Municipal Interest Arbitration of CITY OF GREENFIELD (POLICE DEPARTMENT) and TEAMSTERS UNION LOCAL No. 695 re WERC Case XLI, No. 20663, MIA-255 involving wages and other matters	ARBITRATION AWARD Arbitrator: James L. Stern Decision No. 15033-B

INTRODUCTION

On July 16, 1976, Teamsters Union Local No. 695, hereinafter identified as the Union, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act (MERA) in order to resolve the dispute between the Union and the City of Greenfield, hereinafter identified as the Employer. The WERC, having found that an impasse existed, despite efforts to resolve the dispute during the informal investigation by WERC staff member Donald B. Lee on September 9, 21 and October 13, 1976, issued an order dated November 4, 1976, for final and binding final-offer arbitration.

In an order dated November 24, 1976, the WERC stated that the parties had chosen the undersigned arbitrator from a panel submitted to them and appointed him to issue a final and binding award pursuant to Section 111.77(4)(b) of the MERA. The hearing in this matter was conducted on January 13, 1977, at the City of Greenfield City Hall. Testimony was given and exhibits were introduced. Argument was made by written post-hearing briefs exchanged through the arbitrator on February 15, 1977. A rebuttal brief was filed by the Employer, dated February 28, 1977. Appearing for the Union was Michael Spencer, Business Representative of Teamsters Union Local No. 695; appearing for the Employer was Dennis J. McNally, Attorney of Mulcahy & Wherry.

Section 111.77(4)(b) requires that the arbitrator select either the entire final offer of the Employer or the entire final offer of the Union and does not authorize him to select portions of each offer position or variations thereof. The final offers of the Employer and the Union on the four issues in dispute are:

I-Wages:

		Employer	Union
1976 Wages: (Monthly eff. 1st of yr.)			
Patrolman:	Start	$ 990	$1015
	After 1 complete year	1050	1090
	After 2 complete years	1130	1170
	After 3 complete years	1220	1230
Detective/Juvenile Officers:	Start	1275	1275
	After 1 complete year	1285	1285
	After 2 complete years	1305	1315
	After 3 complete years	1345	1355
1977 Wages: (Monthly eff. 1st of yr.)			
Patrolman:	Start	1040	1086
	After 1 complete year	1110	1166
	After 2 complete years	1190	1252
	After 3 complete years	1280	1316

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	Employer	Union
Detective/Juvenile Officer: Start	$1340	$1364
After 1 complete year	1350	1375
After 2 complete years	1375	1407
After 3 complete years	1420	1450
For the purpose of computing overtime pay, the individual's annual salary shall be divided by the following figure in order to arrive at an hourly pay amount	2022.9 hours	2021.5 hours

II. Compensatory Time: The Employer proposes that the following language be added to the Agreement.

Compensatory Time: In lieu of receiving pay for overtime hours worked, employees may request and receive compensatory time off on a time and one-half (1-1/2) basis for each overtime hour worked. Such compensatory time must be taken within thirty-one (31) calendar days of the time it was earned and must be taken in accordance with the General Order of the Greenfield Police Department setting forth department rules for the utilization of such compensatory time off. In the event that an individual has not taken compensatory time off within the said thirty-one (31) calendar day period after earning the compensatory time, the employee shall be paid for such time at the rate of time and one-half (1-1/2) his regular hourly rate of compensation for each overtime hour worked. In recognition of the fact that certain employees of the Greenfield Police Department have accumulated substantial amounts of compensatory time in their accounts, all compensatory time earned prior to September 1, 1976, must be taken as compensatory time off or will be paid out by the City of Greenfield on or before December 31, 1977, at the overtime rate in effect at the time such hours were worked. In the event that the payout provisions of the previous sentence are found to be in conflict with the provisions of Chapter 109.03, Wisconsin Statutes, the City and the Union agree to immediately negotiate a successor provision.

The Union makes no proposal on this issue and thereby offers that the language of the prior Agreement on this issue be continued without change.

III. Existing Conditions and Benefits: The Union proposes the following language; The Employer proposes that there be no language on this issue in the Agreement.

