

In the Matter of the  
Arbitration Between:

CITY OF MANITOWOC

and

MANITOWOC POLICE DEPARTMENT  
LOCAL 731, AMERICAN FEDERATION  
OF STATE, COUNTY, MUNICIPAL  
EMPLOYEES, AFL-CIO

CASE XXVII  
No. 20650  
MIA-254  
Decision No. 14793-A

#### ARBITRATION AWARD

Gordon Haferbecker, Arbitrator  
January 17, 1977

#### BACKGROUND

The parties to this last offer interest arbitration proceeding are the City of Manitowoc, Wisconsin, "Employer" or "City", and the Manitowoc Police Department Patrolmen, Local 731 of the American Federation of State, County and Municipal Employees, AFL-CIO, "Union."

The Employer recognizes Local 731 as the exclusive bargaining agent for all Patrolmen of the Manitowoc City Police Department excluding Detectives, Sergeants, Lieutenants, Captains, the Inspector, Chief of Police and all other employees who do not have the power of arrest. There are approximately forty-six bargaining unit employees.

This dispute involves three issues for the 1976 contract. They are residency, holiday benefits, and wages. The parties met and negotiated six times during 1976, from March 4 to May 12. Following these sessions there was a mediated bargaining session on June 23, 1976. The Mediator was Karl L. Monson of the Wisconsin Employment Relations Commission.

Because the parties had reached an impasse in negotiations they filed a joint petition for final and binding arbitration on July 7, 1976, with the Wisconsin Employment Relations Commission in accordance with 111.77(3) Wisconsin Statutes.

The Wisconsin Employment Relations Commission then appointed Karl L. Monson as Investigator. He recommended that the Commission issue an order requiring arbitration of the written final offers of the parties. The Commission did so and furnished the parties with a panel of five arbitrators' names from which they selected Gordon Haferbecker of Stevens Point, Wisconsin, as the arbitrator.

The arbitrator convened a hearing on this matter at 10:00 a.m. on Friday, September 10, 1976. Seventy-six exhibits were presented and the testimony of fourteen witnesses was received. A transcript of the hearing was taken by Ms. Carol Ann Brunner, Free-Lance Court Reporter. The parties agreed that briefs be filed within two weeks after receipt of a copy of the transcript. The transcript was received on November 12, 1976. The representatives of the parties asked and were allowed extensions of time for final briefs until December 27, 1976.

Subsequent to receiving the briefs the arbitrator granted permission to the parties to file reply briefs. The reply briefs were received by January 7, 1977.

The Employer was represented at the hearing by Paul D. Laevent, Manitowoc City Attorney and the Union was represented by Michael J. Wilson, District Representative of the Wisconsin Council of County and Municipal Employees, AFL-CIO. In addition to the briefs submitted by Mr. Laevent and Mr. Wilson, the Union submitted a second brief in support of two of its legal contentions in the arbitration.

#### APPLICABLE WISCONSIN STATUTES

This is a proceeding under Section 111.77 of the Wisconsin Statutes covering settlement of disputes in collective bargaining units involving law enforcement personnel and fire fighters. Subsection (6) of the statute 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) Stipulation of the parties
  - (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
  - (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
    - 1. In public employment in comparable communities
    - 2. In private employment in comparable communities
  - (e) The average consumer prices for goods and services, commonly known as the cost of living
  - (f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received
  - (g) Changes in any of the foregoing circumstances during the pending 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 arbitrator will refer to the above provisions as they relate to specific issues. The arbitrator will discuss the three unresolved issues in order of increasing importance. They are: (1) holidays, (2) wages, and (3) residency.

#### HOLIDAYS

The final proposals of the parties are shown as Joint Exhibit #6. Under the 1975 contract the number of holidays for Union members varies depending upon shift assignments. Two-thirds of the force receive 8 1/2 days of benefits for holidays and one-third of the force receives 9 1/2 days of benefits for the holidays. Every member of the force receives benefits for the six major holidays and the three major half-holidays. Every member of the force receives benefits for the day after Thanksgiving, making 8 1/2 holidays. Only those who work on Easter Sunday, which is approximately one-third of the force, get an extra holiday benefit (Employer Brief, p. 8).

Employer Proposal. The Employer is proposing that the holidays be equalized with the Firefighters' holidays to end whipsawing between the departments.

Under the Employer proposal all employees would receive benefits for 8 1/2 holidays, the six major holidays, the three half holidays, and the day after Thanksgiving. Those who work on Easter Sunday would receive time and one-half.

