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In the Matter of Arbitration Between	:
	:
THE CITY OF FRANKLIN	:
	:
and	:
	:
FRANKLIN PROFESSIONAL POLICE-	:
MEN'S PROTECTIVE ASSOCIATION	:
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ARBITRATION AWARD

Case XI

No. 20600-MIA-252

Decision No. 14891-B

This case originated with a petition filed with the Wisconsin Employment Relations Commission on June 21, 1976 by the City of Franklin under §111.77 Wis. Stats., alleging that the parties named above had reached an impasse in their collective bargaining for a 1976 Agreement and requesting that the Commission initiate compulsory final and binding arbitration of the dispute. The Petitioner selected Arbitration Form 2 of §111.77(4). After an investigation had been conducted, the Commission made findings of fact and issued an order that "compulsory final offer arbitration be initiated for the purpose of issuing a final and binding award to resolve an impasse arising in collective bargaining between Franklin Professional Policemen's Protective Association and the City of Franklin on matters affecting wages, hours and conditions of employment of law enforcement personnel in the employ of the City of Franklin." Upon advice to the Commission by the Parties that they had selected the undersigned, Eleanore J. Roe, as the Arbitrator from the panel furnished to them by the Commission, the undersigned was appointed "as the impartial arbitrator to issue a final and binding award in the matter pursuant to Section 111.77(4)(b) of the Municipal Employment Relations Act."

A Hearing was held at the Franklin City Hall on November 3, 1976 during which the Parties were given an opportunity to present oral testimony, documentary evidence and oral argument and to examine and cross examine witnesses.

I. Applicable Statute

Wis. Stats. 111.77, which reads in pertinent part as follows, is applicable to the instant arbitration:

"111.77 Settlement of disputes in collective bargaining units composed of law enforcement personnel and firefighters. In fire departments and city and county law enforcement agencies municipal employers and employes have the duty to bargain collectively in good faith including the duty to refrain from strikes or lockouts and to comply with the procedures set forth below:

"(3) Where the parties have no procedures for disposition of a dispute and an impasse has been reached, either party may petition the commission to initiate compulsory, final and binding arbitration of the dispute. If in determining whether an impasse has been reached the commission finds that any of the procedures set forth in sub. (1) have not been complied with and that compliance would tend to result in a settlement, it may require such compliance as a prerequisite to ordering arbitration. If after such procedures have been complied with or the commission has determined that compliance would not be productive of a settlement and the commission determines that an impasse has been reached, it shall issue an order requiring arbitration. The commission shall in connection with the order for arbitration submit a panel of 5 arbitrators from which the parties may alternately strike names until a single name is left, who shall be appointed by the commission as arbitrator, whose expenses shall be shared equally between the parties. Arbitration proceedings under this section shall not be interrupted or terminated by reason of any prohibited practice charge filed by either party at any time.

"(4) There shall be 2 alternative forms of arbitration:

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"(b) Form 2. ... The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator at the time that the investigation is closed. Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

"(5) The proceedings shall be pursuant to form 2 unless the parties shall agree prior to the hearing that form 1 shall control.

"(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."

## II. Background

The City of Franklin, Milwaukee County, Wisconsin, is located approximately 10 miles south of the center of Milwaukee, Wisconsin [See Appendix A]. It is separated from Milwaukee except for its northeast corner. Four other municipalities border Franklin. Oak Creek which has roughly the area of the City of Franklin and a comparable population lies to the east separating Franklin from Lake Michigan. To the north and with some borders common to Franklin are, from west to east, Hales Corners, Greendale and Greenfield, all with considerably smaller areas. Greendale is similar in population to Franklin, Hales Corners has about two-thirds and Greenfield about twice the number of residents.

During negotiations for a 1974 contract between the Parties, which extended into September-October of 1974, the Association sought to secure a time and a half overtime rate. The City claims that it proposed a 6% increase in wages plus time

and a half for overtime for all police officers and that the Association's negotiators countered with a proposal that the overtime instead be represented by a 2 1/2% across the board increase to be added to wages so as to spread the benefit more evenly over the entire force. The 2 1/2% increase was to take effect July 1, 1974. Mr. Gregory P. Gregory, City Attorney, testified [Tr. 44]:

"[A]t that time we proposed a 6% increase plus time and a half for overtime for all the police officers . . . [F]or several years they [had] wanted that time and a half . . . they took it back to their Association [which] came back to the City negotiat[ors] and said that since all the officers would not benefit . . . by the time and a half they would like to work out some kind of arrangement where that time and a half could be spread out . . . So what they did was . . . calculated [the] number of overtime hours worked by the entire department and translated it into a wage increase which came out to be approximately 2 1/2% . . . [W]e agree to that."

Furthermore, Mr. Gregory said,

"It was always [the City's] position that the 2 1/2% represented overtime pay and . . . at subsequent negotiations I always brought that up . . . and said 'Hey, look, if you are going to get time and a half, we are going to deduct the 2 1/2%.'"

