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 In the Matter of the Petition of
 West Allis Professional Police Association
 For Final and Binding Arbitration
 Involving Law Enforcement Personnel
 In the Employment of
 City of West Allis
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Case XLI
 No. 21196 MIA-290
 Decision No. 15276

Appearances: Michael J. Sachen, City Attorney and Stephen L. Weld,
 Assistant City Attorney, for the City

 Zubrensky, Padden, Graf & Bratt, by George F. Graf,
 for the Association

On February 22, 1977, the Wisconsin Employment Relations Commission appointed the undersigned to make a final and binding arbitration decision in a dispute between the above-captioned parties. A hearing was held at West Allis, Wisconsin, on March 3, 1977. At the hearing both parties were given full opportunity to present evidence and testimony and make arguments. A transcript of the proceedings was made. The record was completed on May 3, 1977, after the exchange of briefs and reply briefs as agreed at the close of the hearing.

The final offers submitted to the WERC in this case are as follows, and the arbitrator must choose one of them without modification:

- City: The final offer of the City on the issue of the dollars-across-the-board adjustment to be applied to all 1976 rates (as modified by 1977 rate structure agreements) and to be effective January 1, 1977, is 39.5¢/hour.
- Union: The final offer of WAPPA on the issue of the dollars-across-the-board adjustment to be applied to all 1976 rates (as modified by 1977 rate structure agreements) and to be effective January 1, 1977, is 55.5¢/hour.

The record in this case is a lengthy one consisting of a transcript of 178 pages, 7 joint exhibits, 4 Association exhibits exhibits of which 1 is a book which itself contains 25 exhibits, and 28 City exhibits, in addition to the briefs and reply briefs.

The arbitrator has studied this entire record and believes that the following facts are most pertinent to the case.

Facts

The bargaining unit consists of 122 employes including 69 patrolmen (59 at top step), 2 cycle riders, 10 corporals, 26 detectives, 11 sergeants, and 4 detective-sergeants. Prior to 1968 sergeants and detective-sergeants were in the unit, and then were taken out of the unit by the City. They were restored to the unit in 1977 following WERC and court litigation.

The Association (Assn. Exhibit 1, pg. 1) shows the top patrolman rate for 24 metropolitan Milwaukee communities and shows that West Allis is ranked 21. Since the hearing an arbitration award was issued in Greenfield which would increase the number of communities to 25 and West Allis' position would be 22. The median rate of the 24 is \$14,680; the average is \$14,687. The rate for West Allis is \$14,445 or approximately \$240 lower than the median-average, which translates using a 2080 hour work year as the parties do, to 11.5¢/hour behind the median-average for metropolitan Milwaukee in 1976.

The Association (Assn. Exhibit 1, page. 2) shows a similar comparison of 20 communities for 20 of these 24 police departments. The comparison shows that in 1974 the average for top patrolman was \$12,307. West Allis was ranked 6 of 20 with a rate of \$12,480 or approximately \$173 or 8¢ above the average. The Association (Exhibit 1, pg. 3) compares 1976 salaries for the same 20 communities as in Exhibit 1, pg. 2, and shows that West Allis ranks 16 of 20 and that the wage rate for West Allis was approximately 10¢ below the average rate for these communities.

Association Exhibit 1, pg. 4 demonstrates that for these 20 communities the percentage increase for West Allis patrolmen from 1974-76 ranked 19th out of 20.

In the next exhibit (#1, pg. 5) the Association compared the top patrolman rank in West Allis with 6 other communities bordering on West Allis (Milwaukee, West Milwaukee, Brookfield, New Berlin, Wauwatosa and Greenfield) which shows that in 1974 West Allis ranked 3rd (13¢ above the average); in 1975 West Allis ranked 5th (4¢ below the average) and in 1976 ranked last (21¢ per hour before inclusion of the Greenfield arbitration award).

Association Exhibit 1, pg. 6, shows for metropolitan Milwaukee communities that of 18 with sergeants, West Allis sergeants rank 4th with a rate 24¢ above average. Of 11 departments with detectives, West Allis detectives rank 5th with a rate 1¢ above average. These are figures for 1976.