The Employer objects to the Union proposal for 9 1/2 holidays because it would exceed the holidays granted to the Police Supervisors and to the Firemen. The Union proposal would result in 45 or 46 additional days off in 1976, compared to 1975 and this would increase the problems of the Department in providing services (Transcript, p. 242).

The Employer is also concerned with the overtime provisions for holiday work as proposed by the Union. The Union is asking for double time plus compensatory time, plus straight time for overtime worked on a holiday. If the Union's proposal were accepted, it would mean that if an officer worked one hour overtime on the day after Thanksgiving investigating an accident, that officer would receive an equivalent of four hours benefits. For working two hours an officer would be entitled to an equivalent of a day's pay (Employer Brief, p. 9). This is a rare and unusual benefit and it would cause serious problems with other employees.

The Employer feels that his proposal, while it would reduce the Easter Sunday benefit as it prevailed in 1975, would still be an improvement over the 1975 contract because it provides more total hours of pay and time off for those employees who work the day after Thanksgiving (Transcript, pp. 122-123). More men would be likely to work the day after Thanksgiving than on Easter Sunday (Transcript, p. 168).

Union Proposal. As indicated above the Union is proposing increasing the number of holidays to 9 1/2 (compared to the Employer's 8 1/2) and is also proposing a change in the pay for holiday work.

The Union Brief includes a table comparing total days off (holidays and vacations) for employees of Anheuser-Busch, the City of Two Rivers, Manitowoc County, and the Employer and Union proposals for Local 731 (Union Brief, pp. 60-61). The table traces the number of days off for employees with one year of service up to thirty-four years of service. In total hours off the rankings are as follows: (1) Anheuser-Busch, (2) Two Rivers, (3) Proposal of Local 731, (4) Proposal of City of Manitowoc, (5) Manitowoc County. The Union notes that Manitowoc County is not really disadvantaged in the comparison because City of Manitowoc Patrolmen must put in additional hours of unpaid report time (15 minutes prior to each shift) and this is not a requirement for Manitowoc County and Two Rivers.

Concerning the overtime pay proposal, the Union admits that there may be some validity to its being an unusual benefit but the cost impact would be minimal since there is normally not much overtime holiday work.

The Union contends that the City's proposal would result in an overall reduction of benefits. It would be a lost potential of eight hours per year for those employees who would otherwise be scheduled to work Easter Sunday. All employees received a minimum of eight and one-half holidays in 1975 with premium pay on Easter Sunday as well as having a schedule of nine and one-half holidays depending upon rotation (Union Brief, p. 63).

Arbitrator's Evaluation. The parties are not in agreement as to whether the Employer's proposal would represent a slight improvement or a slight reduction over the 1975 contract provisions on holidays. I think they would both agree that it would be a minor change.

The arbitrator notes that according to Employer Exhibits #22 and #24, Two Rivers provides 8 paid holidays and Manitowoc County provides 9. The City of Manitowoc at 8 1/2 paid holidays seems to be in between.

Comparing the Employer offer and the Union offer I find the Employer offer to be more reasonable. Most significant here is the Employer's contention that his proposal would be simpler than the 1975 contract and that it is consistent with what the Employer has provided for the Firefighters and the Police Supervisors. The Union proposal would require an additional 46 days off for Police Officers in 1976. It would lead to similar demands from other bargaining units.

## WAGES

There are five categories of Police Officers according to experience. The Employer is proposing monthly pay increases from the least experienced to the most of \$60, \$62, \$64, \$66 and \$68. The Union is proposing that each group receive a \$75 monthly increase. The cost differential for the Union proposal is \$4,380 (Union Brief, p. 43). Ability to pay was not raised as an issue.

Employer Position. The Employer states that other bargaining units got wage increases of approximately 7.2%, the same as is being offered to the Police. It is particularly important to maintain some wage parity with the Firefighters since both groups try to achieve the same economic gains and if either group gets more, the other would be back the next year for an additional adjustment. For 1976, the Firefighters got step increases similar to what the City is proposing for the Police. For 1974 and 1975 the Police and the Firefighters got the same dollar increase. The \$75 increase proposed by the Union would upset the Police and Firefighters wage relationship. The larger increase would also be unfair to all of the other bargaining units which have settled for a 1976 pay adjustment of about 7.2%.

The Employer feels that wage comparisons should emphasize the law enforcement units in Manitowoc County: the City of Manitowoc, the City of Two Rivers, the Manitowoc County Sheriff's Department, and the Manitowoc County Traffic Department. The salaries in the other units are lower than in the City of Manitowoc. The 1976 schedule for Two Rivers is not available but the 1975 schedule shows Manitowoc to be way ahead. For the Manitowoc County Sheriff's and Traffic Departments in 1976 a \$65 per month across-the-board increase was granted. The City's proposal of an increase of \$60 to \$68 is in line with what the County has done for its law enforcement employees. The \$75 proposed by the Union would increase the discrepancy between Manitowoc and Manitowoc County and between Manitowoc and Two Rivers. It would not contribute to stable collective bargaining relationships in the area.

