

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of :  
: JANESVILLE PROFESSIONAL POLICE : Case XIX  
ASSOCIATION, INC. : No. 21017 MIA-271  
: Decision No. 15147-A  
and :  
: CITY OF JANESVILLE (POLICE DEPT.) :  
-----

On January 7, 1977 the undersigned, having been duly selected by the parties from a panel submitted by the Wisconsin Employment Relations Commission, was appointed as Arbitrator by the aforementioned Commission. A hearing was held in Janesville, Wisconsin on February 14, 1977. Post-hearing briefs were duly filed by each party and exchanged through the Arbitrator on March 1, 1977. Reply briefs were also exchanged through the Arbitrator on March 11, 1977. By prearrangement, the Arbitrator met with the parties on March 30, 1977 to explore the possibilities of a settlement. By letter dated April 6, 1977, the parties notified the Arbitrator to proceed with the Award.

Appearances:

For the Union: Thomas J. Basting, Esq.

For the City: Nicholas P. Jones, Esq.

I. Applicable Statute

The statute which governs this case is the Municipal Employment Relations Act (Subchapter IV, Chapter III, Wis. Stats.), the pertinent portions of which read as follows:

"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:

"(a) Form 1. The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment.

"(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. Final Proposals

### A. City's Final Proposal

#### 1. Article IV paragraph 1

<u>Rating</u>	<u>Annual Salary</u>
1st year officer	\$11,700.00
2nd year officer	12,324.00
3rd year officer	13,494.00
5th year officer	14,690.00
Sergeant, Chapter 41	16,796.00
Sergeant, 62.13	17,056.00

#### 2. Article VII paragraph 2

Employes working on a schedule of five (5) work days followed by two (2) days off shall receive four (4) compensatory days off per year to be scheduled at the mutual convenience of the department and the employe. The work day for such employes shall be eight (8) hours per day.

### B. Union's Final Proposal

1. Wages effective 1/1/77: Across the board increase of (5%) for all members of the J.P.P.A.
2. Retirement: City to pay 1/2% more on the fees paid by the officers.
3. Holidays: To be added to the present<sup>o</sup> contract: (1) 1/2 day for Christmas Eve; (2) 1/2 day for New Year's Eve.
4. Sick Leave, Article VIII: To be increased to 120 days maximum.

Sick leave with pay is earned at a rate of 1/14 days per month of service or fifteen (15) days per year of employment; however, employes may use a reasonable amount of sick leave, not in excess of fifteen (15) days, in advance of earning it during the probationary period if needed. Unearned sick leave will be charged as a debit against future credit earned. Unused sick leave will accumulate from year-to-year to a maximum of one hundred twenty (120) days.

5. Article IV, Salaries: Effective 1 January 1977 the annual salaries of police officers of the city of Janesville shall be as follows:

<u>Rating</u>	(1976) <u>Annual Salary</u>	(1977) <u>Annual Salary</u>
1st Year Patrolman	\$11,128.00	\$11,684.00
2nd Year Patrolman	11,752.00	12,340.00
3rd Year Patrolman	12,922.00	13,568.00
5th Year Patrolman	14,118.00	14,824.00
Sergeant, Chapter 41	16,224.00	17,035.00
Sergeant, 62.13	16,484.00	17,308.00

6. Article V, Retirement Factor: The City will pay the employe contribution required by the Wisconsin Retirement Fund pursuant to Chapter 41, Wis. Stats., not to exceed 6% of gross pay, including overtime pay received. For employes covered by the provisions of Section 62.13 Wis. Stats., the City will pay the employe's share of contribution to said pension system, not to exceed four percent (4%) of gross pay, including overtime pay received.

7. Article VI, Probationary Period: All new employes shall serve a probationary period for the first consecutive twelve (12) months of employment unless extended by the Chief for a period not to exceed six (6) months. All employes who have completed the probationary period shall be known as regular employes and the probationary period shall be considered part of the seniority time.

### III. Background Facts

The parties have successfully negotiated their 1977 Agreement with the exception of the issues included in the proposals presently before the Arbitrator (listed above in "II. Final Proposals"). The City states in its Post Hearing Brief (Employer's Brief):

The city has not offered just a \$572 wage improvement. It also will pay for more retirement, more health insurance and more social security, provide air conditioning for squad cars and in some cases more life insurance. The total economic improvement averages 8.25% (City Exhibit #5). This in a year when CPI went up 4.8%. [p. 3]

The City Reply Brief (Employer's Reply Brief) states at p. 3,

The Janesville Professional Police Association does not dispute the extra costs of retirement, health insurance, social security and life insurance over 1976. . . . The true cost of the City's proposal is 8.25% on the average. The true cost of the Janesville Professional Police Association's proposal is 10.37% on the average. [emphasis added]

The City states in its Post Hearing Brief:

The Association offered a 5.5% wage increase and a total package increase averaging 10.37% (City Exhibit #6). [p. 3]

The parties' submissions to the Arbitrator are prepared on the basis or assumption that the 1977 Janesville Police Force will be staffed with 68 sworn personnel. The City Council has authorized an increase to 69. The delay in the execution of the authorization may be due to inaction by the Board of Police and Fire Commissioners. The City Reply Brief assumes that the extra officer will form part of the 1977 force. It states, "An extra officer is an increase in force [of the 53 officers represented by the Janesville Professional Police Association] of 1.9%. The City's wage offer of 4% becomes 5.9%. The Janesville Professional Police Association's wage offer of 5.5% becomes 7.4%." [City Reply Brief, p. 2] Thus the ratio of police of police to population should change favorably. The provision of more life insurance [see City Exhibit #6] appears to affect only Sergeant 62.13 and second and third year patrolmen. No information as to the numbers of officers in these classifications has been received by the Arbitrator.