The Employer offer would omit this section from the Agreement.

Section ____ The Employer will not unilaterally change, modify or reduce benefits, wages and/or favorable work conditions or practices even though same may not be formally or specifically set forth in the labor Agreement.

Employer	Union
IV. Health Insurance for Retirees:	
Insurance for Retirees: Employees who are retired involuntarily at age fifty-five (55) years or over with fifteen (15) years of continuous service with the City of Greenfield Police Department will be covered by hospital and surgical insurance benefits until such employee reaches the maximum age of sixty-five (65) years or until he is eligible for Medicare, whichever occurs earliest. The City agrees to pay the premium for said insurance coverage and the amount of the premium shall be equal to the amount of the premium for the insurance coverage in effect on the date of the retirement by the said employee. This insurance benefit shall not be provided for employees who voluntarily retire. In the event that an employee who is entitled to insurance under the terms of this Section ____ takes employment with another employer who provides medical-hospital insurance coverage, that employee shall be taken off the City's coverage while so employed, on the condition that such employee shall be again provided with the benefit of this Section ____ upon notice that his employment with such subsequent employer has been terminated and, further, upon the condition that he has not reached the age of sixty-five (65) years or that he is not eligible for Medicare.	Section ____ Hospital and Surgical Insurance involving Retirees: Members of the Police Department who are retired involuntarily by the City will be covered by hospital and surgical insurance benefits until a maximum age of sixty-five (65) years or until eligibility for Medicare, whichever occurs earliest. This benefit shall cover dependents or retiree while he is eligible. The premium for said insurance coverage shall be paid by Employer for insurance coverage in effect at the time of retirement only. It is understood this benefit shall not be available to voluntary retirees. At this time, there are no employees near the mandatory retirement age; therefore, it was agreed the City would not be required to purchase insurance coverage until the year in which there are employees who will become eligible. This is a non-cost fringe benefit at this time, but it is to be considered incorporated into the Labor Agreement, the same as though it had been fully set forth therein.

DISCUSSION

The issues listed above are first considered separately. Then the packages in their entirety are compared.

Discussion of Wages Issue:

For purposes of discussion about the 1976 Wage, the arbitrator will use the salary paid to patrolmen with three year's service. This figure is used most often by both the Employer and the Union in their Exhibits. The arbitrator found Employer Exhibit #18 to be extremely helpful in his analysis of the 1976 Wage issue. The Union claims that the monthly salary of a patrolman with three years service should be $1230 while the Employer claims it should be $1220, a difference of less than 1%. If the Employer offer were to prevail, the Greenfield patrolmen would rank 15th out of 27 Milwaukee Metropolitan Area communities (including Greenfield), according to Employer Exhibit #18; if the Union offer were to prevail, the Greenfield patrolmen would rank 11th of the 27 communities.

Since the median position would be 13th, it appears that the Union is seeking a few dollars more than the median while the Employer is offering slightly less than the median salary of these adjoining communities. If the same analysis is made using only the communities listed in Union Exhibit #4 the same results are obtained. The Union offer would place the Greenfield patrolmen in the 7th position out of 19 communities including Greenfield, while the Employer offer would place them in the 11th position. Again, both offers depart only slightly from the salary paid to the patrolmen in the median community.

If this were a conventional arbitration case where the arbitrator was free to "split the difference," the arbitrator probably would do so and would suggest that a monthly salary of $1225 be paid. Clearly, both parties are being reasonable. One can't say that $1220 is equitable and $1230 is not, no more than one can claim that the opposite is true. Under either proposal, patrolmen in Greenfield would be paid "fairly" compared to patrolmen in surrounding communities.

Extension of the discussion to other classifications does not change the situation appreciably because there is only one juvenile officer in the unit and four detectives (Employer Exhibit #2). And, as in the case of the patrolmen, the parties are only $10/month apart, a difference of less than 1%.

For calendar 1977, the Union proposes a wage increase of approximately 7% while the employer proposes a monthly increase of $60 in the salary for a patrolman with 1, 2 and 3 years experience, $50 in the patrolman's starting salary, $65 in the starting and 1st year salary for detectives and juvenile officers, and $70 and $75 in the 2nd and 3rd year salaries respectively of the detectives and juvenile officers. As a percent, this varies from 4.9% for the patrolmen with 3 years service to 5.7% for the patrolmen with 1 years service.

