ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
	)	
Between	)	
	)	
CITY OF TWO RIVERS (POLICE DEPARTMENT)	)	Case XIX
	)	No. 20807 MIA-259
And	)	Decision No. 14988-A
	)	Interest Arbitration
TWO RIVERS POLICE DEPARTMENT EMPLOYEES, LOCAL 76A, AFSCME, AFL-CIO	)	
	)	
	)	

Impartial Arbitrator

William W. Petrie, Esquire
Route 1 - Box 809
Waterford, Wisconsin 53185

Hearing Held

December 13, 1976
City Hall
Two Rivers, Wisconsin

Appearances

For the City	MULCAHY & WHERRY, S.C. By Michael L. Roshar 811 East Wisconsin Avenue Milwaukee, Wisconsin 53202
For the Union	WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES By Michael J. Wilson District Representative 811 Huron Street Manitowoc, Wisconsin 54220

BACKGROUND OF THE CASE

This is a final offer interest arbitration proceeding between the City of Two Rivers, Wisconsin, and the Two Rivers Police Department Employees, Local Union #76A, AFSCME, AFL-CIO.

The current three year labor agreement between the parties runs from January 1, 1974 through December 31, 1977. Pursuant to its terms, the agreement was reopened for further negotiations for calendar year 1976; those items open for additional negotiations were wages and dental insurance.

The parties were unsuccessful in reaching agreement on wages during the 1976 negotiations, and the Union petitioned the Wisconsin Employee Relations Commission for final and binding arbitration pursuant to the State's Municipal Employment Relations Act. Investigator Donald B. Lee was appointed by the Commission, met with the parties on September 30, 1976, unsuccessfully attempted to mediate the dispute, and determined that an impasse existed; on October 4, 1976, the Investigator recommended that the Commission issue an order requiring arbitration of the dispute.

On October 20, 1976 the Commission issued its findings of fact, conclusions of law, certification of results of investigation, and ordered compulsory, final and binding, final offer arbitration of the dispute.

The parties selected the undersigned from a panel of neutrals provided by the Commission, after which the appointment was formalized by an order of the Commission issued on November 4, 1976.

A hearing was held before the undersigned in Two Rivers, Wisconsin on December 13, 1976, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties filed timely post-hearing briefs, after which the proceedings were closed by the arbitrator on February 10, 1977.

ISSUE

In this final offer arbitration proceeding, the jurisdiction of the arbitrator is limited to selecting either the final offer of the Union or that of the Employer.

The final offers of the parties, comprising Appendices A and B and an addendum to the Advice to the Commission dated October 4, 1976 are as follows:

"APPENDIX A

Two Rivers Police Department Employees, Local 76A, AFSCME, AFL-CIO

Final Offer:

The Union proposed to increase all rates published on the '1975 Positions Classifications and Salary Ranges' set out below* by 8% effective January 1, 1976.

APPENDIX B

The City of Two Rivers, Wisconsin

Final Offer:

The Employer offers to increase all rates published on the '1975 Position Classifications and Salary Ranges' set out below* by 7% effective January 1, 1976.

*'1975

POSITION CLASSIFICATIONS AND SALARY RANGES

POSITION	MONTHLY SALARY				
	Hiring Step A	6 Mos. Step B	12 Mos. Step C	24 Mos. Step D	36 Mos. Step E
Patrolman	754.52	789.32	826.22	864.97	906.04
Sergeant, Juvenile Sergeant, Detective	826.22	864.97	906.04	949.20	994.68

The full complement of steps above is intended for newly hired employees. A promoted employee shall be paid his previous rate for the trial period of three (3) months. Upon completion of the three (3) month period, the employee shall receive the fifth (5th) pay step of the new classification.' "

THE STATUTES

The merits of the dispute are governed by the provisions of the Wisconsin Statutes, comprising the Municipal Employment Relations Act; the provisions material and relevant to the resolution of this matter are as follows:

Section 111.77 of the Statutes is entitled "Settlement of disputes in collective bargaining units composed of law enforcement personnel and firefighters." Paragraph (6) deals with arbitral criteria and provides as follows:

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

(a) The lawful authority of the employer.
(b) Stipulations of the parties.
(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:
  1. In public employment in comparable communities.
  2. In private employment in comparable communities.
(e) The average consumer prices for goods and services, commonly known as the cost of living.
(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE CITY

In support of its contention that a 7% increase in wages for 1976 is the more appropriate choice in these proceedings, the City emphasized various portions of Section 111.77 (6) of the Statutes.