Under the previous two contracts the City provides twelve (12) compensatory days off for the nine personnel on its force who regularly work a 5-2 schedule (8 hours per day, 40 hours per week, Saturdays and Sundays off). The remainder of the uniformed force works a 5-2, 5-3 schedule -- an around the clock schedule. This means that the third days off "kelly days" compensate for a much more arduous schedule. These officers work 2/3 of the days of the year for 8 1/2 hours a day or 2068.3 hours per year as against the 2085.7 hours a year for the 5-2 personnel.

The uniformed personnel who work the 5-2, 5-3 round-the-clock schedule necessarily take paid holidays in cash whereas the 5-2 officers take their holidays and days off as in other types of employment.

The contractual issues before the Arbitrator are 1) holidays, 2) salaries, 3) additional City contribution to the Retirement Fund, and 4) change in the provisions of sick leave and reduction of the 12 compensatory days off from 12 to 4.

#### IV. Positions of the Parties

##### A. The Janesville Professional Police Association

The Janesville Professional Police Association's Post Hearing Brief takes the following positions:

1. "The parties have stipulated that the U.S. Department of Labor Statistics show that the consumer price index increased for the calendar year of 1976 in the amount of 4.8%." [p. 1]
2. The interests and welfare of the Public and the financial ability of the City of Janesville to pay is more than adequate (supported by exhibits).
3. The crime rate figures of Wisconsin for Janesville and comparable cities indicate that Janesville's ratio of police to population is at the bottom for the list of cities presented by the Janesville Professional Police Association as "comparable." The average number of officers of such groups excluding Janesville is 1.76 per thousand whereas Janesville's is 1.37 per thousand. Janesville had a crime rate index of 7.7 violent crimes per 10,000 population and 444.5 property crimes per 10,000 population. Of the comparable cities selected by the City, only Appleton and Beloit are above Janesville for violent crimes and only Sheboygan, Oshkosh, LaCrosse and Beloit for property crimes. This shows, the Association says, that Janesville has fewer officers per thousand population but ranks high in violent and property crimes per 10,000 population. Janesville has the smallest per capita expenditure for its police force of all cities on the City's list. In addition, Janesville was one of only three Wisconsin cities with more than a 30,000 population which did not increase their police forces during the past five years.
4. Wage comparisons among the City's "comparable cities" list shows Janesville 4.7% over the mean for minimum salary and 12.4% over the mean for maximum salary. A security guard at the General Motors Plant receives a starting salary of \$1,228 per month. A truck driver in the area receives \$7.76 per hour plus cost of living. Adding to this the settlement statistics for the Rock County Sheriffs Department deputies shows that the Janesville Professional Police Association 5.5% increase is more realistic than the City's suggested increases from 3.74% to 5.14% for the lowest to highest paid of its force.
5. In paid holidays in cities of 39,000 to 150,000, according to the League of Wisconsin Municipalities [Association Exhibit #13], the average for such communities is 8.65 holidays. This shows that the Janesville Professional Police Association proposal is reasonable -- especially since the Janesville officers serve more people for less money per capita where the crime index is higher than average and their work week is longer. The Janesville Department of Public Works 1977 contract provides for 9 1/2 paid holidays. Rock County Sheriffs will receive 10 paid holidays.
6. The change from a 90 to a 120 day sick leave accumulation in comparison with other cities is reasonable and changes the present contract but little.
7. The Janesville Professional Police Association's request that the City provide the additional 1/2% of the employee's contribution toward the Wisconsin Retirement Fund, thereby making the City's contribution 100% is justified by the arrangement in 13 comparable cities. Of these only Janesville and two others pay only 5 1/2% of the full 6% due.
8. The City's proposal to reduce the compensatory days off per year now provided for nine 5-2 employees which days were won in previous bargaining and in the contract for four years and to count the added air conditioning for squad cars as a benefit insults the Janesville Professional Police Association.

##### B. The City of Janesville

1. The City's offer should not be regarded as only \$572 across the board. The City's offer consists of many additional cost pick ups for 1977. The total improvement for the Police Force will come to 8.25% when added to the already

bargained items. It says that in a year when C.P.I. rose 4.3% the City's offer is sufficient and not unreasonably low. The Association's offer of a 5.5% wage increase and more sick leave would increase the whole to 10.37% which is unreasonable.

2. The request for more paid holidays, making the year total 9, for the 5-2, 5-3 officers inflates an already inflated package as the extra holiday means only money. As for the 5-2 officers the holiday is unjustified. They already have 20 days off consisting of 8 holidays plus 12 floating days, while the maximum in any other department presented is 10. An increase of 2 half-day holidays adds up to twice as much as others and would put them 11 days ahead of those other departments. The increase is unjustifiable.

3. In comparison with the accumulation of sick leave in cities listed by the Janesville Professional Police Association no city except Madison accumulates more than 12 days a year at the present time. Madison police may accumulate 13. Rock County Deputies may accumulate 12 days. Janesville police may accumulate 15 days per year (1 1/4 per month). In addition, the Association's proposal to wipe out the present provision for an extra 30 days of sick leave allowed in advance of accumulation is "seriously wrong." The result would be that a third year officer who was sick over 45 days would have no salary after the 45 days. As it is now such an officer would be paid up to 30 extra days and make up those extra days after return to work.