If the 3rd year patrolman rate is used as a benchmark again, it appears that the Union is asking for 7% while the Employer is offering 5%. Actually, the difference between the parties is less than 2% because the salaries for other classifications are increased on the average by about 5-1/2% under the Employer offer as opposed to 7% under the Union offer. Because few other Milwaukee Metropolitan area communities had reached agreement on 1977 salaries at the time of the hearing in this dispute, the same comparisons as those used in analyzing the dispute about the 1976 salary cannot be used to determine what is fair in 1977. Instead, both parties turned to other criteria including changes in the consumer price index in 1976.

The Union relies upon changes in the Milwaukee Area Consumer Price Index and points out that this is the index that the parties had used in the 1974-75 Agreement. The Union points out further that, at the time the parties exchanged final offers, the increase in the Milwaukee index was 6.2%. (The arbitrator assumes that the 6.2% was based on the change from the August, 1975 index to the August, 1976 index: 169.1-159.2/159.2). The Employer relies upon the National Consumer Price Index and upon that Index adjusted to omit changes in health care costs, since the Employer pays the health insurance premium and thereby shields the employee from some increases in health care costs. The Employer notes that the rise in the National Index from November, 1975, to November, 1976, was 5.0% (Employer brief shows this figure as 4.95%) and when adjusted to exclude medical care costs had increased in this period by only 4.5%. When the December, 1975 to December, 1976 figures are used, the change in the National Consumer Price Index is 4.8% and the change in the index adjusted to exclude medical care costs for the same period is 4.5%. In so far as changes in the consumer price indexes are concerned, it appears that the Employer offer is marginally more appropriate than the Union offer.

The Employer also makes some comparisons of Greenfield police salaries with average earnings in private industry. The Union does not challenge the Employer assertion that the police have higher earnings than the average worker in private industry but discounts this comparison on the ground that the private sector average includes unskilled workers as well as skilled workers. The arbitrator would have preferred instead that the Employer and the Union compare the proposed wage increase for 1977 with the percent increase in wages being negotiated for different groups of workers in the Milwaukee area. What percent wage increases are being negotiated in the Milwaukee Metropolitan area for skilled workers? And what percent are being negotiated for unskilled workers? Are these increases comparable to the Union or to the Employer position?

The Union challenges the accuracy of Employer Exhibits #3 and #4 and suggests that the arbitrator focus his attention on minimum and maximum salaries. The arbitrator has relied upon patrolmen maximums as his benchmark but believes that Employer Exhibits #3 and #4 are relevant and have some value despite the error which the Union points out. The Exhibits are useful in that they point out that employees receive step increases and other economic benefit increases which are not reflected in a comparison of maximums. Presumably, employees in the other communities with

whom the comparisons are made in Employer Exhibit #18 also receive such benefits and their exclusion does not bias the calculations made earlier in this discussion. In terms of costs to the community and in terms of gross annual pay of employees, however, the increase in maximum salaries tends to understate the economic impact of the settlement. Average income increases of patrolmen exceed the 7% increase in 1977 salary schedules proposed by the Union.

Finally, there is the miniscule question of whether, for the purpose of computing overtime pay, an individual's annual salary should be divided by 2022.9 hours as proposed by the Employer or by 2021.5 hours as proposed by the Union. The arbitrator believes that the Employer position is correct because it includes leap year. The Union position would be accurate only if it stated that in leap years, the annual salary should be divided by 2027.1 hours, and in other years by 2021.5 hours.

On the whole, the arbitrator believes that the Employer wage offer for the two years is slightly preferable to the Union offer although it is clear that both offers are reasonable.

Discussion of Compensatory Time-off Issue:

The Employer claims that under Section 109.03(1) of the Wisconsin Statutes it is illegal for employers not to pay overtime within 31 days of the time it was earned and that the Union proposal to accumulate overtime and take compensatory time-off more than 31 days after it is earned is illegal. The Union counters this argument with the claim that compensatory time-off is not wages as defined in Section 109.03 and therefore is not subject to the 31 day limitation. It notes further that the courts have not as yet ruled on this issue.