Association Exhibit 1, pg. 20 shows cost of living data for Milwaukee and shows that from February, 1974, through February, 1976, the cost of living increased 16.91%, whereas the patrolman rate increased 15.75%. Using an estimated figure for the February, 1977, cost-of-living, the Association calculates that its offer would result in a 0.7% gain over the cost-of-living increase for the 1974-77 period, whereas the City's offer for 1977 would produce a 2.0% loss to patrolmen.

The Association (Exhibit 1, pg. 22 and 23) calculates that implementation of its offer would cost West Allis taxpayers an additional 28¢ per thousand dollars of assessed valuation in 1977, or 8¢ per thousand more than the City's offer would cost. Viewed a different way, the Association calculates that the owner of a \$40,000 home would pay an additional \$1.28 in taxes in 1977 to pay the Association's offer.

On Exhibit 1, pg. 19, the Association shows the City's offer to the bargaining unit to represent an increase of 5.5% (5.7% to top patrolmen) whereas the Association's offer is an increase of 7.8% to the unit (8.0% to the top patrolman).

Association Exhibit #1, pg. 25, shows area police settlements reached as of February, 1977. They represent approximate percentage increases as follows: Milwaukee 4%; Brookfield 8%; Oak Creek 8%; Wauwatosa 5.6%; Elm Grove 6%; Muskego 6.5%. In its brief the City supplied additional 1977 settlements for the Association's comparison communities: Bayside 5%; River Hills 6.16%; Franklin 5.5%; Wauwatosa 5.3%; New Berlin 5.5%; Menomonee Falls 5.7%. Also, the police won an arbitration in Greenfield and the increase for 1977 appears to be on the order of 7% for top patrolmen.

The City (Exhibits 1-4) calculated costs of employe salary and fringe benefits for each of its unionized bargaining units in terms of the number of hours actually worked. These exhibits demonstrate that salary and fringe benefits per hour worked are higher for police than for any other bargaining unit.

The City calculates the difference between its offer and the Association's offer for salary and salary-related fringe benefit roll-up costs as totalling \$53,239.70 (City Exhibits #8 and #10).

The City entered its 1977 budget (Exhibit #12) into the record and emphasized the following factors (in Exhibits #12-16):

The budget adopted contained a "contingent fund" of \$830,000 from which all wage settlements and increases in wage-related fringe costs were to come. The budget provides that by the end of 1977 the City will have reduced its "general obligation

indebtedness" from approximately \$31 million to \$28 million. Under the State-imposed levy limit formula the City was able to increase its levy by 12.12%, or approximately \$920 thousand. Because it knew this would not be adequate for 1977, the City imposed a new sewer tax which raised \$1.3 million. Given this new tax on its citizens, City officials decided not to raise the entire allowable levy and levied \$337 thousand below the allowable limit. The increase in the levy amounted to 7.0% and the increase in the net tax rate per \$1,000 valuation was 10.8%.

As indicated above the contingent fund in the budget for 1977 is \$830 thousand. The City estimated (Exhibit #15) that in view of a dramatically higher liability insurance premium and a resulting decision by the City to self-insure, and other unanticipated expenditures for workmen's compensation, and some other items, when coupled with settlements reached with the firefighters, and the City's offer to the police and its other not-yet-settled units, the amount remaining in the contingent fund would be about \$6.5 thousand, an amount not sufficient to cover the Association's offer or any demands higher than the City's estimated settlement costs with other bargaining units.

The City presented cost of living data for Milwaukee and the United States purporting to show that the police have stayed ahead of the cost of living from the period 1968-77. (It is hard to evaluate this exhibit because the cost of living index numbers are not given, rather it is an addition of yearly percentage figures, which may produce a distorted result.)

The City (Exhibit #19) showed that the City offer to top patrolmen of 5.7% exceeds its settlement for its top firefighters of 5.2%.

In Exhibit #21 the City makes salary comparisons with cities outside of those bordering West Allis or those in the metropolitan Milwaukee area. The City's comparisons are with Cities in the 30,000 to 175,000 population range which it feels are more comparable also in square miles, equalized valuation, and size of budget, and number of policemen than in the comparisons drawn by the Association. The cities used are: Madison, Racine, Kenosha, Wauwatosa, Janesville, Waukesha, Beloit, Menomonee Falls, Brookfield, New Berlin. These comparisons show that of the 11 cities, West Allis top patrolman annual salary is the median figure, \$14,446. The average rate is \$14,222.