4. Comparison with the Rock County Deputies 1977 contract is not apt because they are not comparable to city police. However, the City's offer is better at every step except the 10th where it is less by \$1.26 per year. The Association's offer is \$132.74 above the deputies at the 10th year. The City notes that deputy sheriffs choose time off for holidays as do the City's 5-2 police officers, so would be comparable to them but not to the City's 5-2, 5-3 officers to whom more holidays mean more money, not more time off. Thus the Arbitrator must choose the City's offer.

Janesville officers may accumulate sick days at 15 days per year while the deputies accumulate 12 a year.

4. Comparison with Janesville Department of Public Works, etc. The fact that the Department of Public Works received a larger raise than that offered to the Police does not justify an equal raise for the Janesville Police. Over the past three years the Department of Public Works employees have received raises totalling 22.1%, whereas the Janesville Professional Police Association have received raises totalling 27%. Of the comparable Janesville departments Janesville Police 1976 starting salary is third from the top and their maximum are on top by over \$50 per month. The laborer, garbage collector, sewer plant operators survey shows that starting salary for the police is third highest, labor 7th, garbage collector 5th and sewer plant operator 8th. The police salary at top ranks first, the laborer 5th, the garbage collector 6th and the sewer plant operator 5th. The City offered a higher increase to the public works union, despite limited funds, because they were behind their comparables having received less in recent years.

5. City Funds. Total potential demands on City funds are greater than the funds available. The question is "Is it desirable to use these funds to add to the salaries of those already receiving the highest salaries or to add to those who are behind?" The Arbitrator must decide. The Public Works Department employees got 6.1% in 1974. The Police received an 8.8% raise. The Janesville Police are paid the highest salaries of all non-supervisory personnel in Janesville and of all comparables.

6. The C.P.I. The C.P.I. over the past five years has gone up 39.63%. Adding the 4.8% for 1976 totals 44.43%. The increase in the police officers' wages doubled that figure. The request for 1977 is not justified.

7. The Crime Rate. Beloit is second place among the comparables. Janesville officers' wages are more than \$50 higher per month than Beloit's. Beloit has 112 violent crimes with 68 officers to work on them -- 1.65 violent crimes per officer. Janesville has 38 violent crimes with 68 officers to work on them -- a rate of .56 violent crimes per officer. The property crime picture

is similar. This does not justify higher pay for Janesville officers than for Beloit officers. Also, the extra officer for Janesville in 1977 should not be overlooked. An extra officer added to the 53 officers represented by the Janesville Professional Police Association means an increase in force of 1.9% making the City's wage offer of 4% a 5.9% wage offer and the Janesville Professional Police Association's proposal of 5.5% a 7.4% proposal when the C.P.I. was 4.8% [City Reply Brief, p. 2].

8. Retirement Contribution. Janesville and Beloit pay the highest salaries of the comparables. Their officers contribute 1/2% to their own retirement. It is reasonable in view of their salaries.

9. Total Benefits. Under both proposals, the cost increases in the 1977 benefit programs approximate the wage increases requested. Reality requires consideration of this fact. The true cost of the City's offer is 8.25% on the average. That of the Janesville Professional Police Association is 10.37% on the average. "In a year when C.P.I. went up 4.8% the City's offer is more reasonable."

#### V. Application of Statutory Criteria to be Weighed by Arbitrator

Section 111.77(6), set out above at Part II, requires that the Arbitrator in reaching a decision consider the following factors:

(a) The lawful authority of the employer.

This is not disputed by the parties.

(b) Stipulations of the parties.

The parties stipulated or agreed that for the year 1976 the C.P.I. rose 4.8% on the national level [Tr., p. 18]; that the already agreed upon portion of the 1977 contract includes the City's agreement to deliver any new cars in 1977 with air conditioning and that the matter of probationary period is not in dispute.

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

It is generally conceded that a full and competent city police force with high morale is in the public interest and welfare. There was no claim to the contrary in the case. The City, however, questions the need and efficacy of increasing the size of its police force beyond the number now authorized by the City Council -- 69 -- in view of the added cost to the taxpayers and the City's interpretation of state crime figures. The Association claims that the Police Force is understaffed in view of its job requirements. There was no dispute as to the financial ability of Janesville to meet any costs appearing in either proposal. The evidence supports Janesville's financial ability at the present time to increase its tax rate, etc. [Tr. pp. 7 et seq.].

(d) Comparison of the wages, hours and conditions of employment of the Janesville Police Force involved, with those of other employees performing similar services and with other employees generally 1) in public employment in comparable communities. . . .

(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.

These factors require first that the Arbitrator determine which cities presented by the parties as comparable are acceptable as such. The parties have presented different but overlapping lists. The City's list has been chosen on the basis of population and excludes large metropolitan areas including communities periferal thereto as being subject to conditions disparate from those of Janesville [Tr. pp. 105 et seq.]. The Janesville Professional Police Association's list does

not exclude other municipalities on that basis. The Arbitrator feels that all cities presented may be used if adjustments are made which take into account accepted differences in problems presented to police in large metropolitan areas or suburbs thereof, as well as in widely different locations in the state. This may be true especially with regard to application of crime rates and their effect upon the needs of a community for a higher or a lower police-population ratio. Association Exhibit #8 -- the November 1976 issue of Wisconsin Taxpayer, published by the Wisconsin Taxpayers' Alliance -- report on Police Departments at page 6 notes that special factors in a community necessitate a higher number of officers and proportionately higher per capita costs. It mentions 1) size and population, 2) high concentration of industry requiring intensive security and traffic control, 3) periodic influxes of tourists, 4) a particularly extensive area to be patrolled and 5) special problems related to college communities as being factors requiring more protection and more cost to the community. Secondly, the Taxpayer said that in using the Wisconsin F.B.I. required reports on crime incidence (as in this publication) variations in reporting as well as the often small figures involved may distort the figures. An increase from 1 to 3 murders would appear as a 200% increase. In addition, officers may spend but a small portion of their time in solving crimes. More may be spent in prevention, traffic control, safety education and community relations. The Wisconsin Department of Justice Division of Law Enforcement Services Crime Information Bureau's report on Crime and Arrests for 1975, shows that Janesville with a 49,930 population, had 38 violent crimes and 2207 property crimes in 1975, whereas the whole of Rock County with a population of 137,937 had respectively 219 and 6624.

