STATE OF WISCONSIN

ARBITRATION AWARD

In the Matter of the Petition of Waukesha Professional Police Association For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of City of Waukesha	Case XXIX No. 21262 MIA-295 Decision No. 15355-A

Appearances:

Hippenmeyer, Reilly, Arenz & Molter, Attorneys at Law, by William F. Reilly, appearing on behalf of Waukesha Professional Police Association.

Michael, Best & Friedrich, Attorneys at Law, by Marshall R. Berkoff and James W. Nellen, II, appearing on behalf of the City of Waukesha.

ARBITRATION AWARD:

On March 31, 1977, the undersigned was appointed impartial arbitrator to issue a final and binding arbitration award in the matter of a dispute existing between Waukesha Professional Police Association, referred to herein as the Association, and the City of Waukesha, referred to herein as the Employer. The appointment was made by the Wisconsin Employment Relations Commission pursuant to Wisconsin Statutes 111.77 (4)(b), and the parties elected to place the issue before the Arbitrator in the form which limits the jurisdiction of the Arbitrator to the selection of either the final offer of the Association or that of the Employer. Hearing was conducted May 9, 1977, at Waukesha, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence, and to make relevant argument. A transcript of the proceedings was made, and briefs were filed in the matter, which were exchanged by the Arbitrator on July 29, 1977.

THE ISSUES:

The final offers as set forth below represent the issues remaining in dispute between the parties:

FINAL OFFER OF THE EMPLOYER:

1. Clarify the existing contract language to provide:

"During the probationary period, an employee may be terminated without recourse to the Grievance and Arbitration Procedure of this contract."

2. Clarify Article X, Previous Benefits, Section 10.01, to provide as follows:

"The City agrees to maintain in substantially the same manner such present fringe benefits not specifically referred to in this agreement. Such benefits (delete "and policies") as may now exist are incorporated herein by reference as though fully set forth at length."

3. Article IX, Insurance Benefits, Section 9.01 (a) Hospital and Medical Insurance, amend to provide as follows:

"The City will pay the monthly premium cost of the employees' group hospital and medical insurance of:

Single Plan -- $ 42.01
Family Plan -- $114.95

In 1978, if the Blue Cross - Blue Shield premium increases above the stated amounts, the City and employee will each pay one-half of such increased premium. If the employee's contribution increases by more than $5.00 per month, the parties agree to meet upon request to consider alternate coverage or carriers.

The City may change insurance carriers where benefits and coverage are comparable to current plan (existing language)."

In response to the Union's proposal for an improvement in the vacation benefits, the City proposes an alternate wage and vacation package as follows: Maintain the current three weeks of vacation after ten years of service together with a monthly salary adjustment for all classifications and steps of $52.00 per month effective January 1, 1977 and $73.00 per month effective January 1, 1978 or in the alternative, improve the vacation benefits to three weeks after eight years of service and adjust the salary proposals by the cost of that increase to provide $45.00 for all classifications and steps effective January 1, 1977 and $71.00 per month effective January 1, 1978. If the Association should so desire, the City would convert the salary amount into a percentage to be applied to each employee's rate calculated so that the total dollar cost of the package remains the same.

FINAL OFFER OF THE ASSOCIATION:

1. WAGES - 7% on each of the existing classifications, with the exception of sergeant, which by agreement of the parties, is removed from coverage of the Collective Bargaining Agreement.

2. Reduction of the probationary period from two years to one year.

3. Provide for 3 weeks vacation after 8 years of service (an improvement from 3 weeks vacation after 10 years of service).

4. Maintain the language of 9.01 (a) providing that "in 1978, if the insurance premiums increase above the stated amounts, the City will pay such increase in 1978".