The arbitrator takes no stand on this legal question and will consider the position of each party on its merits. If the Employer believed that this aspect of the dispute involved an illegal Union offer, the proper forum for arguing that matter was the WERC.

One Employer argument against the unlimited banking of overtime for future use as compensatory time-off is that there is a manpower shortage which makes it difficult for employees to take time off. Since employees must obtain permission from the Employer to take compensatory time-off, the arbitrator does not see how the shortage harms the Employer. It seems to the arbitrator that the manpower shortage would cause a problem for employees rather than for the Employer by preventing employees from taking compensatory time-off at their own convenience. In any event this situation is expected to ease in the future after the five employees hired in November 1976 are fully trained.

The Employer argues further that the problem is aggravated by the fact that employees receive 68 hours off on January 1st in lieu of holiday time-off. The arbitrator is perplexed by this line of argument. If there is a manpower shortage and the Employer wishes to reduce compensatory time-off, why does it add to the problem by using this arrangement instead of paying premium pay for work on holidays?

Another argument put forth by the Employer is that a majority of the employers in the Milwaukee Metropolitan area limit compensatory time-off or do not grant it at all. This claim is supported by Employer Exhibits #26 and #27 and is not challenged by the Union in its post-hearing brief.

Against these Employer arguments the Union raises three counter arguments. First it argues that the Employer had agreed in negotiations to the Union proposal. Union Exhibit #5 shows that the Employer and the Union initialed tentative agreement on a clause which would permit employees to elect compensatory time-off and did not require that the time-off be used within 31 days of the time it was earned. Second the Union claims that the present practice is causing no problems and argues therefore that it should be continued. Third, the Union argues in its brief that the compensatory time-off arrangement saves money for the Employer and that the Employer benefits economically from its continuation.

On the whole, the arbitrator prefers the Union position for the following reasons. In the past employees have had the option of electing compensatory time-off and it seems sensible to continue this arrangement unless there is some reason to change it. As the arbitrator has already indicated, the 1976 manpower shortage may have inconvenienced employees by making it necessary for them to defer compensatory time-off, but the arbitrator has not seen any evidence supporting the argument that continuation of this procedure will damage the Employer.

In testimony at the hearing the Captain of the Greenfield Police Department testified that he was having some problems with employees calling in late or wishing to be excused during the shift, or desiring to tack compensatory time-off to a vacation period. The problems of late call in an desiring to be excused during a shift do not seem to the arbitrator to be directly relevant to this dispute. Presumably, under the Employer proposal, the problem would still exist as individuals are likely to have earned some compensatory time-off. Furthermore, if such requests involve improper absences from duty, the problem is one that the parties would resolve in accordance with other sections of the Agreement. As for the problems of employees wishing to tack compensatory time-off to vacation periods, the Employer can meet this problem by denying the request when there is a manpower shortage, as apparently has been done in the past. Perhaps, when the new men are trained the Employer will not need to deny such requests in order to have sufficient employees available for duty. In any event, the arbitrator cannot see any damage being done by continuing the present procedure.

The arbitrator is not disregarding the Employer evidence about the practice in other communities. Perhaps it would be sensible to negotiate a limit on the amount of compensatory time-off that an employee can accumulate and also to limit the time period during which compensatory time-off can be accumulated. For example, as the Employer points out in its brief and as is shown in Employer Exhibit #27, some communities require that compensatory time-off be used within six months or in the calendar year in which it is earned. Others require that it be used up more promptly. Others may limit accumulation to some amount such as 40 hours and some communities may have negotiated both types of limitations.

In the Greenfield situation, however, there does not seem to have been extensive consideration of this matter. Instead, the Employer agreed on July 14, 1976 to the no-limitation language of the Union and then, apparently, when agreement was not reached on the Agreement as a whole, took the position outlined in its final offer. So far as the evidence in front of the arbitrator is concerned, there has been little discussion about the most practical type of limitation or how such a limitation would apply to the 68 hours of compensatory time-off that would be credited to an employee's account on the first of the year. Would this amount have to be taken within 31 days of the first of the year? Or, alternatively, is it considered earned piece by piece as each holiday occurs?