(1) In connection with Section 111.77(6)(f) which provides for consideration of the overall compensation presently received by the employees, it urged consideration of the following economic increases implemented by the City during 1976:

(a) A $25.00 negotiated increase in the uniform allowance;

(b) A $2.00 per week negotiated increase in shift differential for the second and third shifts;

(c) The $.06 and $.05 per hour negotiated increase in split shift rates for the second and the third shifts;

(d) A negotiated increase in longevity pay which applies after 18 years of service;

(e) The negotiated assumption by the City of the full 6.0% Wisconsin Retirement Fund contribution;

(f) The negotiated addition of two more days off with pay for those completing at least one year of service;

(g) A non-negotiated increase of .9% in the employer's contributions to the Wisconsin Retirement fund;

(h) An approximate 50% increase in premiums charged by Blue Cross-Blue Shield;

(i) An increase from $14,300 to $15,300 in the amount of wages subject to the Social Security tax;

(j) A negotiated increase in the detective classification to a level equivalent to the sergeant classification (an increase of $545.76 per year).

When all the above referenced increases are added into the equation, urged the City, the average increase for 1976 including the City's offer, amounts to a 12.37% increase for Police Department bargaining unit members.

(2) In connection with Section 111.77 (6)(e) and (g) which provide for arbitral consideration of the cost of living considerations and changes therein during the pendency of the arbitration proceedings, it urged consideration of the following:

(a) That the all items CPI for Urban Wage Earners and Clerical Workers indicated increases of 7.01% during 1975 and 4.81% for 1976;

(b) That the all items less medical care index reflected increases of 6.76% 4.46% for 1975 and 1976 respectively.

Since the City pays 95% of the cost of medical insurance, submits the City, the cost of living impact upon bargaining unit employees is somewhere between the increases reflected for the two indices; in any event, it submits, the actual figure is below the 7% wage increase offered by the City, thus affording reasonable protection against cost of living to bargaining unit employees.

(3) In connection with Section 111.77 (6)(d) which provides for consideration of a comparison of the wages, hours and conditions of employment of the employees involved, with those enjoyed by other employees generally in public employment in comparable communities and with private employment in comparable communities, the City urged consideration of the following arguments:

(a) That the 7% general wage increase is compatible with that offered to the City's unrepresented employees, relatively equal to that bargained with L.U.#76 of AFSCME representing Public Works and Utility Workers, and equal to that offered to the firefighters in its' municipal interest arbitration in 1976;

(b) That the other benefits increases granted to the police in 1976 exceed those granted to others in the city and, therefore, the Union's offer would bring the police out of line from a comparison standpoint;

(c) That the 8% increase granted to the firefighters by another arbitrator in 1976 was at least partially due to the disparity between the police and fire wages and the necessity for something of a catch-up adjustment; that the total costs of the firefighters and the police settlements would be approximately equal under the city's proposal;

(d) In applying the comparison standard to other employees performing similar services in comparable communities, the City urged consideration of the following factors:

(i) It suggested comparison with communities with between 10,000 and 20,000 population, excluding communities in the Milwaukee metropolitan area; it submitted that population comparisons are most meaningful, due to presumed equivalency of factors such as similar size departments, similar job responsibilities, similar levels of municipal services, relatively equal tax bases, and roughly equivalent budgeting allocations;

(ii) It urged that the Union's suggested comparison communities were not valid in that they "..stacked the comparisons in favor of larger municipalities."; in addition, it urged the arbitrator to disregard the City of Manitowoc as a comparable community for interest arbitration comparison purposes.