Mr. Gregory also testified [Tr. 43,44] that at the time of the 1974 contract negotiations certain last minute additions were made. He said,

". . . we had basically settled for 1974 . . . their negotiator suggested a two-year contract with no changes in benefits other than a percentage increase for the coming year . . . "

As ultimately drawn, the contract covered two years. For 1974, it provided a 6% increase over the 1973 base rate of \$973.90 for its highest paid patrolmen (used as the guideline) to be instituted January 1, 1974 and an additional 2.5% to fall in place July 1, 1974. For 1975 it provided an 8% increase as of January 1, 1975 and a 1% additional step increase to fall in place July 1, 1975. It also contained a clause - Article V(c) - stating that the Parties agreed to comply with the overtime provisions of the U.S. Fair Labor Standards Act as amended.

The Association, on the other hand, contends that the City did not offer a time and a half increase in 1974. Police Officer Frank Sandor, President of the Association for the past two years testified [Tr. 124,5]:

"Well, as I recall, . . . at no time did the City offer us a time and a half clause . . . the 6% increase on the base . . . was pretty well settled. So, in order to get a time and a half clause, to expedite matters, because we were talking November now, this was September-October of 1974 . . . the Association members agreed that to get a time and a half clause we would accept the 2.5% . . . It was the suggestion of the Association . . . we didn't have a time and a half clause - the City never did agree . . . my feeling is that this is the only way we could have gotten it."

In due course, the Parties began negotiating for a 1976 Agreement. The Parties agreed or stipulated that the provisions of the 1974-1975 Agreement between the Parties should be continued during 1976 with certain other provisions added, including:

- a) The classification of Detective shall be added to Article V, Wages, and inserted at the level occupied by the Police Sergeant [Tr. 113]

- b) The City agrees to pay the increase in the annual health insurance premiums as follows:

	<u>1975</u>	<u>1976</u>	<u>Increase</u>
Annual single premium	\$315.00	\$ 445.80	\$130.80 [42%]
Annual family premium	893.40	1286.88	393.48 [44%]

Each Party proposed language for an Overtime Clause providing for time and a half, the provision to take effect as of January 1, 1976. When the Order for final and binding arbitration was issued by the WERC the different proposals concerning Overtime were included as part of the Final Offers of each Party. However, it was agreed and stipulated by the Parties at the Hearing that regardless of which Party's final offer should be selected by the Arbitrator in the final and binding arbitration taking place (1) The language of the City's Overtime Clause shall be used in the Final Agreement, leaving the 1976 contract otherwise unchanged and (2) A letter shall be written granting to the Association fifteen (15) days after the issuance of the award during which the Association's demands may be presented. [Tr. 112-3]

As a result of the above agreements, the issue of wage increase is the sole issue before the Arbitrator. The Association states its final offer as follows:

"Wages: Increase of 6.4% - effective January 1, 1976, to all steps in all classifications."

It states the final offer of the City of Franklin on the issue as:

"Wages: Increase 5.5% - effective February 1, 1976, to all steps in all classifications."

### III. Positions of the Parties

#### A. Franklin Professional Policeman's Protective Association's Position

The Association claims that its final offer takes into account the factors which subsection 111.77(6) requires that the Arbitrator consider in reaching his decision and award and states that, based upon such analysis, "the Association's final offer is the most reasonable." Its arguments follow.

a) Its offer satisfies the need to recruit and retain the most qualified police officers and is reasonable in view of the financial ability of the City. [The City does not claim inability to pay or financial hardship.] Thus, the Association's offer best serves the interests and welfare of the Public and satisfies the City's duty to secure the most highly qualified officers by offering desirable working conditions, including good salary, fringe benefits and related intangible benefits such as good morale, which is dependent to some degree on comparison of wages and benefits with other police departments in comparable municipalities. The Association notes that the Franklin officers receive a lower base wage than the contiguous Oak Creek officers and "the potential for a morale problem in this type of situation is clear." [Assn. Brief, p. 8, citing Tr. 141, 142] The Association also presses the difficulties of the police officer's work and the resulting social problems which he and his family must face -- all of which, it says, cause unusual stress in this employment.

b) The Association compares the two final offers and finds that "The actual dollar difference between the [two offers] is \$4,252.83 for the entire year 1976." It finds that under the Association's 6.4% wage proposal, the highest paid patrolmen would receive \$1,228.09 per month base wage while under the City's 5.5% offer, he would receive \$1,212.41 per month base wage, the difference being only \$15.68 per month -- an amount which clearly would not jeopardize the City financially. The brief sets forth the City's budget for its Police Department and indicates that the costs are well within its limits. Also, it explains, the City has a surplus left from the previous year of \$140,000.

c) The Association urges that a community to be comparable under the meaning of §111.77(6)(d) must satisfy certain criteria, including in this case a similar location on the southern fringe of Milwaukee County, a like residential base, as well as comparable population, police department size and average family income. The Association selected seven communities as suitable -- Oak Creek, South Milwaukee, West Milwaukee, Greendale, Cudahy, Hales Corners and Saint Francis. It claims that the City's list includes not only those but several other communities which are not properly comparable because some are situated northeast of the City of Milwaukee in the northern part of the County and therefore have no community of interest with the South side. Also, they are almost totally residential, and have a higher average family income than Franklin (using 1970 figures). Others (Wauwatosa and West Allis) have far greater populations and thus larger police departments. The Association's brief also objects to other communities which, though geographically near to Franklin, are situated in Waukesha County which [though contiguous to the City of Franklin] has no major urban complex comparable to the City of Milwaukee. They have different tax bases and revenue sources and do not resemble Franklin either because of the dissimilarity of population, family income or community interests.