The Employer feels that the Union comparisons with law enforcement units outside of Manitowoc County are not pertinent because many of them are considerably larger communities and because some of them (Menasha, Fond du Lac, Oshkosh, and De Pere, for example) require more hours per week of their law enforcement employees (Employer Brief, p. 5 and City Exhibit #24). (Arbitrator's note: The Union, in its Reply Brief, p. 12, challenges the City's claim that the four cities require more hours).

The Employer objects to wage comparisons with non-law enforcement employees as used by the Union feeling that comparisons with other law enforcement agencies are the most appropriate.

The Employer has met the cost of living criteria in its offer because the 7.2% wage increase proposed exceeds the 7% increase in the Consumer Price Index in 1975. The overall cost of the City's offer to the Police would be about 8% (Employer Brief, p. 11). The Employer and Union have agreed on other economic benefits for the Police for 1976, including increases in the pension contribution, the night differential and the clothing allowance (Transcript, p. 107). Thirty-five of the 46 Police would be eligible for the maximum \$68 monthly increase for the full year.

Union Position. The Union argues that each unit must bargain for itself and that the Police should not be held to the pattern accepted by the Firefighters. There are many differences between the two units in hours, pension plans, work duties, and shift assignments.

In comparisons within Manitowoc County, the Union points out that the Manitowoc City Police actually work 38.6 hours per week, not 37 1/2, because of the reporting time. This is more than the other law enforcement units in the County. Two Rivers has better fringe benefits (Union Brief, p. 53). The City of Manitowoc gave a larger increase, \$75, to Local 20, the Police Supervisors' Unit.

The Union compares various police classifications in the City of Manitowoc and Manitowoc County for 1975 and 1976 on a per hour pay basis (Union Brief, p. 52). This shows Patrolmen in the City to be at \$5.61 per hour in 1975, compared to \$5.67 for Manitowoc County. For 1976, under the City's offer, the figures would be \$6.01 for the City and \$6.07 for the County. For other categories, Sergeant through Lieutenant, there are differences in favor of the City for 3 groups in 1975 and 4 in 1976--under the City's offer. The City's 1976 increases to officers other than Patrolmen increased the differentials between Manitowoc and Manitowoc County in most ranks. The Union's proposal would be more consistent with what the City has done for the Police Supervisors and would reduce the hourly pay difference for Patrolmen to one cent (County, \$6.07, City \$6.06) (Union Brief, p. 53).

Union comparisons for 1976 on an hourly basis with Appleton, Green Bay, Sheboygan, Oshkosh, and Fond du Lac show the City of Manitowoc the lowest of the group with Manitowoc at \$6.01 under the City proposal and \$6.06 under the Union proposal. The highest is Appleton at \$6.44 and the second lowest is Fond du Lac at \$6.09 (Union Brief, p. 49).

Monthly pay comparisons for 1975 for the above cities, and also including Neenah, Menasha, and Two Rivers show Two Rivers lowest at \$906, Manitowoc next lowest at \$938, and Green Bay highest at \$1,003 (Union Brief, p. 50, from City Exhibit #24). The Union points out that the average monthly wage of the seven reporting agencies was \$33 above Manitowoc. This justifies a larger increase than the City has offered for 1976.

While the City's proposed increase may exceed the 1975 change in the Consumer Price Index, the Police are still behind in view of what has happened to the cost of living and wages over the 1973-75 period. During that time the cost of living rose 28% but police wages increased only 22% (Union Brief, p. 48). Therefore, increases larger than the 7.2% proposed by the City are needed to restore the purchasing power lost during the 1973-75 period.

The Union cites private sector wage comparisons in Manitowoc. A brewery worker earns \$7.46 per hour, more than the City of Manitowoc would pay its top patrolmen. Postal clerks earn more than Patrolmen (\$14,133 per year before cost of living). Building trades workers earn more than a Patrolman, from \$6.48 per hour for a laborer to \$9.76 per hour for Iron and Asbestos workers (Union Exhibits #9, #10, and Union Brief, p. 55). The Union's proposal of \$6.06 per hour for Patrolmen is low by comparison. The City has shown no evidence whatsoever as to private sector wages.