(e) Based upon comparison of what it regards as comparable communities, the City urged that the Arbitrator reach the following conclusions with respect to the issue:

(i) That the relative ranking of Two Rivers with respect to salaries paid to police officers would not change under either a 7% or an 8% wage increase;

(ii) That the City's offer would result in the Two Rivers Police receiving a higher wage than the average received in comparable communities by employees performing similar services.

(4) The final comparison urged by the City in connection with this matter was the wages and benefits paid in the bargaining unit versus those paid in manufacturing in Manitowoc, in Wisconsin and in the United States. This factor, urges the City, indicates that the bargaining unit employees already receive more than their private sector counterparts in weekly and hourly earnings.

Apart from the material contained above, the City also urged the arbitrator to consider the present tax burden upon the citizens of Two Rivers. Although inability to pay was not argued, the City referenced an above-average contribution already being paid by Two River's taxpayers for municipal services relative to cities of comparable size in Wisconsin.

POSITION OF THE UNION

In support of its contention that an 8% increase in wages for 1976 is the more appropriate choice in these proceedings, the Union also emphasized various arguments relative to the application of the arbitral criteria spelled out in Section 111.77 (6) of the Statutes.

(1) It urged the arbitrator to conclude that the primary comparison relative to wages to be paid to the Two Rivers Police would be with the Manitowoc Police Department and the County Sheriff and Traffic Departments. This comparison, it urges, will result in a settlement that lies within the area of probable expectancy of the parties;

(2) It cited prior arbitration matters in which the Cities of Two Rivers and Manitowoc have been compared and considered comparable for interest arbitration purposes;

(3) It suggested the existence of inequities which would justify a wage increase exceeding the cost of living increases during the pendency of the 1976 wage negotiations and related proceedings;

(4) It argued that comparisons with neighboring communities in the same area indicated that Two Rivers was lagging behind in terms of police wages;

(5) It suggested that statewide comparisons based upon communities of between 10,000 and 20,000 were only of secondary value; it asserts that even these figures significantly support the position of the Union;

(6) It submitted that during the three year period 1973, 1974 and 1975, the cost of living increased some 28.01% while the base wages for Two Rivers Patrolmen increased only 20.97%; even with moderation of the level of increase to 4.81% in 1976, it suggests that the justified level of settlements for law enforcement units is at or above the level proposed by the Union;

(7) It urged that only limited consideration be paid to those cost of living figures cited by the City which excluded medical costs, these were introduced for the first time in the arbitration, referenced the Union, and the current medical insurance by no means covers all medical bills incurred by employees;

(8) It suggested the inapplicability of 1976 roll-ups and fringe benefits increases costs in the wage comparison figures; the contract is reopened only for wages, it suggests, with prior negotiated increases in non wage areas being of no significance;

(9) It urged the arbitrator to give limited consideration to the wage comparisons with other groups of City employees;

(10) It suggested the inapplicability of the private sector comparison criterion in this matter, citing the lack of private police forces to use for comparison purposes; in general it cited, however, the high turnover rate in the department as indicating a general problem with respect to employment competitors.

For the cited reasons, the Union urges the conclusion that its 8% final offer is more appropriate, and more in line with the reasonable expectancies of the parties.

FINDINGS AND CONCLUSIONS

Initially the Arbitrator must reflect upon the fact that both parties to this proceeding have done a highly professional job in presenting evidence and persuasive argument in support of their respective positions. The parties presented a total of thirty-three exhibits in support of their presentations, argued their cases skillfully at the hearing, and submitted very well organized and well-argued post hearing briefs. When the degree of preparation of the parties is coupled with the fact that the two offers in dispute are only 1% apart from one another, it is apparent that the resolution of the matter is not without difficulty.