Using the same 10 other comparison cities, City Exhibit #22 shows that for a patrolman on the force 11 years (the average in West Allis), the pay in West Allis ranks 6th, and if report pay, holiday pay and longevity pay are considered, West Allis ranks 4th.

The same comparison is made in Exhibit #23 for top detective with 20 years service (the average in West Allis), showing West Allis ranked 2nd in wages and 1st if report pay, holiday pay and longevity are added.

The same comparison is made in Exhibit #24 for top sergeant with 23 years service (the average in West Allis) showing West Allis ranked 2nd in wages and 1st if report pay, holiday pay and longevity are added.

City Exhibit #26 shows known 1977 settlements for its comparison cities, including Madison 5.9%; Racine 6.3%; Kenosha 6.9%; Wauwatosa 5.3%; Beloit 6%.

City Exhibit #27 shows that the January, 1977 US cost of living index has increased 5.2% since January, 1976, and the parties stipulated at the hearing that the Milwaukee rate has been slightly higher (.6% in a November to November comparison).

Positions of the Parties:

Association: The position of the Association includes the following:

- 1) The Association contends that the wages of West Allis police "are completely out of line with those paid to Police in comparable and surrounding communities" and that in addition the wage increases given have not kept up with the cost of living. The final offer of the Association "will not in any way bring the West Allis Police into a position of leadership, but will bring them close to being average in comparable and surrounding communities."

2) The Association cites decisions of arbitrators in other cases which have placed heavy emphasis on "where the wages of the litigating police stand in comparison to law enforcement officers in other comparable communities," and especially in the immediate geographical area. In emphasizing the low relative standing of West Allis police in these wage comparisons, the Association points to the fact that West Allis is the second largest city in the metropolitan Milwaukee area.

3) The Association contends that given the 1977 settlements which have been reached thus far in bordering and metropolitan Milwaukee communities, the Association's offer is necessary in order to prevent the West Allis police from falling further behind.

4) The Association contends that the comparisons used by the City are not justified, since those comparison cities are not in the same labor market as West Allis, even if they are similar in size or other characteristics. The Association points out that those Milwaukee area cities which are included in the City's comparisons demonstrate that "West Allis officers are far behind comparable communities in salary."

5) The Association contends its case is supported by examination of cost of living figures, and that the actual February, 1977, index was higher than the estimated figures in Association exhibits, thus adding strength to the Association's arguments.

6) The Association notes that the City argued as justification for its final offer that there was a need to preserve historic relationships with other employe groups in the City. It is the Association's contention that the City has not shown the existence of such historic relationships that need be preserved in this case. The Association contends the City's data show that the City has managed over the years to keep its firefighters, as well as police chief, inspectors, captains and lieutenants "in a favorable comparative position with their counterparts in surrounding Milwaukee area communities" but it has not done so for police officers.

7) The Association contends that during the 1977 contract bargaining, "the City never raised the question of ability to pay." While the City made such arguments for the first time at the arbitration hearing, it is the Association's contention that the City did not demonstrate any inability to pay the Association's final offer. The Association contends that even were the arbitrator persuaded that the City will be facing some financial hardships, this factor should not outweigh the wage comparison and cost of living factors which clearly demonstrate justification for the Association's final offer.

8) The Association acknowledges that the percentage increase (7.7%) it is seeking is higher than most other settlements being arrived at in comparison communities. The Association contends, however, that such an increase is necessary to place West Allis in a "comparable position with officers in surrounding and metropolitan Milwaukee area communities."

City: The position of the City includes the following:

1) The City contends it does not have an adequate contingent fund for meeting the final offer of the Association and to meet the offer it "would have to either realign its budgetary priorities or borrow for operating expenses in order to maintain its current level of services and meet its financial obligations." The City believes the Association has a burden to "present substantial evidence . . . which would rebut the political and financial soundness of the council's collective determination on budgetary matters. Without such evidence . . . the arbitrator should not substitute his judgment for that of the Common Council insofar as it reflects the ability of West Allis taxpayers to absorb increased property tax levies." The City adds to the question of its current ability to pay, the fact that support of the Association's demands would lead to similar demands for increases from other employes, in particular firefighters whose wage status has been closely linked to the police in the past, and the fact that the City anticipates needing new sources of revenue in 1978 because of the likelihood that the allowable levy limitations will not be adequate to meet its obligations.