The Association's brief and exhibits compare the Association's 6.4% and the City's 5.5% offer with the wages paid the police in the seven communities the Association selected as comparable. The comparison shows that the Association's offer (at the rate for the highest paid patrolmen as guideline) translates into \$1,228.09 per month, thus placing it just above the middle of the list, and that the City's 5.5% offer (which the Association claims is in its 1976 effect in reality only a 5% offer due to its being retroactive to February 1 instead of to January 1) translates into \$1,217.00 for 1976, placing it just below the middle of the list. The comparison is supported by Association Exhibit #9 which shows the 1976 percent of dollar increase in salary for the year 1976 rather than the percentage increase in rate.

d) The most cogent argument of the Association is based on its claim that the City's position is unsustainable because it lacks support in the written contract -- there is no mention in the 1974-1976 Agreement of the City's claim that 2.5% of the stated wage base represents overtime and not regular salary. If it is in fact overtime pay it should not be included in the contract as part of the 1975 base salary on which the 1976 salary increase normally would be figured without reference to its distinctive character. There is thus no proof in the contract, the Association indicates, that the 2.5% added as of July 1 in the 1974 contract was not intended to become fused with the basic wage instead of representing a separate amount for overtime. The Association also argues that because of the inclusion in the 1974-1975 Agreement of subsection (c) in Article V, Section 1, it was obvious that subsection (c) along with subsection (b), "Overtime and Rate", which provided for straight time for all overtime worked, superseded any overtime provisions of the preceding part of the contract.

e) In addition to the above arguments, the Association contends that compared with other Franklin municipal employees, the City's offer to the Police is the lowest percentage increase. This it explains on the basis of one month of the City's offer's being at the 1975 rate [presumably with time and a half for overtime added] and of the 5.5% offer's being for eleven instead of for twelve months.

f) The final argument of the Association is based on the U.S. Labor Department's Bureau of Labor Statistics' Consumers Price Index for Urban Wage Earners and Clerical Workers, All Cities (1967=100). The Association reads the Index as a 6.8% increase in the cost of living from January 1, 1975 to January 1, 1976 and an 8.3% similar increase in the Milwaukee area from the end of 1974 to the end of 1975 and says that the City's offer clearly doesn't keep pace therewith. [But see City's position, p. 20. Also see U.S. BLS News, released January 19, 1977 and LRR, 2/21/77 Vol. 94, No. 15, "New and Background Information Part II" stating that from August 1, 1976 the cost of living increased 6.2%.] It also notes that the City has had the use or the interest on the money set aside for the policemen's 1976 salary increase. All in all, it concludes, the Association's final offer "is more reasonable than the City's."

B. City of Franklin's Position

The City's version of the final offers states not only the percentage rates of increase but lists the salary payable to each classification of officers. The City's 1975 salary base includes the amount which it claims represents the 2.5% agreed to in the 1974-1975 Agreement. Page 3 of the City's Post Hearing Brief states,

"[T]he issue to be decided by the Arbitrator is which of the following offers is to be selected:

- a) The City's offer of time and a half (1 1/2) for overtime work except for hours involved in required schooling and training, effective January 1, 1976 and the following wage schedule:

<u>Patrolmen</u>	<u>Effective 1/1/76</u>	<u>Effective 2/1/76</u>
0-06 months	\$ 903.14	\$ 952.81
7-12 months	933.91	985.28
13-24 months	976.03	1,029.71
25-36 months	997.35	1,052.20
After 48 months	1,044.47	1,101.92
	1,154.22	1,217.70
Police Sergeant		
Detective, Administrative Sergeant	1,254.22	1,323.20
Detective Sergeant	1,304.22	1,375.95

- b) The Assn's offer of time and a half (1 1/2) for overtime work except for hours involved in required schooling and training, effective January 1, 1976 and the following wage schedule:

<u>Patrolmen</u>	<u>Effective 1/1/76</u>
0-06 months	\$ 960.94
7-12 months	993.68
13-24 months	1,038.50
25-36 months	1,061.18
After 48 months	1,111.32
	1,228.09
Police Sergeant	
Detective, Administrative Sergeant	1,334.49
Detective Sergeant	1,387.69

The City emphasizes that the "total final offers of both Parties, i.e., the overtime improvements, the wage increase, and the payment of additional health insurance premiums, as a combined package" must be considered and weighed by the Arbitrator. While the City's offer was made retroactive to February 1 in order to keep the total cost impact down, the 5.5% increase in wage rate had the effect of maintaining the wage rate interrelationships with other City employees, including Firefighters, which is important to the employees of the Police Department.

The most useful analysis of the City's position is the following, presented in the transcript at pp. 69 et seq, in which the City explained how it arrived at its offer of 5.5%. The City took \$13,850.64, the annual wage of the top paid patrolmen, deducted 2.5% (or \$346.27) as representing the amount of the salary which consisted of overtime pay. The remainder is the figure which the City uses for computation of the 1976 salary increase. The City claims that the agreed-upon time and a half overtime provision supplements this salary as does the agreement that the City will absorb the increase in the health premium.