It would appear that the two communities most properly comparable to Janesville with respect to crime rates and their effects, due to location and general factors, are Beloit and Madison -- after suitable adjustments are made.

The City's reply brief states,

Beloit has 112 violent crimes. Beloit has 68 officers to work on these crimes. This is 1.65 violent crimes per officer. Janesville has 38 violent crimes. Janesville has 68 officers to work on these crimes. That is 0.56 violent crimes per officer.

Presumably, the City's figures are drawn from the same or similar reports as those cited above. Figures showing changes in these crime rates, etc. for 1976 and 1977 are not available.

There are insufficient reasons provided by the parties to the Arbitrator to make the comparison argued by either party as the evidence presented is not sufficient therefor. [Tr. pp. 35, 36; Employer's Reply Brief, p. 1] There appears to be no basis for a determination that the Police Force -- if at 69 -- is inadequate or overworked.

The statute does not expressly require that the wages, hours, and conditions of employment of the employees of the immediate proceedings be compared with those in other departments of the City, but does so implicitly. This has been the interpretation generally acted upon by both parties and arbitrators. The particular municipality involved must be uniquely comparable. In the instant case, both testimony at the Hearing and discussion in the parties' briefs have dealt with this subject. Testimony was given on the 1977 Janesville Department of Public Works contract and it was discussed in the parties' briefs, although neither party introduced the contract itself into evidence. Other contracts have been concluded since the Hearing took place and during the pendency of these proceedings and are relevant [Manitowoc v. Police Department, decided 12/19/75 Supreme Court of Wis., 70 W. (2d) 1006, 236, NW(2d) 231, cited at end of §111.77(6) and Subch. IV Municipal Employment Relations Act as of 1/1/77]. In addition, the Rock County Deputy Sheriff's Association contract, Association Exhibit #14, was presented to the Arbitrator for comparative purposes.



The Janesville Public Works 1977 contract was compared with the City's and the Janesville Professional Police Association's proposals both at the Hearing and in the parties' briefs [Tr. pp. 73 et seq.]. The Arbitrator has considered the comparison as well as the City's explanation in its brief that the higher wage percentage agreed upon there was due to the City's purpose to make the 1977 Agreement to some extent a "catch up" one on wages. The Janesville Professional Police Association looks at the provision of holidays (ten) which was not increased for 1977 -- and the percentage wage increase 1) for the 1976 lowest paid Public Works employee whose wage was increased from \$3.99 hourly to \$4.29 -- approximately 7.8% -- and 2) for the highest paid employee in that Department for whom the increase was 5.1% -- making the range of increases 5.1 to 7.8% for 1977. In the 1977 Public Works Department contract, as in their previous contract, the City pays 5%, which is 100% of the total 5% employee contribution required. The contract was signed 1/31/77. In general, similar provision of monetary fringe benefits as that already in the Janesville Professional Police Association 1976 contract is found in the Public Works employees contract. The only 1977 addition of new monetary items for 1977 in the Public Works Department contract which was discussed was the wage increase [Tr. pp. 83 et seq.] It should be noted at this point that there was no evidence to show that the hours or other conditions of employment -- the duties -- of Public Works Department employees are in any way truly similar to those of a Police Force. Clearly, this detracts from the value of the comparison. The difference in the hourly rates of the starting salaries is an indication of the disparity between these two types of employment.

The Janesville Professional Police Association also brought out evidence concerning the Janesville Police Supervisor Association contract on cross examination of the City's witness. One of the Supervisors' duties under their contract is to supervise events in the City. If within their regular shift, they receive regular rates; if outside, they receive overtime. These duties may arise at hours which are not within the normal work day for a 5-2 hour schedule. The Janesville Professional Police Association Police Force does not have a similar contractual duty. The Supervisors have retained their 12 compensatory days off in the 1977 contract [Tr. pp. 91 et seq.]. Although they were not shown to have a rotating work week such as the 5-2, 5-3 Police Officers', the implication is that these extra days off are in the nature of "kelly" days as I understand the term to be used by the parties. The testimony on this matter is far from clear and the contract was not submitted. It appears to apply the 12 compensatory days off to a 5-2, 5-3 schedule Supervisor who regularly must cover events in the City outside his regular shift, thus destroying much of the comparability which would otherwise exist. However, there appears to be an adequate comparability between Police Supervisors work and that of the Janesville Professional Police Association officers to afford a basis for comparison.

