal retirement eligibility is not necessary to serve the purposes for which the retirement pension was created. A deferred pension which might very well suit the employee's purposes, is available, if the police officer is interested in early retirement to begin a new career.

AWARD -- SPOUSE OPTION

At this time the option is hardly realistic. The five percent (5) deduction in a police officers own pension is continued with the surviving spouse receiving a pension equivalent to one-half of that reduced pension.

AWARD -- DISABILITY BENEFITS

This demand is granted for the benefit of five employees only! They were hired as civilian employees, later they became members of the police force. The Association proposal is granted on the basis of what amounts to a "grandfather clause" which does not include patrolmen on the police force who at one time were police aides.

HEALTH INSURANCE -- ACTIVE EMPLOYEES

There are two health plans for active employees. The basic plan, Blue Cross-Blue Shield 2365 and Surgical SM-100, provides for the full cost of charges of semi-private hospital accommodations for 365 days. The second plan, Blue Cross-Major Medical, has a \$20,000 maximum and \$100 deductible. It pays eighty percent (80) of the reasonable and customary charges for medical services not covered by the basic plan.

The City currently pays the full cost of the two plans. With the plans, the employee, his spouse and his dependents can expect that between ninety and ninety-five percent of their medical costs will be paid for by the City.

The City says the value of the plan to the employee is best illustrated by reference to comparative data of the eight cities in the North Central region of comparable population, which shows that the City of Milwaukee is paying the highest among the cities in comparison and exceeds the average by \$90.00.

The City has proposed that a \$60.00 maximum per month be placed on its contribution to the cost of maintaining active employee health insurance coverage. Under this proposal, the City would continue to pay the full cost of single employee's coverage and up to \$720.00 annually toward the family coverage. It says that in terms of comparisons, Milwaukee would continue to rank first relative to

single coverage and Milwaukee would rank third in family coverage.

The City has granted major medical, in the amount of \$50,000.00 to other City employees and the Association says it is merely asking for it to be raised to \$30,000.00 and, states in view of the fact that the costs are minimal it feels that this aspect of the demand should be granted.

The parties are in agreement on the Association's proposal to reduce the deductible from \$100 to \$50, although there is no stipulation on this matter.

AWARD -- HEALTH INSURANCE--ACTIVE EMPLOYEES

The City's proposals as to non-duplication of benefits provision is granted, as that does not mean that the employees coverage will be reduced. The City's proposal as a \$60 maximum per month is remanded to the parties for the next contract period as a subject of meaningful negotiations.

The major medical insurance shall be increased from \$20,000 maximum to \$50,000 maximum in line to what was granted other city employees.

The reduction of the deductible for major medical shall be from \$100 to \$50 per annum.

SURVIVORSHIP BENEFITS

The City submits that in the event of the untimely death of an employee prior to retirement, his survivors are entitled to any number of benefits. It says if the death is not duty related, they are eligible for life insurance benefits equivalent to 1-1/2 times the members salary on the date of death. They are eligible to receive money which has accumulated in the employees annuity account through contributions by the employee and by the City on the employees behalf. They may be eligible for survivorship benefits paid out by the fireman's and policeman's survivorship fund. In addition, the City notes that if the employee was past normal retirement age at the time of his death, the survivor may be entitled to the protective survivorship option provided the employee has elected such option.

The City says that the Policeman's and Fireman's survivorship fund is a separate fund established by the ERS to pay survivorship benefits to policemen and firemen. The benefits are funded through equal contributions by the employer and the employee. In the event of the accidental death of an employee who has not retired, the fund pays benefits in the amount of \$280 per month for a surviving spouse with at least one child under eighteen years of age and in the event there are no children, \$140 per month first payable when the survivor

reaches sixty-two (62) years of age.

The Association requests are that the survivorship benefit amounts be increased from the present \$140 in the case of survivors without dependents and \$280 in the case of survivors with dependents to \$175 and \$325 per month respectively. In addition, the Association has proposed that the widow's eligibility for survivorship benefits be reduced from age 62 to age 52.

The City submits that a granting of the proposals will create an inequity between policemen and firemen and, therefore, will require increased contributions by the City and the employee.

In response to the Association's argument for increasing the amount of the benefit is that a surplus exists in the fund, the City replies that the so-called surplus is not a surplus at all. It maintains that the surplus which existed in the past no longer exists because of the recent increases in benefits.

AWARD -- SURVIVORSHIP BENEFITS

The present survivorship benefits and in accord with the recent settlement with firemen, the eligibility age is reduced from age 62 to age 57.