If the Union position prevails in this dispute and no limitation on the accumulation of compensatory time-off is added to the Agreement, the Employer may well wish to raise the argument again in next year's negotiations (which are not too far off!). Perhaps, in future negotiations, the parties may agree on some limitation, or possibly the dispute may again be referred to arbitration. Before it is referred to an arbitrator, however, it would be logical to expect that the parties will have explored all options.

In this case, the arbitrator does not challenge the legal right of the Employer to include compensatory time-off limitations in its final offer. The arbitrator does believe, however, that in this type of situation where one party or the other has agreed to a proposal but later wishes to change its mind, that the party changing its mind must present a strong case in support of its changed position. In this instance, as the arbitrator has already stated, he does not find that the Employer has advanced persuasive arguments for placing such a limitation in the Agreement.

Existing Conditions & Benefits:

The Employer argues that the existence of an existing conditions and benefits clause, or a maintenance of standards clause, as it is usually referred to, would hamper the efficient operation of the police department and furthermore that most other communities in the Milwaukee Metropolitan area have not agreed to such a clause.

The Employer also claims that the need of employees to retain this benefit has been reduced by virtue of the agreement of the City to have discipline and discharge cases subject to arbitration rather than to appeal to the police and fire commission as was the case under the prior Agreement.

The Union argues that it gained such a clause in past negotiations and that it would be unfair to deprive employees of a benefit which exists in the prior Agreement. (Technically, the clause is included in a letter attached to the Agreement which states that said letter is incorporated by reference in the Labor Agreement.) The Union argues that the existence of this clause has not caused problems in the past and fears that the Employer desire to delete the clause masks the real and presumably anti-employee reason for the change. (See Union Brief, p. 14.)

The arbitrator finds it difficult to resolve this issue. Like other arbitrators, he would not establish a maintenance of standards clause, except under special circumstances. In this instance, however, the parties have established such a clause in the past Agreement and the Union is asking only that the status quo be maintained. The Employer, on the other hand, is asking the arbitrator to take away a benefit from employees which they have had in the past. Just as arbitrators are reluctant to grant new maintenance of standards clauses, so arbitrators are equally reluctant to take away from either party through arbitration proceedings those rights which they have freely negotiated into past Agreements.

Given these balancing considerations, the arbitrator needs to evaluate the conflicting evidence as to the question of whether the existence of this clause in the prior Agreement has hampered efficiency. The Employer witness in the best position to testify on this point, Captain Richard Karweik, went into considerable detail about the type of problem that might arise if a maintenance of standards clause were to be included in the 1976-77 Agreement. Most of his examples, however, are hypothetical although reference was made to two grievances which charged that the Employer had violated the existing conditions and benefits clause.

The Employer argues that a maintenance of standards clause "would make . . . it virtually impossible to adjust manpower needs . . . [because] an officer could prevent the City from switching his shift by claiming that the shift he presently works is a favorable working condition." (Employer Brief, p. 35.) The arbitrator reviewed the shift preference clause and finds that, although shift preference is based upon seniority within rank, the clause specifically provides that shift assignment rights are subject to exception "when the Police Chief deems it is in the best interest of the Department . . ." (Section 6.05 of the '74-'75 Agreement, Joint Exhibit #2). It appears to the arbitrator that this language specifically affirms the right of the Chief to make exceptions in the interest of the department and therefore would not be barred by a maintenance of standards clause.

Another hypothetical example raised by the Employer is that an employee might argue that his assignment to a particular beat is a favorable work condition and that he could not be assigned to another less attractive beat because it might violate the maintenance of standards clause. In connection with this hypothetical example, the Employer noted that one employee had filed a grievance on just such a matter (see Employer Brief, pp. 35-36). Although the Union may grieve a reassignment, it appears to this arbitrator that, absent special circumstances (such as those that might violate the reasonableness requirement of the Management Rights Clause, Section (j) of Union Exhibit #9), the management rights clause covers this right of assignment and amply protects the Employer.