The Rock County Deputy Sheriff's contract was presented to the Arbitrator as Association Exhibit #14, and testimony thereon was presented at the Hearing [Tr. pp. 74 et seq.]. Unfortunately, the parties did not present any information as to conditions of employment such as area which must be covered in performing duties. Wis. Stats., §§ 59.21 et seq., deal with some of the requirements for county sheriff departments. They indicate a wide-ranging job, covering different duties from those of a city police department. The deputy's job is on the 5-2, 5-3 plan, plus a half hour prior to shift time reporting period (apparently unpaid for). The 1977 pay schedule for Deputy Sheriffs provides for a hiring rate of \$11,485.94. Thereafter, a one-year Deputy receives \$12,115.10, a two-year Deputy, \$13,206.50, a four-year Deputy, \$14,670.25, a nine-year Deputy, \$14,991.26 and a Captain tops the list at \$18,406.70. This compares with Janesville Professional Police Association salaries under the City Proposal of \$11,700 to \$14,990 for Patrolmen and of \$17,056 for Sergeant.

Under the Janesville Professional Police Association proposal, police rates would extend between \$11,685 and \$17,309. Thus, under the City's proposal for 1977 the salary rates are superior to those of the Rock County Deputy Association except for the one-year Patrolman (\$11,700 as against \$12,115.10) and the top bracket (\$17,056 as against \$18,406.70). The City's proposed flat rate increase would have the effect of raising the first-year Patrolman at the expense of the top-ranking Sergeant -- a leveling-off effect on the pay rate schedule, to the advantage of the Patrolman Officer. Under the Janesville Professional Police Association proposal,

there is a less favorable comparison, it would seem, to the Rock County Deputy Sheriffs for the lower salary echelons of the Police Force, whereas the Janesville Professional Police Association proposal maintains the original salary rate structure. The Janesville Professional Police Association Agreement for 1976, Article XXXI, provides for discussions after 1978 for future changes in rank structure.

The two contracts are roughly similar on other monetary benefits including vacations and health insurance except for the omission by Rock County of the drug and dental coverage provided by the City.

The ten days of holidays provided by the County surpasses that of the Police by two full days, one of which would be acquired by the Janesville Professional Police Association under its proposal. Each employer pays 100% of the health insurance costs.

The County pays one-half of the Deputies' group life insurance program costs. The City makes some contribution toward life insurance but the contract, testimony, exhibits, and briefs have not made this matter clear to the Arbitrator. Section 40.15, Wis. Stats., requires that there be withheld from each insured employee under age 65 some 60 cents for each \$1,000 of group life insurance. Under the new 1977 contract provisions already agreed upon there are stated amounts to be paid by the City for several, but not all, classifications of police. The reason for these selective contributions is not clear nor is the change from the 1976 provision clear. The Janesville Professional Police Association proposal provides for the same contribution for two additional classifications [Article XVI, City Exhibits #5, 6]. The County pays one-half the cost for its Deputies.

Job stability is a condition of employment of the highest order. Provision for such stability may be found in the present Janesville Professional Police Association contract with the City and in the statute covering police. Police are protected from lateral entrance into their employment insofar as reasonably possible.

Janesville Police uniforms and cleaning bills are paid 100% by the City. The County contract provides for a \$175 uniform allowance and for laundry and dry-cleaning up to \$110 per year.

The County will pay cost of tuition and books for certain educational improvements for its Deputies. No program is set up by the City.

The County also pays a shift differential which is not matched by the City.

When all the items above are considered, the Arbitrator finds that the City proposal compares favorably with the Rock County Deputy Sheriff's 1977 contract.

Subsection 111.77(6)(d)2. Comparison with wages, hours and conditions of employment in private employment in comparable communities.

Neither party attempted to present evidence as to private employment, other than in Janesville. The only contract presented was a compilation of information secured by the Association on the current General Motors contract [Tr. pp. 56 et seq.; Association Exhibit #9]. The testimony at the Hearing related primarily to wage rates -- including the C.O.L. provision. This contract is so much more "sketchy" than the Municipal Employment contracts that the Arbitrator finds it of little value for comparative purposes. This is also true with respect to testimony relating to other private employment such as truck drivers, nurses, etc. Public Employment contracts in Janesville appear to be so superior in all respects, except perhaps that of direct wage rates and C.O.L., as to require disregard of these comparisons in the case of Police.

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

The parties stipulated that the C.P.I. showed a 4.8% increase for 1976. Applying subsection (8) Changes, etc. produces the following pattern, extracted from "News" from the U.S. Department of Labor Bureau of Labor Statistics 4/21/77. The January 1977 C.P.I. was 5.2% higher than in January 1976; the February 1977

C.P.I. was 6.0% higher than in February 1976; the March 1977 C.P.I. was 6.4% higher than in March 1976; the April 1977 C.P.I. was 6.8% higher than in April 1976. This B.L.S. report also states,

On a seasonally adjusted basis, the C.P.I. also rose 0.6% in March. This compares with rises of 1.0% in February and 0.8% in January, and an average monthly increase of 0.3% in the last four months of 1976. The March rise was slower than earlier this year because of smaller price increases for food and other commodities.

Also, it states,

For the three months ended in March, the C.P.I. rose at a seasonally adjusted annual rate of 10%, compared with a 4.2% rise in the final quarter of 1976. The acceleration occurred primarily in the food component. [underlining added]

The City figured in its Exhibit #4, using C.P.I. figures for December 1970 through November 1976, that during this five-year period the rise in the City Police Force income ranged from 43.11% to 47.87%, while the C.P.I. rose 39.63% based on the Milwaukee area [Tr. pp. 99, 106]. During this period a first-year Patrolman's salary rose 43%. Subtracting this from the C.P.I. rise of 39.63% left that Patrolman with a 3% rise in salary over that same 5-year period [Tr. pp. 98-100]. It should be noted here that in City Exhibits #5 and 6 the percentages arrived at as those in the 1977 already agreed-upon items plus 1) the City proposal and 2) the Janesville Professional Police Association proposal are not based upon the actual change in the costs which would have required that the difference between the cost (including all monetary fringes) in 1976 and the cost under the proposals, but rather on the base salary rate alone. This distorts the picture for arrival at such a true cost. However, it does not distort the difference between the parties' proposals if so based, as both are treated the same. Nevertheless, with respect to the [rise] C.P.I. figures it would be necessary to reduce the overall percentage increases reached by the City [8.25% and 10.37%] to more realistic figures. The Arbitrator cannot do this due to the lack of evidence [the 1976 contract] supplied to him. He can take notice, however, that these percentage figures must be greatly reduced.