The statutory criteria referenced in Section 111.77 (6) of the Wisconsin Statutes are extremely broad in potential application, but some of the criteria have little or no application to the situation at hand. Section 111.77(6)(a), for example, relates to the lawful authority of the employer; since no question is raised relative to the authority of the City of Two Rivers in this proceeding, this section of the statutes has no application to the case at hand. Sub-section (b) which follows immediately thereafter refers to stipulations of the parties; the only applicable stipulation of the parties was that ability to pay was not in issue in the proceeding. Sub-section (c), when stripped of any ability to pay issue, relates solely to "The interests and welfare of the public..". Sub-section (d) raises the comparison factor which is major in the resolution of substantially all interest arbitration disputes. Sub-section (e) raises the cost of living factor which has been of particular importance in recent years due to the volatility in the prices paid by consumers for goods and services. Sub-section (f), in general

terms, directs the arbitrator to consider the overall level of compensation presently received by the employees including fringe benefits, continuity and stability of employment, and all other benefits received. Sub-section (g) directs the arbitrator to consider changes in the various criteria that occur during the pendency of the arbitration proceedings. Sub-section (h) in rather general terms directs the arbitrator to consider other factors normally taken into consideration in the determination of wages, hours and conditions of employment in public and private bargaining and third party proceedings relating thereto.

The arbitrator will treat the various factors argued by the parties in the following order:

(1) The Comparison Factor in General Under Section 111.77 (d);

(2) Comparisons With Other Cities Under Section 111.77 (6)(d)(1);

(3) Comparisons With Other City of Two Rivers Employees Under Section 111.77(6)(d);

(4) Comparisons of Wages and Conditions in Private Employment in Comparable Communities Under Section 111.77 (6)(d)(2);

(5) The Cost of Living Question Under Section 111.77(6)(e);

(6) The Overall Compensation Presently Received, Including Benefit Increases in 1976, Under Section 111.77(6)(f);

(7) The Interests and Welfare of the Public Under Section 111.77(6)(c).

The Comparison Factor in General Under Section 111.77(d)

Without any doubt, the single most extensively relied upon criterion in resolving interest disputes is that of comparison. This point was well enunciated in the following section from the authoritative book by Elkouri and Elkouri:1./

> "Without question the most extensively used standard in 'interests' arbitration is 'prevailing practice'. This standard is applied, with varying degrees of emphasis, in most 'interests' cases. In a sense, when this standard is applied the result is that disputes indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties."

Irving Bernstein in his excellent book on wage arbitration makes the same points, and expands upon the rationale as follows:2./

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have 'the appeal of precedent and... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public'."

Comparisons with Other Cities Under Section 111.77(6)(d)(1)

The enunciation of the principle that comparisons are the most extensively used criterion, and explaining the rationale underlying their use, however, does not solve the most basic question of specifically what cities should furnish the comparison data? The basic position of the Union is that the most logical comparison should be with the City of Manitowoc based upon physical proximity and the allegation that Two Rivers and Manitowoc are "twin cities"; secondarily, the Union urges comparison of cities of various sizes in the geographic area of Two Rivers.

The City urges consideration of wages paid to policemen during 1976 by communities falling within the 10,000 to 20,000 population category on a state wide basis; in suggesting this comparison, however, it urges exclusion of the Milwaukee metropolitan communities due to circumstances peculiar to this urban area adjacent to Wisconsin's largest city.

While the Union would normally and properly insist upon some consideration being given to the proximity of Two Rivers to Manitowoc in labor contract negotiations, I must observe that the City is correct in that arbitrators will generally place primary emphasis upon a comparison based upon population and reasonable proximity rather than mere proximity alone. In other words, a statewide comparison based upon communities of comparable size would be the standard most typically followed by arbitrators rather than any comparison that ignored size in favor of geography alone.

In looking to cities that fall within the 10,000 to 20,000 population range on a statewide basis the City submits that its offer would place the Two Rivers Police at the median point among police salaries, that both the Union's and the City's offers would leave the police at the same relative position and that the City's offer would place Two River salaries for all three categories, (i.e., patrolman, sergeant and detective), at a level above the average monthly salaries paid in the comparable communities.