DENTAL INSURANCE

The Association says it is demanding that an award be granted which provides a dental program that is not voluntary or optional but is one that police officers and their dependents can participate in during the term of the Agreement. The Association says the question becomes whether or not it will create a precedent, which the Association says should be of no concern to the City since they bargain individually with each unit of City employees, and cost to the City which the Association says is somewhat negligible in terms of the total costs and since the Association is not asking for retroactivity on this demand, and that it would have to be renegotiated at the term of this contract which the Association says would give them and the City an experience factor as to whether or not such a program is in the best interests of all parties involved.

The City through its witnesses submitted that the need for the Association plan is somewhat dampened by the fact that the existing health insurance plan already covered oral surgery and care necessitated by accidental injuries. It maintains that because much of what would be covered would not be beyond the means of the employee, the City says that much of the program satisfied no pressing needs of the employee.

The City says that comparative data from the eight cities in the North Central region of comparable population reveals that not one of the cities in the survey provides dental coverage. On the other hand the Association introduced comparative data from the fourteen cities that were the subject of its base salary comparisons, and this data indicates that 6 of the 14 have some sort of dental coverage. The City says that the Association did not explain just what this plan consisted of and how much it costs.

AWARD -- DENTAL CARE

This is a matter better left for the future on a less comprehensive basis. It is noted that comparable employers and other City employee groups do not have dental benefits at this time.

HEALTH INSURANCE -- RETIREES

The City submits that it currently provides the same health insurance coverage for police employees under the age of sixty-five as is provided for active employees with the exception of a \$25.00 deductible for each hospitalization. For retirees over sixty-five, the City provides Blue Cross conversion coverage which is basically a hospitalization and surgical care program with an eighty percent co-insurance factor. The City says the main difference between active coverage and retiree coverage is in the allocation of the cost to the employee and the City. For retirees, the City contributes \$51.19 monthly and the employee contributes \$50.86 monthly toward family coverage, and the City contributes \$20.89 monthly toward single coverage. The City says that the cost to the retiree for the basic plan is frozen at the present rate.

The Association proposal is that benefits would be provided only for employees retiring during the term of the contract, but benefits would continue for those employees until they became eligible for Medicare. The City and the Association are in agreement that the total cost of the modified proposal would be \$10,984,832 in connection with the proposal for twenty-five year retirement at no minimum age and \$6,380,000 in connection with the proposal for twenty-five year retirement at age fifty (50).

The Association says it is asking for health insurance for those who can retire, only during the term of this contract, to be given the opportunity to have their health insurance picked up by the City, which would provide an experience factor. It says it is only bargaining this issue for those within the bargaining unit. It notes that if the retirees go out and obtain other employment which provides health insurance that no employer will be the "primary" carrier. In that event, of course, the City will not have to pay anything. It says on the other hand if there is no carrier for those that retire during the term of the contract, the City, it submits, should carry the full burden of providing for medical care for the retiree and his dependents just as is done in the military.

AWARD -- HEALTH INSURANCE, RETIREES

A retiree may participate in the City's Blue Cross/Blue Shield plan between the ages of sixty (60) and sixty-five (65), on the same basis as the firefighters, including appropriate provisions for subordination and non-duplication coordination of coverage with any other employer-related group to which the retiree or his spouse may belong, or of coverage under any program of government-sponsored health insurance for retired employees. The employee may pay personally for any dependent coverage.

LONGEVITY

The Association points out that it was the result of the last arbitration that longevity first came into existence. It says, however, the problem is threefold:

1. Should there be an increase in the benefits,
2. Whether or not longevity pay should take the number of years to achieve, and
3. The penalization of one who advances within the spectrum of improvement for himself by acquiring a role such as detective but then in turn loses longevity pay.

The Association says that under the last contract, when one rises from the role of patrolman to that of detective he is not entitled to longevity until he has accomplished the number of years required within that promotional position. The Association says that officers should not be penalized for striving for upper mobility, and further says it is recognition for long service with the City, and argued at the hearing that the proposal is meritorious for those who have no avenues to promotion, such as policewomen and police matrons.

In addition, the Association is asking for an increase in the benefit as set forth in Association Exhibit #22. Under the Association proposal officers would be given a benefit whether or not they have been promoted. This way instead of being eligible for increments after

twelve (12) or twenty (20) years, employees would be eligible after eight (8) years, fourteen (14) years, and twenty (20) years. Instead of increments of \$250, there would be increments of \$400.

The City has steadfastly opposed longevity pay based solely on years of service, and points out that no City employee receives such pay. It cites the testimony of Inspector Ziarnik that many officers with five years of service do as well as or better than officers with twenty years of service. It says the Union did not establish that the plan will help the City retain experienced employees. It says further that Union testimony is that police professionalism will not be enhanced through the granting of longevity benefits.