The same defect as that noted above with respect to City Exhibits #5 and 6 appears in the City's Exhibit #4 [Tr. pp. 96, 97, 98]. As for Exhibit #4, the real increase in overall compensation would more truly depict the actual increases received by Police during the five-year period 1971-1976. Testimony of Mr. Daniel Wentzloff [Tr. pp. 82 et seq.] established that the extra benefits received by the Police since 1971 include 1) 12 fewer working days per year, 2) change for patrol officers from a 6-2 system with 13 "kelly" days to a 5-2, 5-3 system under which they work 8 1/2 hours a day or 2068.3 days a year, which is 17.4 days less than are worked by the 5-2 system officers, 3) City's payment of an extra percent of the contribution to the Wisconsin Retirement Fund required from an employee, 4) a drug coverage and a dental program added to the Health Insurance, 5) increase in the portion of the Health Insurance paid by the City to 100%, 6) addition of cost of Health Insurance premiums upon retirement until retired employees are eligible for Medicare, and 7) City payment of the full salary for an officer who is off on workers' compensation. Unfortunately, the City's testimony does not indicate the value added to the above compensation during the five-year period discussed. Thus the true increase in the Police income is not represented by salary alone and the difference of 3% on a first-year Patrolman's salary when compared with the rise of the C.P.I. as shown by the City in its testimony and Exhibit #4 is deceptive and would work to the City's disadvantage in interpreting that exhibit.

#### VI. OPINION AND AWARD

The Arbitrator has undertaken to take every factor listed in Section 111.77(6) into consideration so as to comply in full with the letter and spirit of the Statute.

The City's basic argument is that the Union's proposal on the key issue of "wages" is unreasonable and excessive, and the City proposal more reasonable. This argument is based on two erroneous calculations, however. The first relates to the City's estimate of the percentage increase in the total package of wages plus fringe benefits from 1976 to 1977. The City states that the Union's proposal shows a 10.37% increase and the City's proposal an 8.25% increase. However, instead of figuring this percentage by calculating the increase from wages plus fringes for 1976 to wages plus fringes for 1977, the City has arrived at this percentage by comparing wages for 1976 to wages plus fringes for 1977. Therefore, in the City's words, the percentages thus derived are "inflated" and cannot be given consideration. The second erroneous calculation is that which states that the 1976 C.P.I. was 4.8%. The figure "4.8% represents the rise from December 1975 to December 1976 only. A percentage figure is published for each month of the year. A proper estimate then, of the C.P.I. for the entire year would be an average of all the monthly figures, which is 5.8% [See Appendix A]. Again, the average figure for the first quarter of 1977 is also 5.8%. Choosing the December figure, as the City did, is no more compelling than choosing the March or May or September figure, as it does not accurately reflect the average change for the whole year, nor does it give an adequate picture of the trend. The City's whole case is infected by these no doubt unintentional errors.

There is another defect or mistake in the City's insistence on reduction in holiday compensation for nine officers after it has granted it in the past. The Union could argue with some force that it paid a price for this benefit at the bargaining table presumably for a quid pro quo, and should not be deprived of it without a new quid pro quo or some special reason which does not appear. Finally, in the judgment of the Arbitrator, the Union request that the recent increase in wages to nonrepresented employees and to the Firefighters be considered raises issues of fundamental importance which could not be regarded as a factor or factors in the present case without the consent of all parties involved.

#### AWARD

Under all of these circumstances, the Arbitrator is compelled to select the Union offer as more reasonable and fair, and orders that it be incorporated into the 1977 Agreement.

Nathan P. Feinsinger /s/  
Nathan P. Feinsinger, Arbitrator

DATED: May 26, 1977  
Madison, Wisconsin

APPENDIX A

Consumer Price Index (C.P.I.) for 1976 [Change from 1975]

<u>Month</u>	<u>Percentage</u>
January	6.3
February	6.3
March	6.1
April	6.1
May	6.2
June	5.9
July	5.4
August	5.6
September	5.5
October	5.3
November	5.0
December	4.8
<u>Avg. for Year 1976</u>	<u>5.8</u>

Consumer Price Index (C.P.I.) for 1977 [Change from 1976]

<u>Month</u>	<u>Percentage</u>
January	5.2
February	6.0
March	6.4
April	6.8
<u>Avg. for 1st Quarter</u>	<u>5.8</u>

Source: Department of Labor, Bureau of Labor Statistics

STATE OF WISCONSIN

BEFORE THE ARBITRATOR  
EDWARD E. HALES

IN THE MATTER OF THE PETITION OF THE

"  
"  
WAUWATOSA PROFESSIONAL POLICEMEN'S ASSOCIATION " "  
" " "  
For Final and Binding Arbitration " Case XXXIV  
Involving Law Enforcement Personnel " No. 17921 MIA-104  
in the Employ of " Decision No. 12811-A  
" "  
CITY OF WAUWATOSA " "  
" "  
" "