The Union registers no objection to dropping the Milwaukee area cities from the computations, but it suggests also dropping some of those at the lower end of the wage scale from further consideration. It indicates that the City's figures for Middleton Patrolmen are incorrect, and raises a question relative to the Kaukauna figures. The City offered no explanation relative to the Middleton discrepancy but explained the Kaukauna figure as an average figure in that the Police unit received an increase on both January 1 and again on July 1, 1976; the city used the average of the two rates rather than the higher rate paid at the end of the year.

The Arbitrator does not completely agree with the computations employed by the City with respect to Kaukauna; paying $913.86 for six months and paying $968.69 thereafter is realistically not the same as the reported rate of $942.00 for the entire year! If two employees were making $1,000.00 per year at the beginning of the year and one got a raise of $100.00 per month in January and the second received a raise of $200.00 per month in July, both would have made the same amount of money during the year; the second employee would be making $1,200.00 per year at the end of the year and thereafter, however, while the first employee was still at the $1,100.00 per year level.

Rather than favor either party with the disputed Kaukauna figures, however, perhaps it would be equitable merely to drop them from the computations. If the Kaukauna figures are dropped entirely, and the corrected Middleton figures added, the revised average salary for the eleven comparable cities shown on Employer Exhibit #18 is $975.95 per month, a figure closer to the Union's offer of $978.52 than to the City's offer of $969.46.

Since neither party elected to submit the average amount of wage increase for the year 1976, the average salary in absolute terms is the most valid comparison figure. Based upon the comparison of wages paid in comparable cities of 10,000 to 20,000 population in the State of Wisconsin, I must conclude that the Union's proposal is closer to the average than the City's final offer.

Comparisons with Other City of Two Rivers Employees Under Section 111.77(6)(d)

The City voiced a legitimate and an honest concern with respect to the pattern of settlements with fire fighters, public works employees, and unrepresented employees; it submits that the police settlement should be relatively consistent with wages paid in other units.

The Union resists this argument on the basis of the fact that the three bargaining units all bargain separately and distinctly from one another. It cites several arbitration cases and an excerpt from Article III of the agreement which provides as follows:

"Article III - UNION ACTIVITY

The Local is to bargain separately from all other bargaining units under the jurisdiction of the City."

While the desire for uniformity in relationships is understandable for the employer, it is impossible to ascribe primary importance to this factor. In this respect, I must agree with the rather uniform positions enunciated by the five arbitrators cited by the Union in support of its position. The City may well pursue uniformity as a bargaining goal but in the absence of a well established practice, each individual bargaining unit must be evaluated separately from others.

Comparisons of Wages and Conditions in Private Employment in Comparable Communities Under Section 111.77(6)(d)(2)

In this connection the City urged comparison of the average wages received in manufacturing employment in the City of Manitowoc, in the State of Wisconsin and in the United States.

Without going into the matter in great detail it would be very difficult to ascribe conclusive value to these factors due to the following considerations:

(1) There is a significant difference between police work and the unclassified general manufacturing employment referenced by the City;

(2) There was no showing of comparability between the two catagories of jobs.

This criterion would be of greater significance in this case if we were dealing with private sector counterparts to police employees to the same extent that such counterparts exist in other types of public employment.

The arbitrator observes in passing that it would also be illogical in the extreme to pay great attention to a comparison of manufacturing wages in Manitowoc and policework in Two Rivers, after having denied major validity to any comparison between comparable policework in the two cities.

The Cost of Living Question Under Section 111.77(6)(e)

The initial questions to be determined by the Arbitrator in connection with the cost of living issue is which time frame and which set of statistics to give consideration to in his deliberations.

The Union urged major consideration of the degree to which increases in cost of living during 1973, 1974 and 1975 exceeded the wage increases enjoyed by the bargaining unit during these years. The City urged consideration of the cost of living increases during both 1975 and 1976, suggesting that the index used should exclude medical costs from consideration.