Because its offer for 1976 includes a separate provision for time and a half for overtime, the City has based its offer on the 1976 rate stripped of overtime. The City has used \$13,505 as its top patrolman base salary upon which to figure its offer of a 1976 increase in salary. The City reached [Tr. 71-76] this \$13,505 figure as follows, using always the top patrolman rates. It annualized the 1975 monthly rate \$1,154.22 and got \$13,851 [rounded], then subtracted the 2.5% which represents overtime (\$346) and got a \$13,505 base annual rate on which the City has calculated its 1976 increase offer. To get the hourly rate of \$6.92 which it uses in its calculations, it divided the \$13,851 (the rate including the 2.5%) by 2002 hours in the year worked. Overtime has regularly been figured by using this rate, even though it is considered to include 2.5% overtime, making double overtime on that amount, the City notes. To reach the City's total overtime cost the City multiplied the \$6.92 overtime rate by 144 (the number of overtime hours worked during the year) which came out to about \$996. The 1975 contract called for overtime at straight time rates. The City then added the \$996 and the \$346 to reach its total overtime cost or \$1,342. [City's Brief, pp. 7,8]

The City's offer of 5.5% applies to a salary base which includes the 2.5% attributed by the City to overtime or \$14,847. The City explains that its "offer is computed by combining one month at the 1975 rate and 11 months at the 1976 rate" but adds, "If the City's offer were computed for 12 months at the 1976 rate, the percentage would increase an additional .5% to a total of 8.2%." [City's Brief, p. 9]

The City argues that its total 1976 offer compares very favorably with and exceeds most 1976 settlements reached with policemen by the 23 surrounding suburban communities. It states that the true comparative picture must be arrived at by the inclusion of all the fringe benefit programs along with the wages. For this purpose, the City uses the base salary rates excluding overtime payments of 23 communities surrounding the City of Franklin. The City included in its list of communities not only all those found in Milwaukee County but some in Waukesha County which are contiguous to Milwaukee County. [The Association takes issue with this selection on the ground that only the seven which are located in Milwaukee County and south of the City of Milwaukee can properly be considered "comparable".] The City succeeds in showing by this method that if the City's highest monthly rate were annualized, its offer would amount to 8.2%, only two-tenths of a percent less than the average increase in the 23 communities. If no other than communities located in Milwaukee County were used for comparison, the City offer would amount to an increase of 7.6%, it shows. [City's Brief, p. 10]

The City continues by noting that the Association's offer amounts to an increase of \$1,232, or 9.1%, which is "1.5% higher than the average increase granted the 16 other Milwaukee County police departments and would amount to the highest wage increase granted in Milwaukee suburban police departments.

The City says that it advisedly uses the same number of overtime hours as are worked in Franklin in computing the total monetary [wage plus overtime] receipts of a top patrolman in the other compared communities because it demonstrates what that salary rate would mean to a Franklin employee. The average annual overtime (so figured) in the 23 communities for 1975 was \$1,405 and in 1976 was \$1,523, an increase of 8.4%. In Franklin it was \$1,342 and in 1976 under the City's offer it would be \$1,570, an increase of 17%. [City's Brief, p. 11]

If the average annual wage and overtime payments in 1975 and 1976 in the 23 suburban communities are compared, it shows an 8.4% increase. Making the same comparison with Franklin figures shows a Franklin increase of 8.6%. In addition, the City explains, if the City's offer were retroactive to January 1, 1976, thus including 12 instead of 11 months for 1976, the increase shown would be 9%. Were the comparison with other suburban communities confined to the 16 in Milwaukee County it would show an increase in those other communities of 7.6% as against the 8.6% increase in Franklin. [City's Brief, pp. 11, 12]

In summary, the above figures indicate that the City's offer gives more than the average granted in the 23 other communities and 1% more than has been granted in other Milwaukee County suburban communities. "The Association's offer would amount to an increase of \$1,480 or 10% in wage and overtime payments, almost 2.5% more than granted in the other Milwaukee County communities." [City's Brief, pp. 10-12]

In 1975, the average annual health insurance premium paid by the 23 communities was \$765 and in 1976 was \$1,091, a 43% increase. In the 16 Milwaukee County suburban communities the average Wages, Overtime and Health Insurance paid was \$15,776 as against \$17,231 for 1976 - an increase of 9.2%. In the 23 communities the increase was 10.1%. In Franklin the increase was \$1,666 or 10.6%, which is .5% higher than in the 23 communities and 1.5% higher than in the 16 Milwaukee County communities. Even though increases in other fringe benefits (including clothing allowances, holiday, educational incentive and longevity pay) are added in, The City of Franklin's increases are superior -- amounting to \$264 per year over the average in the 23 communities and \$389 over the average in the Milwaukee County communities. The City's position on the wage issue, as is shown above, is grounded essentially on what the City considers to be the true base salary rate, which it insists must be reached by factorizing out the 2.5% which was built into the figure in the 1974-1975 contract as a substitute for a time and a half overtime rate in view of the new time and a half overtime agreement for 1976.