2) The City contends that the cost of living index should be interpreted in light of its composite nature, and argues that the police are significantly insulated from cost of living changes by the fact that the City pays 40% of their compensation in the form of fringe benefits, including the full cost of health insurance. The City contends its offer to patrolmen of 5.69% at the top step is in line with national and Milwaukee cost of living increases during 1976, and contends further that over a ten year period wage increases to police have exceeded the increase in cost of living.

3) The City contends its offer to police is also competitive with comparable communities.

The City contends that geographical proximity should not be considered the appropriate criterion for comparability, but rather such measures as population, tax base, nature of police work and the makeup of the police department should all be considered in selecting comparable communities. In addition, the City believes a comparison of total annual wages received by each rank is a more relevant figure for comparison than the base wage.

4) The City contends that its offer is in line with other comparison settlements, either the City's or Association's, for 1977, both those which were known at the time of the hearing and those which have settled subsequently. According to the City, the norm for such settlements is in the 5-6% range, and the City does not see a justification for the higher settlement sought by the Association.

Discussion:

The arbitrator has considered the criteria for decisionmaking listed at Section 111.77(6) Wisconsin Statutes. There is no question in this case about the lawful authority of the employer to grant the Association's final offer, nor is there any immediate question about the "financial ability of the unit of government to meet these costs . . ." The City has indicated that in order to implement the Association's offer it might have to take deficit financing measures until new revenue sources can be raised, and/or it might have to make reallocations within its present budget. While the City has the ability to pay, and the City does not rebut the Association's assertion that ability-to-pay was not an argument during the bargaining, it is also the fact that in order to stay within the levy limits the City decided to impose a new sewer tax which raised some \$1.3 million. At the same time the property tax rate was raised 10.8%. Thus, weighed against the measures the City has had to take to stay within its levy limits, the offer made by the City is a reasonable one.

The change in cost of living increase that occurred during calendar year 1976, the year immediately preceding the implementation date of a new 1977 contract and thus the year most relevant to this dispute, was 10 index points from February 1976 to February 1977, or 5.98% over the February, 1976, base of 167.1. The parties agree that the cost of living index for Milwaukee has been slightly above the national figure and thus the cost of living index for Milwaukee for the same period increased approximately 6.5%. Weighed against cost of living changes the City's offer to the unit of 5.5% is no more or less reasonable than the 7.8% requested by the Association.

The City's position regarding cost of living is meritorious when it argues that a major component of the cost of living index is for health care and the City pays the full cost of health insurance for its employees. The Association's position also has merit when it argues that it has received 2-3% less than the cost of living change since 1974.

The arbitrator is not persuaded that cost of living is a significant factor in this case. The City should not be faulted for having given increases which have stayed within a percent a year of the cost of living increase during times of significant inflation. The Association has done reasonably well in that regard in the absence of a negotiated cost of living formula, which, of course, the parties could negotiate if they were in agreement about the importance of a strict relationship between cost of living and wage settlements.

The questions of comparability are the most controversial in this case. The arbitrator has accepted the Association's argument that given the recent movement of sergeants into the bargaining unit the top patrolman rate is the best one for comparison purposes since sergeant rates up to 1977 were set by the City unilaterally, and since the majority of the unit are patrolmen and most are at the top step.

The arbitrator has also not calculated the pay police receive for report time in making the comparisons. Report time is something that not all departments have, and not all that have it pay for it. The City has chosen to have its police officers report early and is paying for it, but that should not be used as an offset to base wages when comparisons are made between departments.

The City points out that its offer to police exceeds the offer made to all of its other employe groups including firefighters, the latter group being one which the City has tried to maintain in a close relationship with the police although the relationship has not been one of strict parity each year.