The City says that length of service is given recognition in the base salary through the five increments from minimum to maximum. Recognition is given to length of service in rank through "longevity and rank pay". Recognition is given to length of service in promotion through the five-year eligibility requirement for detectives and sergeants. It says that recognition is currently given to length of service and the benefit formula increase to 2.40 percent of employees with twenty-five (25) or more years of service. It says finally recognition is given for years of service in education pay in that such pay is available only to officers with five years or more of service.

AWARD -- LONGEVITY

The recognition for experience and expertise acquired over time that is not otherwise recognized shall be continued as set forth in the previous contract. It is noted that the Fire and Police Commission has recently taken steps to assure that they will be eligible for promotion on the same basis as patrolmen.

UNIFORM ALLOWANCE

The Association says it is not asking for any increase in uniform allowance which presently is \$155.00 a year. They say they are merely asking that in view of the fact that many times their uniforms and equipment, which they are required to wear and to utilize, are damaged in the line of duty the City of Milwaukee be required to pay for the replacement cost. The Association is asking that the cost for replacement be paid by the City of Milwaukee.

The City is concerned with how "damage to the uniform in the line of duty" would be distinguished from normal "wear and tear" which is covered by the uniform allowance under the Union's proposal. It asks that if a final determination of "damage in the line of duty" is necessary that should be vested in the Chief.

AWARD -- UNIFORM ALLOWANCE

The nature of the police officer's work is such that the request of the Association is reasonable enough so that uniform or equipment items directly or indirectly destroyed in the line of duty shall be paid for by the City. The damage to be assessed by the Chief.

GUN ALLOWANCE

The Association demand is (1) make it optional to carry a weapon off duty and give up the \$100 per year, or (2) increase the gun allowance from \$100 per year to \$2 per day, thereby paying the officers for the same considering and inconvenience and potential threat to their own lives and those around them, whether family members or citizens.

The City submits that the \$100 gun allowance was not established for the purpose of compensating for the inconvenience to the officer while carrying a gun while off duty and the Association proposal is nothing more than another attempt to obtain an increase in compensation under the guise of some other rationale. The City states that while it is opposed to the Union's proposal that the gun allowance be increased, it is even more strongly opposed to the alternative proposal that the requirement for carrying a gun while off duty be abolished.

AWARD -- GUN ALLOWANCE

This matter was discussed above in regard to a request removing the restriction on carrying a gun. The gun will be continued to be carried while off duty and as stated earlier, the gun allowance shall be increased by \$25 the first year of the contract, and an additional \$25 the second year. This Award is retroactive to November, 1974.

TERMINAL LEAVE PAY

During the course of the arbitration proceedings the Association changed its original position when it demanded that terminal leave pay be increased from the present thirty (30) days to ninety (90) days at base pay. That demand was then decreased from 90 days to 45 days, and it was alternatively proposed that if Blue Cross/Blue Shield coverage was provided for the retiree during the actual retirement for only the term of this contract, the present thirty-days terminal leave need not be altered.

The City submits that it realizes no monetary savings in terms of the accumulated sick-leave account. It says the data shows that Milwaukee's benefit is typical to that provided by other comparable employers in that Milwaukee ranks near the middle.

AWARD -- TERMINAL LEAVE PAY

Many officers retire with unused leave time, and such officers who have not taken advantage of the sick leave benefits shall be eligible for at least forty-five (45) days pay in the form of terminal leave pay if the officers, in fact, have that amount of unused sick leave. This Award is retroactive to November, 1974.

SPECIAL DUTY PAY

The Association has proposed that bargaining unit members who are assigned to underfill higher classifications be paid at the lowest rate for that classification, Association Exhibit #8. Under the Association's proposal, patrolmen assigned to underfill desk sergeant positions would be paid at the lowest pay for the desk sergeant position. At the present time they are paid at their patrolman rate.

The City believes that underfilling provides an opportunity for the patrolman to be trained in the responsibility of his immediate supervisor and to become familiar with all aspects of the district station operation.

The Association states that its demand is simply "equal pay for equal work". It says the alternatives would be to create more positions of sergeants so that a patrolman would not have to underfill a sergeant. It says in the alternative, if the creation of the position of sergeants are not created, then those within the bargaining unit who are called upon to accept duties and responsibilities of a sergeant be paid at the lowest rate of pay for a sergeant.

The City says that comparable data from the eight North Central Cities of comparable population reveals that none pay officers for

underfilling their immediate supervisor's position. It argues further that the fact firefighters who are assigned to underfill Fire Lieutenant positions, and are paid the lowest rate for Fire Lieutenant position for this work, is not analogous as for one thing the differential between fire fighter and Fire Lieutenant is considerably less than that between patrolman and sergeant.