In addition, the City regards the compensation of the Policemen to consist only in part of wages. Both in its testimony at the Hearing and in its brief it shows that the overall fringe benefits enjoyed by its employees compare favorably with those provided by either the average of the 23 communities it has used for comparative purposes or the 16 of them which are located in Milwaukee County. The City submitted an exhibit at the Hearing (City Exhibit #6) on which it had indicated for the 23 communities it has used for comparison as well as for Franklin, the many fringe benefits enjoyed by policemen in addition to wages and overtime. For this exhibit as for its figures relating to wages, the 2.5% factor built into the wage rate in 1974-1975 has been removed from the rate and used as a separate overtime item, making it comparable to the pattern of the other communities. The Fringe benefits listed include longevity, holidays, educational incentives, pension, clothing allowances, health insurance, vacation and life insurance. The Exhibit demonstrates that of the 16 Milwaukee County communities compared, ten paid higher wages in 1976 than are offered by the City. The wage figure does not include overtime (which is sometimes regarded as an extension of wages). The totality of compensation compared with the totality enjoyed by Franklin policemen showed that only two of the 23 communities and one in Milwaukee County exceed the City offer -- whether the actual annual wage to be received under the Franklin offer is used or the amount is figured at the new 1976 rate. The average 1976 annual compensation enjoyed by a top patrolman in the 23 communities is \$22,976; under City of Franklin's offer he would receive \$23,759 in overall compensation -- 3.8% more than the average. The average for the 16 Milwaukee County communities is \$23,072 -- the City's offer is 3% more. If the rate of the City's offer, rather than the cost is used, the percentage would be 3.4% more than the average. The Association's offer . . . would be \$24,040 or 4.6% more if the list of 23 is used. It would exceed the 16 in Milwaukee County by 4.2%.

One more criterion has been established by §111.77(6)(e) -- the average consumer price index for goods and services. . . . The City has used the latest figures in its brief -- which were not available at the time of the Hearing. It shows, the City says, that "although the Consumer Price Index still shows a rise, the rise is de-escalating. The City's total package offer, which approximates 10.6% is clearly in excess of both the 4.3% national rise and the 5.6% Milwaukee rise in the Consumer Price Index." [City's Brief, p. 18]

The City claims that the Franklin Police Force has achieved a relatively poor record in its control of crime in the City. Its brief sets out a chart to show that while the rate of crime in Franklin is smaller than in 21 other suburban communities, the rate of clearance compares very unfavorably. [The numbers of personnel in the various police departments is not indicated by the City.]

In its Reply Brief, the City argues against the Association's contention that the insertion in the 1974-1975 contract of an agreement by the City that effective January 1, 1975 it would comply with the Fair Labor Standards Act as amended [City's Reply Brief, 4th page] shows that the Parties did not intend to continue the 2.5% as a substitute for an overtime rate into 1975. The City makes note that the provisions of the Act (later declared unconstitutional) required that time and a half should be paid to law enforcement personnel only for all hours worked in excess of 240 hours in a work period of 28 consecutive days -- or 60 hours in a seven day work period.



Since it applied only to overtime hours in excess of 60 hours per week, it is obvious, the City says, that the Franklin Police Department would never be affected by its limits. The City's policeman's normal work in 1974, 1975 and 1976 was made up of six days of work followed by three off days, followed by five days of work, followed by two off days, each work day of which consisted of eight hours. In order to be entitled to time and a half for overtime under the Fair Labor Standards Act, the City states, an employee must have worked all of his regular hours plus 80 to 96 hours in a 28 day work period or an additional 12 to 28 hours in a seven day work period. "Thus," the City says, "the 2.5% agreement still had vitality in 1975 and its elimination for 1976 must be recognized and considered as an important element in the 1976 offers of both of the Parties." [City Reply Brief, final page]

#### IV. Discussion

The difference between the Parties' final offers is rooted primarily in their disagreement as to how the 2.5% increase in the 1974 Agreement which took effect July 1, 1974, should be regarded as of 1976. The Association's view is essentially that it lost its character as a substitute for an agreed-upon overtime rate and in 1975 became an increase in the regular straight time salary rate, leaving the employees with absolutely no contractual provision representing or providing for any overtime special rate with the exception of the federal Fair Labor Standards Act with which the Parties agreed to comply. Both Parties testified [see p. 6, above] that initially the 2.5% incorporated into the 1974 Agreement was in effect a substitute for the half time rate which would have formed part of a time and a half overtime rate under consideration at that time. Also, both stated that placing the 2.5% in the salary was intended to distribute the benefit evenly among all the employees. The resultant question, then, concerns the status of the 2.5%, which remained in the rate at the end of 1975. Had it changed its character and become purely base salary rate with no difference for any practical purpose (as apparently claimed by the Association) or had it retained its original character as overtime rate so as to be duplicatory of the provision for time and a half for overtime proposed and agreed upon for the 1976 Agreement? The Parties apparently never discussed institution of a rate higher than time and a half for 1976 overtime, so that need not be considered. The Association contends that the 2.5% must be viewed as merely a part of the salary base regardless of its origin, arguing that the omission in the 1974-1975 Agreement of any reference to its origin or character must be taken to mean that it was intended to become simply salary, thus leaving the provision for payment of overtime at straight rates unsupplemented. In addition, the Association argues, the inclusion of subsection (c) in the 1974-1975 contract, and its placement beneath the enumeration of rates for 1975 means that the Parties intended that at least in 1975 the overtime character of the 2.5% in the 1974 contract should be supplanted by the agreement to comply with the overtime provisions of the Fair Labor Standards Act.