Appearances: Peck, Brigden, Petzjan, Lindner, Honzik & Peck, S. C., by  
Roger E. Walsh, Esq., 700 North Water Street, Milwaukee,  
Wisconsin, on behalf of the employer, City of Wauwatosa

Goldberg, Previant & Uelman, by David Loeffler, Esq., 211  
West Wisconsin Avenue, Milwaukee, Wisconsin, on behalf of  
the employees, Wauwatosa Professional Policemen's Association

FINAL AND BINDING ARBITRATION AWARD

On September 12 and 13 of 1974, the arbitration in the above-entitled matter was held pursuant to Section 111.77 of the Wisconsin Statutes to issue a final and binding award between Wauwatosa Professional Policemen's Association and the City of Wauwatosa. The hearing was held at the Wauwatosa City Hall, 7725 West North Avenue, Wauwatosa, Wisconsin, at which time both parties were given full opportunity to present evidence and arguments in support of their positions. The parties also submitted memorandum briefs in support of their positions.

ISSUES - WAGES

ASSOCIATION'S FINAL OFFER: An increase in base compensation of \$85.00 per month, retroactive to January 1, 1974.

CITY'S FINAL OFFER: An increase of \$70.00 per month to be applied to all steps in the salary schedule, retroactive to January 1, 1974.

THE ASSOCIATION'S POSITION

"Shall the police officers of the City of Wauwatosa receive the maximum possible protection against the inflationary pressures which all workers have felt during 1974? Shall the police officers of the City of Wauwatosa receive that level of total compensation which allows them a relatively greater range of consumer choices and a relatively more comfortable and varied life style in return for their services as urban policemen who face violence and extreme emotional stress as a regular part of their job: Shall this particular group of officers, already possessing substantial technical skills and firmly committed to increasing their education in the widest possible sense, be permitted the relatively richer variety of experience which flows from having relatively more disposable income?

These are the issues presented by the choice of a monthly increase in base compensation of either \$85.00 or \$70.00, the only outstanding item.

Using the media of the compensation received by all members of the unit at the end of 1973, the Association proposes to increase base salary for 1974 by \$1020 which when combined with increases already agreed to, would bring total annual compensation to \$15,330 on the median, or a percentage increase of 9.5%.

The City would increase base salary by \$840 bringing total median compensation to \$15,150 or a percentage increase of 8.2%.

Since the inflation rate for wage earners in the Milwaukee area for 1974 can be reasonably predicted to run at 9.4% as measured by the BLS Consumer Price Index, and the cost of a reasonably comfortable lifestyle will range between \$13,211 and \$19,186 (\$16,000 being the mid-point), the arbitrator ought to accept the Association's offer which gives the greater protection against inflation and generates a relatively more comfortable lifestyle.

These officers have demonstrated their right to such consideration through their actual performance of the difficult job of urban policing and their willingness to continually upgrade their skills."

#### THE CITY'S POSITION

"The City requests the arbitrator to select the last offer of the City. Briefly summarized, the reasons in support of this request are:

1. The combination of a limitation on the City's 1974 budget, which was imposed by law, and a substantial, unexpected increase in pension costs has put the City in an impossible financial situation. The City will be financially unable to meet the cost impact of the Association's wage offer.
2. The City's offer to its Policemen exceeds settlements made with other City employees.
3. The City's offer re-establishes a historic wage relationship between the City's firefighters and policemen.
4. A comparison of wages, benefits and overall compensation of the Wauwatosa police officer under the City's offer with that of police officers in other comparable municipalities places Wauwatosa police officers in an extremely favorable comparative position.
5. Wage and benefit increases granted Wauwatosa police officers in past years as well as those offered for 1974 exceed increases in the cost of living.
6. There is no competent evidence offered to substantiate any increase in workload in Wauwatosa, or that if there was an increase in workload, that it was more than experienced in other municipalities. In fact, crime has increased less in Wauwatosa than in other municipalities, yet wages and benefits offered by the City have exceeded those granted in other municipalities."

#### DISCUSSION

The City has pleaded the inability to pay the Association's wage demand, based on three factors: 1) An increase in pension costs; 2) Statutory limit on budget increases, and 3) Cost of the firefighters' settlement. The ability to pay is an established criteria in the determination of wage rates and other contract benefits, and the Arbitrator has considered the ability to pay with other factors relevant in establishing reasonable and equitable compensation. The employer's ability to pay is not, in and of itself, the sole reason for establishing wage rates, although it is a significant element properly to be taken into account in determining the weight to be attached to other criteria. 1/ The ability to pay in public-sector arbitration cases is of special significance, because the employer does not have the sources of revenue apart from the taxing power, which has various limitations including the need for public support. 2/

---

1/ General Motors Corporation, 1 L A 125, 145 (Garrison, Eisenhower & Stacey - 1946)

2/ Hamtramck Board of Education, 54 L A 162, 163 (Gould - 1969)

Since the employer in this arbitration has pleaded the inability to pay, the burden of sufficient evidence to support the plea and alleged inability to pay must be borne by the employer. 3/

In reviewing the evidence presented by the City to support its allegation of inability to pay, the Arbitrator has reviewed the testimony of Lambert R. Tjensvold, City Controller, City of Wauwatosa. Mr. Tjensvold's testimony indicates that the City would only have a projected surplus of just under \$7,000.00 out of a total budget of \$14 to \$15 million dollars for 1974. (Tr. p. 231) The testimony of Mr. Tjensvold, concerning the 1974 budget process, does not reveal any unreasonable or arbitrary budgetary decisions on the part of the City. Likewise, the Association did not present any evidence which indicates unreasonable, arbitrary or capricious decisions on the part of the City in establishing the 1974 budget.