The normal time period considered by arbitrators in connection with cost of living questions is the time frame since the parties last went to the table for the purpose of negotiations. This principle and the rationale behind it was particularly well discussed in the previously referenced book by Irving Bernstein:[3.]

"Base period manipulation...presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule: the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement).[8] The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go behind such a date,' a transit board has noted, 'would of necessity require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded between them.[9] This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost-of-living in their negotiations. Where the legislative history demonstrates that this issue was considered, the holding becomes so much the stronger.

This line of reasoning rests upon the past rather than the prospective behavior of the index, the former being the more common method of calculating a cost-of-living wage change."

In the above connection see Waterfront Employers Association (9LA 172), Atlantic and Gulf Coast Shippers (9 LA 632), Moeller Instruments Company (6 LA 639), R. H. Macy & Co. (9LA 305), and Remco Instruments (43 LA 29).

Since there is nothing in the record to suggest that the parties have agreed to go further back in time than the 1975 effective date of the current labor agreement and, additionally, since there is nothing in the record to indicate that their 1974 negotiations anticipated or discounted any future movement in the cost of living index, the arbitrator must conclude that the primary time period before him for the purpose of examining movement in the cost of living is calendar year 1975. Accordingly, I will discount the Union's cost of living argument to the extent that it relates to wage and cost of living considerations that preceded January 1, 1975.

What then of the City's urging of the Arbitrator to consider movement in the index during calendar year 1976? It is true that 111.77(6)(g) provides that the arbitrator shall give weight to "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." It must be realized, however, that changes in some of the criteria would be quite significant in the considerations while changes in some others would be relatively insignificant. If, for example, collective bargaining in several comparable communities were concluded after the expiration date in one unit but before the conclusion of the arbitration process, the parties and the Arbitrator would undoubtedly place great weight on the wages, hours and conditions of employment negotiated by the parties. Situations could well be visualized where wild fluctuations in the cost of living indices would be given primary consideration by an arbitrator, but I fail to see that type of situation in the case at hand. Indeed, if the arbitrator were to look to both 1975 and 1976, he would be considering increases totaling between 11% and 12%; it would obviously be inappropriate to retroactively apply cost of living increases that occured during the entire year of 1976 to a wage increase that became effective on January 1, 1976.

For the reasons outlined above, I must conclude that the only persuasive cost of living figures before the arbitrator in these proceedings are those relating to movement in the index occuring during the calendar year 1975; in other words, the movement in the indices occuring since the last negotiations and before the effective date of the wage increase herein under consideration.

What then of the dispute between the parties relative to which set of cost of living figures to use? The City urges the use of a relatively new index which excludes medical costs from the computations, while the Union urges use of the overall figures which include medical costs.

While there is a great deal of logic associated with the position of the City, to the extent that the employees do not actually incur medical expenses that are reimbursed by insurance, I am reluctant to utilize the new cost of living index in these proceedings due to the following factors:

(1) The figures were introduced and argued for the first time at the arbitration proceeding, not having been previously discussed by the parties;

(2) There was no showing at the hearing relative to what percentage of medical insurance contribution was made by employees in the bargaining unit, nor to what extent employees were required to personally pay medical expenses not reimbursed by their group insurance plans.

In light of the above discussions, the arbitrator will give primary cost of living consideration to the fact that there was a 7.01% increase in the all items Consumer Price Index during calendar year 1975.

The Overall Compensation Presently Received, Including Benefits Increases in 1976 Under Section 111.77(6)(f)

The City referenced a number of deferred negotiated increases in fringe benefits, in addition to some legally required contributions that were added to its' payroll costs for policemen in the unit in 1976, and urged their consideration by the Arbitrator.