A further important difference between the positions of the Parties lies in their approaches to the §111.77(6)(d) "comparison of the wages, hours and conditions of employment of the employees involved . . . with the wages, hours and conditions of employment of other employees performing similar services. . . ." Apparently, both Parties in their presentations have assumed that subsection (6)(d) which uses this language applies, at least in part, to the percentage of increase granted by other municipalities to their policemen. A large portion of each Party's argument has been devoted to the attempt to show that the percentages of increase in compensation to policemen in the 1976 Agreements in nearby communities either are or are not better on the average than that of the Party making the argument.

Neither Party related the crime rate in Franklin or in the communities taken as comparable with the size of the police departments and with the resultant factor of stress on a police force because of consequent lack of ability to cope with such crime.

#### V. Decision

In reaching her decision the Arbitrator proposes to follow §111.77(6) of the governing statute insofar as applicable to this dispute.

There is no dispute as to (a) the lawful authority of the employer or as to (b) stipulations of the Parties. The stipulations in this case have been discussed above in Part III and are approved and recognized by the Arbitrator. The Parties diverge in their positions as to which offer better serves (c) the interests and welfare of the public, but have not in their presentations disagreed as to the "financial ability of the unit of government to meet these costs." The Association claims that the City does have that ability and attempts to demonstrate this by showing (1) that the cost of its offer falls well within what the City has budgeted for the 1976 costs of its Police Department, and (2) that the difference between the two offers is less than "the surplus of incoming money in 1976 over cash which will be paid out by the City in 1976" which was reported in the community newspaper, "Franklin-Hales Corners Hub." The Arbitrator notes, however, that even were this newspaper account accepted as authentic information, some of the items designated as "incoming money" consist of non-recurring income, thus making such income unavailable for roll-up costs of the 1976 Agreement increases in future years. It is also noted that the article states, "This surplus will be pumped back into the 1977 budget and will help hold down property tax rates." This raises a question as to whether this surplus has been earmarked already by the Council. The City does not claim inability to pay the 1976 effects of a contract such as that sought by the Association. It did, however, apparently consider roll-up costs in its discussion of the police-firefighter relationship. The Franklin Contract provides fringe benefits which depend as to their amount on the percentage of the wage rate of an employee. These include severance pay, Wisconsin Retirement Fund, Workmen's Compensation, Social Security and, of course, overtime. The possibility of future added benefits with such an interrelationship with wage rates as well as the certainty of roll-up costs is apparent. It is noteworthy that City Exhibit #6 indicates that the contracts in many of the communities used for comparative purposes do not figure vacation time in their pension payments. Subsection (c) also requires the arbitrator to give weight to the "interests and welfare of the public." The Association claims that its offer better serves the public interests and welfare because it is higher, thus assuring that the City will be better able to recruit and retain better qualified police personnel and that these employees will be able to perform their duties more ably if they are relieved of the stress and dissatisfaction inherent in comparing their salaries unfavorably with those of the police in nearby communities. The Association's testimony indicates that such comparisons and salary facts relating to other departments are regularly transmitted from department to department by means of an active "grapevine." The City insists that §111.77(6)(c) refers to total compensation of police -- which includes the value of fringe benefits -- and that police personnel are as knowledgeable of the comparisons with such total compensation as of comparison of the wage factor alone. This is supported by an Association witness. Also, the City adequately supported its position that it does not suffer in its consequent ability to recruit or to retain its policemen, by its record -- which shows that for a significant period it has had no resignations having any bearing on this matter. The Arbitrator agrees with the position of the City in this respect. There is no credible or plausible reason considering the caliber of Franklin policemen for them to fail to realize this.

Section 111.77(6)(d) of the Statutes requires the Arbitrator to give weight to the "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."

There has been no evidence produced by the Parties as to the hours and conditions of employment of the policemen of Franklin or of any of the compared communities. In its absence, the Arbitrator assumes that there is no significant difference between the hours or conditions of employment of the employees in question here and those of the other employees mentioned in (d) above. The matter of wages has been dealt with at length. The Parties have spent considerable time and space in their presentations at the Hearing and in their briefs showing that, dependent upon various different factors, the offers would have various percentage relations to the 1976 increases granted by other "comparable" communities, each Party trying to show that the relationship produced by its own offer is more "reasonable" than the relationship resulting from the other Party's offer.