The City, in its brief, has cited recent arbitration decisions concerning the ability to pay in establishing compensation for City employees. The Arbitrator agrees with the position taken by Arbitrator Max Raskin. Arbitrator Raskin states: "It is therefore well not to unduly burden the city finances after the municipal budget has been formulated and the tax rate established." 4/

The factors presented by the City indicating their inability to pay the Association's offer were not materially disputed, and a recent arbitration decision cited by the City also reveals that statutory limitations did prevent municipalities from developing more liberal budgets for 1974. 5/

Police officers' salaries, like other public expenditures, must come from public revenues which are not limitless; and while police officers should not be expected to subsidize the community in its efforts to pay City expenditures, their salary request must be viewed in light of the total community demand for public funds. Also, some restraint in wage demands is advisable especially during this period of extreme economic uncertainty.

In reviewing City Exhibit 11, the offer of the City would amount to the largest total annual compensation of any other police department in the suburban Milwaukee area. The total monthly compensation for a top-step police officer in Wauwatosa would amount to \$1,321.59 per month. A review of City Exhibit 12 also reveals that police officers from the City of Wauwatosa are paid better than police officers in other cities in southeastern Wisconsin. The City's offer is \$118.31 higher than a police officer would receive in Beloit, \$100.42 per month more than a police officer in Janesville, \$153.12 per month more than a police officer in Kenosha, and \$125.00 per month more than a police officer in the City of Racine.

The Association, in its brief, compares the salaries of police officers of the City of Wauwatosa with the salaries of police officers of the City of Milwaukee. The Association also contends that Wauwatosa police officers receive 3.6 per cent less total annual compensation than Milwaukee police officers. The City of Milwaukee operates a major city police department. Procedures used by the City of Milwaukee Police Department are similar to those used in many suburban communities; but that does not necessarily make the Milwaukee Police Department comparable to other suburban departments, even though their boundaries may be contiguous. It is the Arbitrator's position that more comparability exists with the City of Wauwatosa and other municipalities in the suburban Milwaukee area.

During the past year, inflation has eroded the purchasing power of all American citizens; and keeping pace with the cost of living is an extremely difficult, if not impossible, task. The Association presented impressive evidence concerning the cost of living, the rate of inflation, consumer price index and other economical life style information concerning the Milwaukee area. The cost of living, consumer price index and rate of inflation are only some of the factors to be observed in determining a reasonable wage offer and must be weighed with all relevant information.

---

3/ Restaurant - Hotel Employees Council of San Diego, 11 L A 469, 477 (Aaron - 1948)

4/ City of Oconomowoc and Teamsters' Local 695, WERC Decision No. 12388-A (Max Raskin - March 1974)

5/ City of Kenosha and Kenosha Professional Policemen's Association, WERC Decision No. 12500-A (H. Herman Rauch - June 1964)



The City contends, and cited recent arbitration decisions in support of their position, that the Arbitrator must look at only 1973 economic data in order to determine and establish 1974 wage rates. The economic information concerning the previous year should be the primary information considered in determining compensation. But, Section 111.77(6)(g) of the Wisconsin Statutes appears to charge the Arbitrator with the responsibility of observing changes that may take place during pendency of the arbitration proceeding.

The Bureau of Labor Statistics reports that the consumer price index has risen 56% in the past 8 years. This means that several hundred items in a specific "market basket" have risen drastically over that period of time, and it affects consumers differently depending on life style and geographic area. The Bureau of Labor Statistics' reports also show that inflation rose to record levels in 1973 and 1974, but is presently slowing. 6/

In considering all the economic data presented by the parties, it appears as though the City's offer does provide police officers with reasonable protection against the rising cost of living.

The Association offered evidence which reveals an increase in the workload for police officers of the City of Wauwatosa. The Arbitrator has reviewed the increase in crime reported by the State Department of Justice, Division of Law Enforcement Services, and most of the municipalities in the suburban Milwaukee area showed an appreciable increase in the crime rate. The percentage of increase for the City of Wauwatosa was a little less than 90% for 1972-1973, which represents approximately the average rate of increase for all municipalities reported in the suburban Milwaukee area.

Lieutenant Jerold G. Simmons, of the Wauwatosa Police Department, testified at page 90 of the transcript as follows:

"Q. Generally then the type of work performed by Wauwatosa police officers is similar in nature to the type of work performed by officers in other suburban municipalities?

A. Yes, I never said it wasn't. It's just that the amount has increased."

The testimony of Lieutenant Simmons indicates the similarity in workload of the City of Wauwatosa with other suburban municipalities, yet the City's final offer tops the total compensation of all other suburban police departments. The increase in workload in the City of Wauwatosa has not changed to such an extent that it would justify the Arbitrator in rejecting the City's final offer as inadequate.

Considering all of the evidence presented and reviewing the briefs of the parties, the Arbitrator finds that the City's offer is the more reasonable.

#### AWARD

The Arbitrator selects the final offer submitted by the City granting an increase of \$70.00 per month to be applied to all steps in the salary schedule, retroactive to January 1, 1974.

Dated at Racine, Wisconsin, this 26th day of February, 1975.

Edward E. Hales /s/  
EDWARD E. HALES  
ARBITRATOR

---

6/ Labor Law Reports, Report No. 128, January 24, 1975, Issue No. 543, part 2, Commerce Clearing House, Inc.