Arbitrator's Evaluation. The City has introduced no private sector comparisons. The Union comparisons do show that police pay is low in comparison to the brewery workers, postal workers and building trades. It should be noted that annual pay comparisons for the building trades would probably not look as good as hourly comparisons because of seasonal unemployment. Because of the unique nature of law enforcement work it is difficult to find private employment which is similar. There is no evidence that the wages paid in the private sector in Manitowoc have caused excessive turnover of Patrolmen or that it has become difficult to fill police vacancies.

On the cost of living comparisons the Union does show a disadvantage over the three-year period selected. Probably a substantial proportion of private and public sector employees had a similar experience. A comparison covering more years, when inflation was lower, would probably be more favorable to the City. The Union's comparisons include only base wages and do not show other economic gains--in fringe benefits--that no doubt also occurred. Adding these would modify the results.

The Employer in making Manitowoc County law enforcement comparisons did not note the \$75 per month increase given to the Police Supervisors' Unit. The Union pointed this out. I have calculated the percentage increase for 1976, over 1975 for the various categories, using the Employer's proposal. The \$60 to \$68 increases for Patrolmen give the following percentage increases for the five experience categories: 7.23, 7.175, 7.19, 7.22, and 7.24. The percentage increases for the five Police Supervisor groups are 7.33, 7.33, 7.06, 6.69, and 6.69. It does not appear that the Patrolmen were treated unfairly although the flat increase of \$75 gave a greater range of percentage increases than the graduated increase proposed for Patrolmen.

The Employer and the Union differ in their comparisons between Manitowoc County law enforcement units and the City of Manitowoc Police. The City shows up better in the monthly pay comparisons used by the City and the County shows slightly better when hourly pay is computed. I think it is useful for the Union to calculate the hourly pay, taking into account the required reporting time. I would presume, however, that when Patrolmen in the two units compare their pay and their pay increases that they would be most concerned with actual monthly earnings and with negotiated monthly salary increases.

How does the increase granted the Manitowoc County law enforcement employees compare with that proposed by the Employer and the Union in this case? For 1976, the County Traffic Department has a pay range of \$867 to \$985 per month. The Employer here is proposing a range of \$889 to \$1,006 for 1976. The Union here is proposing \$904 to \$1,013. In 1975, the County range was \$802 to \$920, and the City's range was \$829 to \$938.

For the most experienced Patrolmen the 1975 differential was \$18 in favor of the City. For 1976, it would be \$21 under the City's proposal and \$28 under the Union proposal. It should be noted that one reason for the difference under the City's proposal is that Manitowoc County used a flat increase of \$65 while the City's 1976 proposal is for a graduated increase of \$60 to \$68. The City proposal would come closer to maintaining the past relationship.

In comparing law enforcement wages I feel that comparisons in the immediate area, in this case Manitowoc County, should be given primary consideration. It is appropriate also to then consider wages in cities in the area, taking population differences into account. The Union has made comparisons with cities in eastern Wisconsin which should be considered and Manitowoc does rank low in comparison to the others. I think, however, that the differential is partly explainable by population differences. Appleton, Green Bay, Sheboygan, and Oshkosh are all considerably larger than Manitowoc. Neenah and Menasha, although smaller, probably have wage levels influenced by their close proximity to Oshkosh and Appleton. Fond du Lac is the most comparable in population and is closest to Manitowoc in 1975 monthly wages (\$963 for a top patrolman compared to \$938 in Manitowoc). For 1976, Fond du Lac will go to \$1,018, compared to \$1,006 for Manitowoc under the City proposal and \$1,013 under the Union proposal. Both proposals narrow the difference with Fond du Lac.

I feel that the strongest arguments in support of the Union wage proposal are narrowing the differential with other area cities, particularly Fond du Lac, narrowing the differences with private employers in Manitowoc, and catching up with the impact of 1973-75 inflation.

The strongest arguments for the City's wage position are the following: (1) maintaining equity between the pay of police and fire fighters, (2) favorable wage comparisons with Manitowoc County and Two Rivers law enforcement units, (3) a wage increase comparable to that granted other City bargaining units, (4) an increase greater than the 1975 rise in the cost of living.

I find the Employer's wage offer, on balance, to be more reasonable than that of the Union. It would be more conducive to good labor relations with the various bargaining units that have already settled 1976 contracts, particularly the fire-fighters. It maintains the wage relationship that has existed between the City and the other County law enforcement units.

#### RESIDENCY

The Employer proposes to change Article III, Section J, to read as follows:  
J. All police patrolmen are required to be residents of the City of Manitowoc during the term of this Agreement.

The Union proposes that Article III-Management Rights, Section J, read as follows: All employees shall reside within a ten (10) mile radius from the center point of the intersection of 9th and Jay Streets within six (6) months after the completion of the probationary period.