It appears to the Arbitrator that the comparison of such percentages has far less bearing on the reasonableness of an offer than a comparison of the actual wages achieved thereby. To demonstrate, the Arbitrator will take the limited group of communities selected by the Association as properly comparable and the Association's figures which appear on page 19 of its Brief which are used to show comparison of both the percentages and salaries resulting from 1976 increases granted to their policemen. [These communities are Oak Creek, South Milwaukee, West Milwaukee, Greendale, Cudahy, Hales Corners and Saint Francis. In making the comparison the Association uses as the City 1976 wage offer one month at the 1975 contractual rate of \$1,154.22 plus eleven months at the wage rate of \$1,217.70. Whereas the City shows such a calculation also, it essentially presses that the more important consideration is the 1976 established rate, which would take into account merely the new eleven month rate (\$1,217.70 monthly, annualized at \$14,612.40). This the City shows produces a higher percentage figure (8.2%) "just .2% less than the average increase" in the 23 communities. If figured on a 1975 base rate, devoid of the controversial 2.5%, the City's actual 1976 offer would amount to 7.7% as against the average in the 23 communities of 8.4% -- some .7%.] The Association compares the 1976 wages and percentage increases of the seven communities with the 1976 percentage increases of the offers of the Association and the City. This is demonstrated by a chart which shows that, viewed as a percentage increase, the Association's offer falls far short of the highest and the City's falls below the lowest. The increases in all except one of the communities fall between seven and eight percentage. The 1975 salaries of the comparable communities and therefore the dollar amount of the increases are not set out. However, the 1976 salary rates range from a monthly rate of \$1,239 to \$1,147. When the Association's and City's offers are inserted, the Association's rate would be fourth and the City's sixth out of the nine. While the chart presented in the Brief demonstrates that the Association's offer would amount to the second from the lowest percentage increase of the nine rates (including the Association's and the City's), thus implying it is not too high, there is no indication of the amount of the preceding wage or the total compensation provided by any of the nine communities. Without this information before us, the percentage increase is relatively meaningless as are the wage relationships. The Association expresses a similar understanding when it states at pages 18 and 19 of its Brief, "The comparisons of wages and fringe benefits are . . . to be utilized . . . to measure a range of reasonableness . . . as . . . one of the many factors to be balanced by the Arbitrator in reaching a final decision. In order to determine the reasonableness . . . it is necessary to look at the base wage. . . ." [emphasis added]

The Arbitrator does not believe that the 1976 wage has the greatest significance in this case. The Association's monthly wage is \$11.00 lower than the highest of the seven communities; the City's is \$16.00 lower. As discussed above, the arbitrator is not persuaded that this small variation would hurt morale or the City's ability to recruit and retain personnel in view of the apparent intelligence level of the Department personnel. The Franklin policemen were shown to be well informed, as so small a department would normally be. Clearly, all of them would be cognizent of the overall compensation level and, granted that information as to wages in the other communities is constantly communicated through the "grapevine," it must be assumed that information as to benefits other than wages are also.

The above discussed requirement of (d) for "Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding" with those of employees performing similar services and with other employees generally in "public employment in comparable communities" requires that an arbitrator determine the comparability of other communities to be used. The City has taken a broad view and included either all the other 16 communities in Milwaukee County or all those plus most of those contiguous with Milwaukee County but lying in Waukesha County. The Association selected only seven, all of which lie south and southwest of what might be called the central city of Milwaukee, claiming that the more distant location or the disparity in wealth (family income), population, difference of county or lack of community interest should exclude all the others. The Arbitrator believes that all of the groups of communities can be used validly and are useful but agrees that their locations make the seven selected by the Association worthy of the most weight. Thus, she has considered all the comparisons offered by the Parties. The Association has shown the average 1970 family income in its seven selected communities ranges between \$11,691 and \$15,447

whereas in Franklin in 1970 it was \$12,999. Admittedly, significant changes may have taken place during the period between 1970 and 1976. It was shown that there has been a great increase in population in many of them, especially in Franklin. Median 1970 family incomes in some of the other communities included by the City indicate that in this respect it is not unreasonable to include them. The range for West Allis, Shorewood and Wauwatosa is \$11,050 to \$13,595. All are approximately similar as to distance from the Milwaukee Central City. Whitefish Bay has a \$17,124 average family income, making it less valuable for comparative purposes. [Figures from the Wisconsin Book of U.S. Census] When viewed as per capita income, the averages come out about the same [See, "Current Population Reports: Population Estimates and Projections," Department of Commerce Publication, dated June, 1975]

The next criterion that the statute requires the arbitrator to consider is paragraph (2) The average consumer prices for goods and services, commonly known as the cost of living. Each Party has advanced its interpretation of the U.S. Department of Labor Bureau of Labor Statistics Consumer Price Index (commonly known as the CPI). There is some variation in their results, due to their not having access to the final reports thereon at the time of filing their briefs.

Since the briefs were filed, the U.S. Department of Labor News has released the following information:

"THE CONSUMER PRICE INDEX -- DECEMBER, 1976

The Consumer Price Index rose 0.3% in December before seasonal adjustment to 174.3 (1967=100), the Bureau of Labor Statistics of the U.S. Dept. of Labor reported today. The December CPI was 4.8 percent higher than in December 1975, the smallest December-to-December rise in 4 years."

The report continues by saying that on a seasonally adjusted basis, the CPI increased 0.4% in December, compared with 0.3% in October and November.

The Bureau of National Affairs' Labor Relations Expediter of its LRR, at page 174e indicates that the All Cities Index rose from 166.7 in January, 1976 to 174.3 in December, 1976. The February 21, 1977 LRR News and Background Information Part II, Supplement to Vol. 94, Issue No. 15, showed the January, 1977 Index as 175.3.

It appears to the Arbitrator that the City's offer of 5.5% of the 1975 rate including the 2.5%, on the interpretation of which the Parties differ, even though the Association's interpretation were accepted as the correct one, should be viewed as more than adequate to cover the 4.8% of increase in the CPI reported by the BLS, leaving a reasonable amount for increased productivity. Were the City's interpretation of the 2.5% accepted, the increase in salary, which the City has shown is 7.7% [City's Brief, pp. 8, 9] is more than adequate. Even were the Association's percentage figure based on its computation showing a City 5% rate accepted as the truly representative rate, it would not be unacceptable merely for its relationship with the 4.8% increase in the CPI.