Related to the question of whether a particular beat is a favorable work condition which must be maintained are similar problems related to the relative desirability of different assignments such as assignment to the functions of desk clerk, court officer and the keeping of the business card file. It appears to the arbitrator that the Employer has the right to make such assignments in the absence of a maintenance of standards clause subject of course to the reasonableness requirement referred to above. The arbitrator also believes that the Employer has this same right if the Agreement contains a maintenance of standards clause.

So far as the arbitrator can determine from the hypothetical and actual problems of the police department that relate to this issue, the continuation of a maintenance of standards clause would not hamper the efficient running of the police department. On the other hand, the discontinuation of the maintenance of standards clause would not change the situation in so far as these examples are concerned. From the point of view of the Union, one might ask, what is lost if the maintenance of standards clause is deleted from the Agreement? As the Employer points out in its brief the Union is hard pressed to come up with specific benefits which rest upon the maintenance of standards clause.

The answer seems to be as much psychological as real. The clause is seen as protection against the unknown. From the Union point of view, who knows what sort of new administrative procedure the Employer might wish to adopt in the future. Perhaps a new Chief might want to change things in a way which did not violate the Agreement but which represented a change for the worse. Perhaps he would be able to make such changes unless restrained by a maintenance of standards clause.

Finally, there is the argument which centers around the maintenance of standards clause which other unions of the City of Greenfield have negotiated with the Employer. The Union argues that firefighters and public works department employees of the Employer have maintenance of standards clauses and that it would be unfair to discriminate against police employees by taking the clause away from them. It is of interest to note, in this connection, that Mr. Raymond C. Dwyer, Director of Public Works for the City of Greenfield testified that the maintenance of standards clause in the public works department hindered the efficient operation of that department. He testified further that the maintenance of standards clause caused the Employer to lose an arbitration case in which the City attempted to reduce a 3 man call-in crew for a snow salting operation to two men. (It should be noted that the Arbitrator requested a copy of this award but has not been furnished same and therefore accepts the testimony only as a statement of opinion by the witness of why the case was lost rather than as a statement of the arbitrator in that case as to why he upheld the grievance. For example, he might have done so on safety grounds rather than because of a maintenance of standards clause.)

The conclusion that the arbitrator draws from the argument advanced by the employer in regard to the public works department is probably quite the opposite of what the Employer intended. It seems to the arbitrator that if the clause is such a problem in the public works department Agreement with AFSCME Local 2, the Employer should negotiate its deletion. After doing so, the Employer would be in a stronger position to argue before arbitrators for the removal of the clause from the police and firefighters Agreements.

Finally, it should be noted that the Employer ties its request for the deletion of the maintenance of standards clause to its deletion of the so-called "anti-standards" sentence from the management rights clause (Union Exhibit #9) and to its substitution of a neutral arbitrator for the Police and Fire Commission as the final and binding step of grievances other than those not covered by Section 62.13 of the Wisconsin Statute (Union Exhibit #8). The arbitrator recognizes that the Employer has departed from the status quo in these two respects but wonders whether the Union would regard these two concessions as a fair trade for the deletion of the maintenance of standards clause. From the argument in its brief, the arbitrator draws the inference that the Union would not regard this as a fair trade because the Union believes that the Police and Fire Commission rulings are subject to appeal to the WERC or the courts (see Union Brief, p. 13).

On the whole, then, where does this arbitrator find himself on this issue of whether or not to delete a maintenance of standards clause from the Agreement? After considerable thought about the matter, the arbitrator finds that the Union offer is to be preferred although there is ample argument in the opposite direction. Where an employer has through negotiations granted a maintenance of standards clause to one union representing employees of the Employer, he should not rely upon an arbitrator to take away the same privilege from a different Union representing another group of employees, particularly where no abuse of this clause has been demonstrated and where its impact is prospective and hypothetical. If the Employer had taken away the maintenance of standards clause from AFSCME Local 2 or if the prior existence of the clause had been shown to have hampered efficiency, the arbitrator would have

sided with the Employer on this issue. Given the circumstances described above, however, it appears to the arbitrator that the Union offer on this issue is more equitable than the Employer offer.