Background. This is the most important and most difficult issue in this arbitration proceeding. The Employer and the Union have already been involved in two previous arbitrations as well as court proceedings on the issue. It is an issue better resolved through collective bargaining because a settlement reached in that way will be more acceptable to both parties and they would be less likely to try to change it in the next contract or in the next arbitration. Also, as one of the issues in a last offer settlement package, the outcome must depend in part on the arbitrator's evaluation of the other unresolved issues.

The first arbitration between Local 731 and the City of Manitowoc on the residency issue was decided on October 24, 1973, by Arbitrator Howard Bellman. The questions before him were (1) Did the City's enactment of the "Residency in City" ordinance violate the collective bargaining agreements and, if so, (2) What remedy is appropriate? The case included discussion of city ordinances related to residency enacted in 1973, 1943, and 1957. The arbitrator held that the enactment of the ordinance exceeded the City's right to issue reasonable work rules and ordered "that the City cease and refrain from any and all application of the 'Residence in City' ordinance set forth above to the employees in the two bargaining units pertinent herein" (Union Exhibit #3).

The second arbitration was decided on July 8, 1974 by Arbitration Edward E. Hales. It was last offer arbitration involving the same parties and Arbitrator Hales ruled in favor of the Union upholding them on the two issues of a pension contribution and the elimination of a residency requirement for Police (Union Exhibit #3). This decision had been preceded by an incorrect decision in which Arbitrator Hales had decided the residency issue in favor of the City and the pension issue in favor of the Union. Since the statutes require the arbitrator to take the complete final offer of one party or the other, Mr. Hales then issued a new award as indicated above, upholding the Union on the two issues. The City of Manitowoc challenged his award on various grounds in Manitowoc County Court and before the Wisconsin Supreme Court. The matter was heard in the August Term of the Court and Arbitrator Hales' award was upheld in December of 1975 (Union Exhibit #5, Employer Exhibit #45).

Residency continued to be an issue in collective bargaining between the parties. They did not sign the agreement for 1975 until January 19, 1976. The agreement included a clause, Article III, J, stating "Police officers shall not be required to live within the City of Manitowoc" (City Exhibit #46). The City states that the clause was accepted because 1975 was over and because it wanted to conclude a contract and pay the men their back pay. The City indicated at the time of signing the 1975 contract that this was being done without prejudice as to the City's position on residency (Transcript, pp. 165, 171, 189, 200). The signature page of the contract has the notation: "Committee recommends entering into this agreement without prejudice of future year's agreements." It appears that the residency clause was the reason for the notation. No doubt the Employer hoped to get a residency requirement into the 1976 agreement, as had been done with several other bargaining units.

Thus this issue is before this arbitrator as a part of the final offers of the parties for a 1976 contract. I will review the various matters bearing on the issue of residency.

Prevailing Practice. The Union introduced Exhibit #6 showing 14 Eastern Wisconsin communities in which residence is not required by collective bargaining agreement. The Employer introduced 19 Exhibits (#18, 23, 27, and 29 through 44) showing that many Wisconsin cities have ordinances requiring that police be residents of the City. The Union objected to acceptance of these as Exhibits because it is not known to what extent the ordinances are being enforced, and because the ordinances may be subject to challenge by the local police union. The Wisconsin Employment Relations Commission has ruled that employee residency rules are conditions of employment with regard to which there is a duty to bargain collectively under the Municipal Employment Relations Act, prior to their enactment (City of Brookfield, Dec. No. 11406-B, 1973 and Union Exhibit #2, p. 5). The arbitrator is accepting these Employer Exhibits with the qualification that some of them may not be enforceable if they do not meet the WERC requirements cited above.

I think the parties agree that municipalities may have ordinances providing for residency subject to the qualifications noted above, that residency is a mandatory bargaining subject for unions and municipal employers, and that some communities have residency requirements for police and some do not. It would appear that there may be more eastern Wisconsin communities that do not require residency of police than there are communities that have such a requirement.

City of Manitowoc Residency Ordinances. The Employer cites various Manitowoc residency ordinances passed by the City Council in 1943, 1957, and 1973. The application of these to Local 731 was a major issue in the 1973 arbitration by Howard Bellman. The arbitrator found that the 1973 ordinance could not be enforced on the Police in Manitowoc and that its enactment exceeded the City's right to issue reasonable work rules. The arbitrator also found that the 1943 ordinance and the 1957 resolution had not been consistently enforced (Union Exhibit #2).