A very important statutory criterion remains to be considered -- (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.

The best information available to the Arbitrator is City Exhibit #6 which sets forth the wages, overtime and fringe benefits of each of the 23 communities (which include the seven selected by the Association). As noted in Part III, above, at page 8, the City for this exhibit has "factored out" the 2.5% inserted in the 1974 contract as of July 1. It has included this amount as part of overtime to make it more in line with the practice in the other communities used. The result was set out at page 8 above as follows:

The totality of compensation compared with the totality enjoyed by Franklin policemen showed that only two of the 23 communities and one in Milwaukee County exceed the City offer -- whether the actual annual wage to be received under the Franklin offer is used or the amount is figured at the new 1976 rate. The average 1976 annual compensation enjoyed by a top patrolman in the 23 communities is \$22,976; under City of Franklin's offer he would receive \$23,759 in overall compensation -- 3.8% more than the average. The average for the 16 Milwaukee County communities is \$23,072 -- the City's offer is 3% more. If the rate of the City's offer, rather than the cost is used the percentage would be 3.4% more than the average. The Association's offer . . . would be \$24,040 or 4.6% more if the list of 23 is used. It would exceed the 16 in Milwaukee County by 4.2%.

The Arbitrator believes that the total compensation to be received by the employees for 1976 is of utmost importance in determining the reasonableness and fairness of the two offers. The Association's offer consisting of a total compensation of \$24,040 is, the City's exhibit shows, 4.6% above the average of the list of 23 and the City's offer is 3.8% more than the average. If the list is confined to the 16 Milwaukee County communities, the City's offer is 3% more and the Association's would be 4.2% more. It is more persuasive to note that the City's offer of total compensation expressed in dollars is exceeded by only two of the 23 communities listed and by only South Milwaukee among the 16 in Milwaukee County. The Association's offer in dollars is exceeded by none. On the basis of total compensation the Arbitrator feels that the City's offer appears to be more within the realm of reason and fairness.

With respect to (g) Changes in any of the foregoing circumstances during the pendency of the arbitration, it may merely be noted that while there may be changes in such matters as statistics on family income, etc., they are not known or available to the Arbitrator. Changes produced by stipulation -- such as the agreement of the Parties not to consider Milwaukee County Sheriffs agreement and others mentioned have been taken account of. Also changes in the published statistics bearing on the CPI have been utilized.

The final requirement of the statutory section is (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 . . . One such factor is the crime rate of Franklin as compared with that in other comparable communities. Reference to this was made in the City's Brief. Crime rate is -- in one sense -- a condition of employment though not truly within the ability of the employer to govern, so not considered under (d). Both Parties take seriously the City's crime rate. The City has indicated that its control in Franklin is not as successful as in most of the other communities. It shows that the rate of crime in Franklin is very close to the average in 21 other communities, but that the arrests made are substantially less. The Arbitrator notes that the City produced no information as to the sizes of the police departments in all the communities relative to the incidence of crime and the arrests made. The Association Exhibit #11 is a copy of a letter from Franklin Chief of Police noting a constant increase of crime and arrests and urging increase in the police force to control it.

The Arbitrator has given fairly close attention to City Exhibit #14, "Wisconsin Criminal Justice Information - Crime and Arrests 1975" issued by the Department of Justice. This indicates that taking the seven communities which the Association accepts as properly comparable the following comparisons may be taken into account. Because there is no information available to the Arbitrator on the relative size of the police force in the seven communities considered, the arrest rates are not of much value. However, as showing the problem facing the police in Franklin compared with that in eleven other communities (which the Arbitrator believes reasonably comparable) it may be considered that the Franklin rate of crime (not divided into categories, as all types require time, effort and expertise from police) is approximately 3900 per 100,000. Only two of the communities -- Shorewood and Hales Corners have a smaller crime rate -- respectively 487 and 567. The others have a higher rate. The following are listed in order of an ascending rate: Oak Creek, St. Francis, West Allis, Greenfield, Cudahy, South Milwaukee, Wauwatosa, Greendale and West Milwaukee. West Milwaukee has the highest rate (7511).

The lowest is Oak Creek with a rate of 4149. These figures bear upon the proper comparability of the communities. It is clear that with a crime rate almost twice that of the City of Franklin, on this basis at least, West Milwaukee should normally provide higher wages and total compensation to recruit and retain its police force, but relative to the overall size of the force. Oak Creek with a crime rate of 4149 is apparently most properly comparable to Franklin. The available figures -- from City Exhibit #6 -- show that the total 1976 compensation (always speaking of the top patrolman) is \$23,545 as against the City's 1976 offer of \$23,759 or its rate of \$23,854.

AWARD

After due consideration of all relevant factors the Arbitrator finds the Final Offer of The City of Franklin to be the more reasonable and fair of those submitted by either Party to this Arbitration Proceeding.

Eleanore J. Roe /s/  
Eleanore J. Roe, Arbitrator

DATED: March 4, 1977  
Madison, Wisconsin

APPENDIX A