Retirees Health Insurance:

Both the Employer and the Union introduced their arguments on this issue with reference to the point that "this fringe benefit will not affect a single employee in the bargaining unit during the term of this 1976-77 collective bargaining agreement or for many years thereafter." (Employer Brief, p. 44). This issue appears to be less important to the parties than the other issues in dispute and possibly because it has no immediate impact, the discussion of this issue is understandably less thorough than the discussion of the other issues.

For example, neither the Union nor the Employer comment on the fact that the Employer proposal provides that the City will pay "the amount of the premium for the insurance coverage in effect on the date of the retirement by the said employee" (Joint #1), while the Union proposal provides that the City shall pay the premium "for coverage in effect at time of retirement only" (Joint #2). There is a difference between paying the amount of the premium at a particular date and paying for the coverage that existed at a particular date, even though the Employer brief (p. 43) apparently overlooks this distinction and though the Union makes no reference to it. If the premium for the coverage at the date of retirement of an individual was $50 per month, and the premium for the same coverage is increased two years later to $60 per month, the employee would pay the $10 increase under the Employer proposal and the Employer would pay the increase under the Union proposal.

Also, there is no discussion of what is meant by "involuntary retirement" and how this is interpreted by the parties. Under the Employer proposal, involuntary retirement seems to involve retirement because of age while under the Union proposal, an employee might be considered to be involuntarily retired, for example, if he fails to pass a physical examination. Perhaps the parties would consider this to be a "termination" rather than an example of involuntary retirement. In any event, there is no discussion of this point and therefore it is well nigh impossible for the arbitrator to determine the effect of the two different proposals.

The Union argues primarily that since the Employer negotiated this benefit as part of the 1974-75 Agreement, it should not be taken away from employees by tightening up the language. The Employer argues that since there is no standard provision in agreements of other communities in the Milwaukee Metropolitan area and since many of them make no provision for this contingency, the Employer should be able to tighten up the clause on grounds of equity and comparison with contracts of other employees of the City of Greenfield who have age restrictions in the clause in their contracts providing for this benefit.

The arbitrator thinks that it would be sensible for the Employer and the Union to consider tightening up on the language originally agreed upon but does not believe that adequate attention has been given to the exact language that such a clause should contain. Therefore, since there will be no impact during the life of the 1976-77 Agreement, according to the Employer and Union, and since there have been no problems raised about the language agreed to in the 1974-75 Agreement, the arbitrator believes that it is preferable to go along with the Union proposal on this issue.

Although it is difficult to balance a position on wages against positions on such matters as accumulation of compensatory time-off and maintenance of existing benefits, the arbitrator believes that the total difference between the parties on the three non-wage issues is of greater significance than the difference on the wage issue. It should be noted also that there is a common thread running through the position of the Employer on the three non-wage issues. In each one the Employer is attempting to take something away from the Union which the Union had won previously. Unless the Employer is able to show good reasons why such benefits should be discontinued, an arbitrator usually will not remove them. One of the factors normally taken into account in collective bargaining, a criterion listed in the statute (111.70(6)(h)), is that you don't lightly take away benefits from either party which they have won through negotiations.

In this dispute, the arbitrator has stated that the Employer did not show that the existence of these benefits has hampered the Employer in carrying out his functions or in any way caused significant harm to the Employer. Furthermore, the arbitrator believes it to be particularly important that the Employer has not negotiated the removal of the maintenance of standards clause from its agreement with another union, not subject to statutory binding arbitration, even though the Employer testified that its ability to manage efficiently had been hampered by the existence of the clause in the other Union's agreement.

FINDINGS AND AWARD

Therefore, for the reasons explained in the prior discussion section of this award and with full consideration of the statutory criteria and the testimony, exhibits, and arguments of the parties, the arbitrator finds that the final offer of the Union is preferable to the final offer of the Employer, and

The arbitrator selects the final offer of the Union and orders that it be incorporated into the January 1, 1976 to December 31, 1977 Agreement.

3/28/77

March 28, 1977

James L. Stern /s/
James L. Stern, Arbitrator