The Union urged the arbitrator to consider that the deferred increases were negotiated and fully taken into consideration by the parties at the time that they negotiated the wage reopener giving rise to this proceeding. In urging that the arbitrator disregard these factors, the Union cited Arbitrator Philip Marshall in a City of Wausau arbitration. I must agree with the position of the Union in this respect and again cite author Irving Bernstein's explanation of the matter:4./

> "Arbitrators have had little difficulty in establishing a rule to cover this point. They hold that features of the work, though appropriate for fixing differentials between jobs should not influence a general wage movement. As a consequence in across-the-board wage cases, they have ignored claims that tractor-trailer drivers were entitled to a premium for physical strain; that fringe benefits should be charged off against wage rates;....
>
> The theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates. Hence established differentials and premiums are regarded as fixed for purposes of general wage changes....."

In connection with the external changes such as modifications of the contribution to the Wisconsin Retirement Fund, these generally apply equally to all employers and employees and will not change the relative wage positions. The suggested consideration of the increase in the Social Security contributions maximum from $14,300 to $15,300 is also inappropriate due to the above factor, in addition to the fact that any employee who has earnings above the old maximum loses wages due to being personally required to make the same contribution increase as the City.

While the City must validly take all the increases into consideration in evaluating its finances, the Arbitrator must conclude that the above factors have no basis for inclusion in the wage determinations in this arbitration proceeding.

The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet These Costs Under Section 111.77 (6)(c)

The parties specified at the hearing that ability to pay was not in issue in these proceedings. Additionally there was evidence in the record to the effect that there was additional money available in the budget to pay for any increases that resulted from these proceedings; in short, the City has managed its finances in a fiscally conservative and businesslike manner.

While the fact that the City of Two Rivers is fifth highest of fourteen comparable communities in terms of its effective real estate full value tax rate, there was no showing that any decision in this proceeding would have an impact upon the tax rate. It would certainly be inappropriate to conclude that either of the two alternatives before the arbitrator would have a significant impact upon the interest and welfare of the public within the meaning of Section 111.77(6)(c).

Summary of Conclusions

Based upon the above discussions, the Arbitrator has reached the following summarized conclusions:

(1) That a comparison of wages paid by the City of Two Rivers to member of the Police Unit versus those paid in cities of 10,000 to 20,000 population in Wisconsin is the most appropriate comparison in this case; this comparison indicates that the average paid in comparable cities is closer to the final offer of the Union than to the final offer of the City;

(2) That internal comparisons within the City of Two Rivers relative to wages paid to other represented and to non-represented employees should not be given controlling effect in these proceedings;

(3) That, in the absence of any showing of comparability, the manufacturing wages paid within the City of Manitowoc, the State of Wisconsin and the United States, should not be given controlling effect in these proceedings;

(4) That the increase of 7.01% in the all items Consumer Price Index for calandar year 1975 supports the Union's final offer in this proceeding; that the reduction of the rate of increase in the cost of living to approximately 4.81% in calendar year 1976 does not detract from the appropriateness of the Union's final offer for 1976;

(5) That deferred negotiated increases in fringe benefits which became effective in 1976, and certain non-negotiated 1976 increases in employment related costs for the City of Two Rivers are inappropriate for major consideration in the wage determination question;

(6) That there is no evidence in the record to support the conclusion that the interests and welfare of the City would be adversely affected by implementation of the more appropriate of the two final offers.

For the reasons shown above and discussed herein, I have concluded that the Union's final offer in these proceedings is the more appropriate of the two final offers before the Arbitrator.

1./ How Arbitration Works, Bureau of National Affairs, Third Edition - 1973, page 746.

2./ The Arbitration of Wages, University of California Press, 1954, page 54.

3./ Ibid, pages 75 and 75, footnotes ommitted.

4./ Ibid, pages 90 and 91.

AWARD

Based upon a careful consideration of all the evidence and argument, and pursuant to the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Two Rivers Police Department Employees, Local 76A, AFSCME, AFL-CIO, is the more appropriate of the two final offers before the Arbitrator;

(2) Accordingly, and effective January 1, 1976, all rates published on the "1975 Positions Classifications and Salary Ranges" should be increased by 8%.

William W. Petrie /s/
WILLIAM W. PETRIE
Impartial Arbitrator

March 10, 1977
Waterford, Wisconsin