In view of the above, this arbitrator does not find the City ordinances to be a major factor supporting the City's position in this case. The ordinances as well as the testimony of the Mayor and Council members indicate only the support of the Mayor and the Council for residency requirements. The Employer did testify that the City is attempting to consistently enforce residency on the Police and that all of the members of the current police force are city residents. The Union did not challenge this. I will comment later concerning the Employer's present right to enforce the ordinance on the Police.

Residency Requirements in Other City Units and in the County. The Employer during and since 1974 has negotiated residence requirement clauses in its contracts with Union units of public workers, nurses, police supervisors, firefighters, and park and cemetery workers (City Exhibits #5, 6, 7, 8, 9, 10, 11, 12, 13 and Joint Exhibits #1, 2, 3, and 4). Only the Police lack such a contract provision. The Employer has accepted the WERC policy that residency is a mandatory bargaining subject. The City of Two Rivers has a residency requirements for its Police and residency is required by state statute for County Sheriff's and Traffic units. If the arbitrator granted the Union's position on residency, it would injure the Employer's bargaining relationship with other employee units and destroy the consistency which has been achieved.

The Union responds that the other City groups cannot achieve elimination of a residency requirement because with the exception of the Firefighters they do not have last offer arbitration available. The Two Rivers Police may have preferred to await the outcome of the residency issue with the Manitowoc Police.

The residency requirements in the City contracts are not uniform. Some of them provide that any discharge because of the residency clause shall be subject to the grievance procedure and also include a clause "to hold the Union harmless from any legal action resulting from the enforcement of this provision of the contract" (Joint Exhibit #3, Exhibits #5, 6, 7, 9, 10, 12). The Union points out that the Employer's residence proposal for the Police is harsher than what it has negotiated with many of its other units. It merely states, "All policemen are required to be residents of the City of Manitowoc during the term of this Agreement." There is no opportunity for probationary employees to have a reasonable period for household transition, no provision for appeal to the Police and Fire Commission and/or City Council as some of the City contracts provide, no mention of a grievance procedure appeal, and no provision to hold the Union harmless if an individual disciplined or discharged on the basis of Section J should bring suit against both the City and Local 731.

The arbitrator should give weight to the City's compliance with the law on the negotiation of the residency issue with its various unions and also to the fact that residency is now the prevailing practice in most of the City and County contracts. However, the City's case would have been stronger on this issue if its residency proposal were more reasonable and if the proposal had included the kinds of clauses which the City has granted to some of its other bargaining units. In response on this issue the Employer Reply Brief states that while the City contracts differ in wording, they would be applied uniformly and time would be allowed for moving, and the City's residency ordinance would apply (Reply Brief, p. 4).



Employer's non-compliance with the Bellman and Hales Arbitrator Decisions and with Article III, Section J of the 1975 contract with the Union. Arbitrator Bellman's 1973 decision (Union Exhibit #2) did order the City to cease and refrain from applying the "Residence in City" ordinance to this Union. The Hales decision, upheld by the Wisconsin Supreme Court, did decide against the City's position on residency. The City did agree to Article III, Section J of the 1975 contract with the Union providing that police officers shall not be required to live in the City of Manitowoc. In spite of the above the City has continued to advertise that applicants for police positions must comply with the residency ordinance, has stated its residency requirements in police applicant interviews, and has indicated probable dismissal if a police officer moved outside of the City (Transcript, pp. 3-8, 104, 109, 110, 126-137, 188-190, 225, 228).

The Union charges that the above City actions represent prohibited practices under Wisconsin statutes (Union Brief, pp. 26-27). The Union has brought no formal charge against the Employer before the WERC, perhaps hoping as the Employer did that the issue of residency could be resolved through collective bargaining. I presume that the Employer carried out all of the other provisions of the 1975 collective bargaining contract with the Union except Article III, Section J. This section was also a legal part of the contract. There was no formal agreement between the parties to suspend it in 1976, pending further negotiations. The City has not adequately explained its non-compliance with the arbitration decisions and the 1975 contract.

Availability of Police. A good part of the hearing was devoted to the question of whether Police Officers would be promptly and regularly available if they lived outside the City boundaries. Testimony indicated that the City starts snow plowing operations earlier than many of the towns (1:00 a.m. instead of 7:00 or 8:00 a.m.) and that residence outside the City would often mean residence on a town road which might be plowed later and less well than City streets.

On the basis of the testimony presented, the arbitrator did not find the evidence convincing enough to justify City residence. Highway employees, County traffic officers and postal employees--many of whom live outside the City--reported little or no difficulty in getting to work in spite of weather conditions (Transcript, pp. 30, 32, 43, 53, 80, 82, 83).