The City points out also that its wage offer in percentage terms is in line with settlements for 1977 being reached in comparison communities whether the City's or Association's comparisons are used. The Association acknowledges this to be the case but argues that a larger increase is necessary in order to bring West Allis nearer to the average salary paid to top patrolmen in comparison communities.

The arbitrator believes that while there is merit in both parties' comparisons, there is greater merit in the Association's comparisons. While it is true that the various suburban Milwaukee communities have different size populations, tax bases, population make-up and density, and differ in other ways as well, there is a commonality of police problems linked to the urban characteristics of metropolitan areas and their immediate suburbs. In addition it is significant in the view of the arbitrator that West Allis is contiguous with the City of Milwaukee and is the city with the second largest population in the area.

The crux of the Association's case is that comparisons over the last several years indicate that there has been significant slippage in the Association's relative position. Whereas in 1974 the Association was paid above the median and average base for top patrolmen in the metropolitan area, it has now fallen below by at least 10-15¢ per hour, depending on what cities are used in the comparison. The City argues that if its 11-city comparison is used, West Allis is right at the median and no adjustment is needed.

The arbitrator has partially combined the comparison cities used by the parties. By looking at communities appearing on both parties' lists, one can look at those cities in the metropolitan area which the City will also agree have similar characteristics to its own police force. These cities demonstrate the effect of being in a metropolitan area labor market on police wages for cities with characteristics similar to West Allis.

The cities common to both groups are: Menomonee Falls, Brookfield, Wauwatosa, and New Berlin. In 1974 their median annual base salary was approximately \$12,000 and their average was \$12,036, while West Allis was ranked ahead of all of them with an annual base of \$12,480, some 21¢ per hour (using 2080 hours) ahead of them. In 1976 their median salary was approximately \$14,700 and their average was \$14,865 compared to the \$14,445 of West Allis. Thus instead of being 21¢ ahead, West Allis was from 12¢ to 20¢ behind these same cities, depending on whether the median or average figure is used.

The City argues that because of its close proximity and characteristics, the city of Waukesha should be included in the comparisons. Adding Waukesha (\$13,788 in 1976), the median of the five cities is then \$14,740 and the average is \$14,650 which would leave West Allis 10-14¢ behind.

Also, using the Association's comparisons but accepting the City's argument that the City of Milwaukee should not be included, shows West Allis approximately 10¢ an hour

Given the fact that the City's offer is reasonable by all other measures, i.e. comparisons with its other of its own employes, the range of settlements to police for 1977, changes in the cost of living in 1976, and the fact that the City has felt it necessary to impose significant new tax measures to balance its budget, the arbitrator's choice is a very difficult one indeed. While a decision could be reached that the City's position is more reasonable this year and that the City should strive to make up the gap in years to come, there is no indication in the City's presentation of its financial outlook that this will occur or be any easier to achieve next year or the year after than it is now.

It is entirely reasonable that the police of West Allis who work in the largest suburb, contiguous to Milwaukee not be one of the lowest paid police departments in the area. Their final offer in this case would not make them one of the best paid police forces, but would restore them to an average position.

In the arbitrator's view the Association's arguments based on comparisons in this case are more persuasive than the City's arguments concerning its financial condition. In addition, the City is not obligated to give the raise awarded here to its other employe groups. Equal treatment of employes for wage increase purposes is desirable but a wage policy should take into consideration the labor market comparisons which may be more favorable to one group than another. In this case there is clear justification in the wage comparisons for giving the police the raise they are seeking. The City may still choose to have a close relationship between police and firefighter salaries, although the Association exhibit 1, pg. 18 shows police wages generally above firefighter wages in the Milwaukee area, but such a City policy should not act to hold down police wages below those commonly granted in comparison communities.

Based on all of the above facts and discussion, and the statutory criteria for the arbitrator's decision, the arbitrator makes the following AWARD

The City is hereby ordered to implement the final offer made by the Association, namely:

The final offer of WAPPA on the issue of the dollars-across-the-board adjustment to be applied to all 1976 rates (as modified by 1977 rate structure agreements) and to be effective January 1, 1977 is 55.5¢/hour.

Dated at Madison, Wisconsin this 25th day of May, 1977.

Edward B. Krinsky /s/
Edward B. Krinsky, Arbitrator