AWARD -- SPECIAL DUTY PAY

The Association request is that when a patrolman is fulfilling the position of Acting Desk Sergeant that he be paid commensurate with the pay of a Sergeant at its lowest hourly rate for performing those duties is granted. The officer is fulfilling the function, and should be compensated accordingly. This Award is retroactive to November, 1974.

SUBCONTRACTING

The City notes that under the previous contract, the City reversed the right to subcontract.

The Association submits that the use of private guards at City Hall and other private security guards on City property could endanger members of the bargaining unit in that they might be replaced with private security guards at a lower rate of pay than that paid to police officers. It asserts that private security guards would be doing the same kind of work that the officers laid off previously did even though the private security guards would not have police powers.

The City says that at the present time, private security personnel are hired by the City to perform security services in connection with housing projects and City Hall. The City employs thirty-five guards to patrol the Public Museum and two security guards to patrol the harbor area (City Exhibit #5, Item: Subcontracting). A review of the contracts for the private security personnel and the job descriptions for all the personnel reveals that they are to call the police if they observe events beyond their control or if they observe criminal violations or trespasses to property (City Exhibit #5, Item: Subcontracting).

Inspector Ziernik testified that the Milwaukee Police Department

provides general and adequate police protection. If anyone wants more protection, they have to hire private security personnel. Inspector Ziernik testified that under no circumstances would the police perform building security services. He indicated that such assignments would be a waste of police manpower.

AWARD -- SUBCONTRACTING

The Arbitrator finds that the evidence about the conditions which gave rise to the Association's concern as well as the general conditions about the job of the Police Personnel, do not represent an invasion of the bargaining unit's rights and security so the Associations' request will not be awarded.

ASSOCIATION NEGOTIATING COMMITTEE & ONE ADDITIONAL LIAISON OFFICER

The Association has proposed that members of the Board of Trustees be released from duty with pay for time spent in negotiations. It asks that representatives of the Association, who are designated to be on this committee shall be paid regular base salary up to a combined maximum of 672 man hours annually for any time spent engaged in the grievance procedure or business conducted on behalf of the City.

The Association says it is necessary that its trustees and/or designates be relieved of duty with pay rather than the man having to change off days or work at this after their tour of duty.

The Association is requesting that an additional liaison man be provided. It says that the work load is such that the two present liaison men cannot handle it.

The Association submits that the demand is of great importance, and in order to make sure that the contract will be properly administered the addition of an additional liaisonman is imperative for the good of all concerned.

The City has proposed to maintain the present benefit relative to time spent in negotiations. The City has proposed that existing liaison officers be eliminated (City Exhibit 3, Item IV). The City is opposed to the Association proposal for 672 hours of time to attend to Union business. In relation to the liaison officer and the 672

combined hours, the City position is that the Union ought to hire a business representative to attend to its affairs and that this business representative ought to be paid in full by the Association. In relation to the proposal relative to time spent in negotiations, the City position is that the Association has not engaged in meaningful negotiations for years and the present amount of time allocated is entirely adequate in view of the Association approach to negotiations (City Exhibit #5, Item: Union Activity).

In support of its liaison proposal, the Association argues that the fire fighters and District Council 48 have each been granted one liaison man as a result of recent negotiations. The City notes that District Council 48 has two liaison officers for 3,500 employes. The fire fighters have one liaison officer for 1,000 employes. It says the Association at the present time has fewer employes per liaison officer than either the firemen or District Council 48.

AWARD -- NEGOTIATING COMMITTEE & ONE ADDITIONAL LIAISON OFFICER

The ruling is that the City shall continue the two present positions of two liaison persons. The parties have a professional relationship and this should be continued. In light of the servicing personnel maintained by other city employee unions, the request for a third liaison person is not granted.

The evidence and data does not substantiate the Association's

request for allowing Association trustees 672 hours of paid time off.
The present time for negotiations shall be continued, which can of
course always be extended if circumstances so necessitate.

AWARD -- RETROACTIVITY

Measures related to the Contract are made retroactive to November 3, 1974. Of course, as the Association and the City realize there are some matters which cannot be made retroactive. Matters such as working conditions and insurance do not lend themselves to retroactivity.

The Matter of wages and salaries do, and those have been indicated in the Awards, and if there is any question the Arbitrator will so address himself to them.

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The parties have already stipulated contract language on issues agreed upon which was submitted at the hearing. The above awards shall be placed in the appropriate sections of the contract with the appropriate language.

E.J. FORSYTHE, ARBITRATOR

DATED: October 17, 1975
Detroit, Michigan