Arbitrator Bellman in his 1973 decision discussed this issue and suggested that a maximum distance from some point within the City would provide some assurance of proximity (Union Exhibit #2, p. 6).

The Union's proposal for the 1976 contract accepts the Bellman suggestion and provides for a 10-mile limit. The arbitrator feels that this is a significant compromise and represents a concession from the Union's previous position on residency.

Economic Impact. While it is difficult to measure the economic impact of eliminating residency requirements, this arbitrator feels that it is a very significant argument. Older cities are concerned and hurt economically as middle and upper income residents move to suburban and unincorporated areas and as industry often moves out of the central city. The tax base shrinks but the costs of welfare and city services often keeps on rising. This is a concern not only of metropolitan centers like Milwaukee and Madison but also of many smaller communities. The Mayor pointed out that the local real estate tax to support city or town government is \$9.90 per \$1,000 of assessed valuation in the City, compared to \$1.00 per \$1,000 in the Town of Manitowoc Rapids (Transcript, pp. 191-192). City revenues under state shared taxes and federal revenue sharing are based in part at least on population.

If all 500 or 600 city employees lived outside the City of Manitowoc, it might represent a population loss of over 2,000 people and this would be very significant. There would also be some related population loss due to the impact on City retail and service businesses. Of course, such a large migration is unlikely. It would have been helpful to the arbitrator and it would still be helpful for future negotiation on the residency issue if the City and/or the Union would gather data on the experience of other cities on this matter. In cities the size of Manitowoc which do not have a residency requirement, what proportion of the employees have exercised their right to live outside of the City? Stevens Point has limited the proportion of Policemen and Firemen who may live outside the City.

On this issue of economic impact the Union quotes Arbitrator Bellman from his 1973 Manitowoc decision: "The possibilities of contributing to the City's retail trade, tax base, and general economic welfare are likewise insufficient as counterweights to the very drastic stricture sought to be imposed upon where one might propose to locate one's home because they do not relate to the City's personnel management function" (Union Brief, p. 33).

The Union noted the Mayor's testimony that "We're a good solid, sound, prosperous City" as well as the fact that Manitowoc is growing in population.

The Union in its Brief (p. 33) states that the City has now shown that there would be economic calamity if 46 Patrolmen would leave the City. The arbitrator feels that the economic impact would have some significance and there would also be a serious impact on collective bargaining on economic issues. In some of the fact findings and arbitrations where I have been involved the City has argued that meeting the Union demands would require a tax increase. The Union spokesman has responded "We are also taxpayers or renters in the City and we will also share in the City's increased budget costs." What becomes of this response if all or most of the bargaining unit are non-residents? Will it become more difficult to negotiate wage and benefit increases if the City's taxpayers and representatives feel that non-resident employees are asking for wage increases that will result in city tax increases while the non-resident employees enjoy low real estate taxes in a rural area? I may have overstated the point but I feel it is significant to both the City and the Union as they consider residency now and in the future.

It should be pointed out that the Union's proposal, by limiting the residency area allowed, would have a lesser impact than the provision in the 1975 contract between the parties.

I think that the economic impact argument is a major one in favor of residency requirements.

Personal Freedom of the Employee. Residency requirements of course limit the freedom of City employees in contrast to that of employees who work for private employers. As the Union points out the parents may want their families to live near a river, in a woods, or on a farm. They may want an environment or an experience not available in the City of Manitowoc. Residence requirements sometimes force an individual to choose between his or her livelihood and personal or family concerns (Union Brief, p. 29).

Cities concede that the above may be true but point out that this loss of personal freedom must be balanced against the other reasons for residency rules. The courts have held that residency requirements do not violate the equal protection clause of the U.S. Constitution. One court said "The question is not whether a man is free to live where he will. Rather the question is whether he may live where he wishes and at the same time insist upon employment by government" (Ector v. City of Torrance, 514, P.2d 433, 10 cal3d 129, 1973).

The desire and need of cities for residence requirements and the needs of individual employees can sometimes be compromised in part by provisions which allow the governing body to make exceptions for individual employees (particularly hardship cases) by provisions limiting the proportion of non-residents, and by provisions limiting the area in which the non-resident can live.

The arbitrator feels that such compromises are desirable. The City of Manitowoc has provided some flexibility in some of its contracts dealing with residency (appeals, grievance procedure) but has not included such flexibility in the wording of its contract clause proposed for the Police. The Union's proposal in this case does represent a compromise, allowing a greater measure of individual freedom in the employee's choice of residence but still limiting that choice.

Fond du Lac Arbitration on Residency. (Employer Exhibit #17). The parties have commented on this case at the hearing and in their Briefs. Arbitrator Zeidler in a 1975 decision upheld the residence requirement for police in the City of Fond du Lac. The Union had proposed residency within a fifteen-mile limit of the police station. Many of the aspects of residency discussed in the present case were reviewed in the Fond du Lac arbitration.

In his conclusion, Mr. Zeidler stated "that the economic disadvantage from the lack of such a rule (residency) would be more substantial to the City, that residency for police officers would be especially valuable for good community rapport, and from the standpoint of comparative conditions, the position of the City has greater justification."

I am in agreement with Mr. Zeidler that the economic impact has significance and that community rapport is of importance. Mr. Zeidler also did not feel that the availability of the police, because of distance, roads, and so forth, was a major factor.

Probably the major factors in this Manitowoc arbitration that differ from the Fond du Lac case are the fact that there have been two previous arbitrations which have eliminated residency as a requirement for Manitowoc Patrolmen and there is a provision in the 1975 Manitowoc Patrolmen's contract which states that residency is not required. While the Manitowoc Patrolmen have not been allowed to enjoy the benefits of these decisions and of the 1975 contract, that contract is still legally in effect. The Fond du Lac case also did not give much consideration to possible other compromises on the residency issue, except for the Union's proposal of a fifteen-mile limit.

The Manitowoc Union has commented concerning Mr. Zeidler's statement that "the general pattern still is to require residency within the municipality itself." The Union feels that he gave considerable weight to city residency ordinances, some of which may not prevail against challenges. The Union also notes that the City of New Berlin and the Police Association there both accepted a ten-mile radius as reasonable for residency (Union Brief, p. 42).

#### ARBITRATOR'S CONCLUSION ON RESIDENCY

As the above analysis and discussion indicates there are good arguments on both sides of the residency issue. After weighing carefully all of the evidence in this case, the arbitrator finds the Union position on this issue to be more reasonable than that of the Employer.

There are certainly good arguments for the Employer's side, particularly the existence of other City contracts providing for residency and the economic impact of non-residency.

These are outweighed, however, by evidence on the Union side. The Patrolmen have won the right to live outside the City in three ways: (1) the Bellman arbitration decision which held that the City could not enforce residency on the Patrolmen, (2) the Hales arbitration decision which held that Patrolmen did not need to live within the City of Manitowoc, and (3) Article III, Section J of the 1975 contract between the parties which states that Police officers shall not be required to live within the City of Manitowoc. That 1975 contract is still in effect. According to the Transcript, p. 171, the Union made some concessions to achieve that clause. In spite of all of the above legal determinations, the City of Manitowoc has continued to deny the Police officers their right to live outside the City.

I am also influenced by the Union's willingness to compromise on this issue through their proposal for a ten-mile residency limit. This is a reasonable and significant compromise and does give some considerations to the Employer's concerns on availability and economic impact. The Employer's proposal on residence in its wording is not as liberal as the residence clause granted some of the other local unions (appeal provisions, access to grievance procedure). The Union proposal gives some consideration to employee personal needs but puts a significant limitation on the non-residency option.

#### THE THREE ISSUES

As indicated earlier, the arbitrator has found the Employer position on wages and holidays more reasonable than that of the Union and I have found the Union position more reasonable on the matter of residency. The issues are not of equal importance. I have judged residency the most significant, then wages, and last holidays.

The Transcript, the Exhibits, and the Briefs would all attest in their emphasis to the primacy of the residency issue. It also is a longstanding issue--going back at least to the 1973 arbitration decision. The arbitrator cannot under the statute grant the Union side on one issue and the Employer side on the others. He must accept the total final offer of the Union or the Employer.

Recognizing the primacy of the residency issue, is the Union position on holidays so unreasonable and lacking in merit that the award should go to the Employer in spite of residency? I do not think so. The Union position on wages and holidays had some merit as my earlier analysis indicates. Giving the award to the Union would give the Police one more holiday than they now have. For most of the Patrolmen, the monthly increase in pay will be \$75 instead of \$68 but it will be the same dollar increase as that granted the Police Supervisors. The dollar cost is not large and the City has not pleaded inability to pay. I have therefore determined that the Union's position on the secondary issues of pay and holidays is not so unreasonable as to justify denying their major concern--residency.

I thus find, taking the complete final offer of each party into account, that the Union position is the more reasonable of the two.

#### AWARD

The final offer of Manitowoc Police Department Patrolmen, Local 731, AFSCME, AFL-CIO in the matter of the 1976 contract between the City of Manitowoc and the Union shall be incorporated in the contract.

January 17, 1977

Gordon Haferbecker /s/  
Gordon Haferbecker, Arbitrator