5. Maintain the language of Article X with respect to previous benefits as it was set forth in the predecessor contract.

DISCUSSION:

From the foregoing statement of the final offer of the parties, the offers placed before the Arbitrator fall into the following categories:

1. Wages
2. Vacations
3. Hospital and Medical Insurance Benefits
4. Probation
5. Clarification of previous Benefits Clause

Each of the five issues set forth above will be discussed separately, with the exception that for the purposes of this discussion the vacation issue will be considered along with wages, since the record is clear that the Employer is willing to grant the Association request for 3 weeks of vacation after 8 years, providing the cost of the vacation improvement ($7.00 per month in the first year) is offset from the wage increase otherwise offered. Since no argument has been made with respect to uniformity of vacations for all employees of the Employer, and since the Employer position treats the vacation issue solely as a matter of economics, the undersigned considers it proper to deal with the vacation issue in conjunction with wages.

The Arbitrator is mindful of the criteria set forth in Wisconsin Statutes 111.77 (6), which spells out the criteria the Arbitrator is to consider in determining which offer should be accepted. The undersigned notes that no issues were raised, nor were arguments advanced, with respect to criteria set forth in 111.77 (6) (b), or (c). The Arbitrator further notes that no evidence was adduced with respect to the statutory criteria found at 111.77 (6) (d) 2. It follows, therefore, that in considering the position of the parties the undersigned will apply the remaining criteria of the statute at 111.77 (6), which are:

(a) Lawful authority of the Employer.

(d) 1 - Comparison of wages, hours and conditions of employment with other employees performing similar services in public employment in comparable communites.

(e) Cost of living.

(f) Total compensation received by employees.

(g) changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Other factors traditionally considered in collective bargaining.

WAGES AND VACATIONS

As noted in the foregoing discussion the undersigned will consider the proposed vacation improvement as part of the wage consideration, since the record is clear that the Employer is willing to grant the vacation improvement, providing the $7.00 per month cost of the improved vacation is removed from his wage offer of $52.00 per month for the first year, and that the $2.00 per month cost for the improved vacation is removed from his wage offer of $73.00 per month for the second year. The sole difference between the parties' position with respect to vacation is that the Association position asks the Arbitrator to grant the vacation in addition to the 7% wage increase the Association proposes. The undersigned has calculated, from Employer data, that the $7.00 per month cost attributable to vacation improvements represents an additional .6% in the first year and .2% in the second year. For the purposes of this discussion then the undersigned when considering respective percentage increases will consider the Association position to be 7.6% for the first year and 7.2% for the second year. Since the Employer has made an alternative proposal in his last offer, wherein the Association would have the option of $52.00 per month increase in the first year and no vacation improvement, or $45.00 per month in the first year with the improved vacations; and $73.00 per month increase in the second year with no vacation improvement or $71.00 per month in the second year with the vacation improvement; the undersigned will consider, since the alternatives are mathematically equivalent, the Employer's offer to be $52.00 for the first year, and $73.00 for the second year, when considering the Employer wage offer.

Since the issue of ability to pay is not involved in these proceedings, the undersigned will consider the remaining pertinent statutory criteria with respect to wages, i. e., a comparison of wages paid for comparable responsibilities in other comparable communities and the cost of living. The undersigned notes that the statutory criteria also directs consideration to wages paid for comparable activities in the private sector; however, no evidence was adduced at hearing with respect to this criteria, consequently, it will not be considered.

With respect to the criteria of a comparison of wages and other benefits with other employees performing similar service in public employment in comparable communities, the undersigned accepts Association Exhibit #4 as a proper comparison. Association Exhibit #4 sets forth 10 Waukesha County cities (inclusive of the City of Waukesha), showing the top patrolman's annual salary for 1977 as follows:

Brookfield		$16,159.68
Menomonee Falls		16,020.00
Hartland		15,757.00
Elm Grove		15,396.00
New Berlin		15,382.63
Muskego		15,230.00
Waukesha	Association Offer	14,748.00
Pewaukee		14.712.00
Butler		14,568.00
Waukesha	Employer Offer	14,412.00
Oconomowoc		14,352.00

From the foregoing tabulation it is clear to the undersigned that the Association offer is not excessive when compared to other municipalities in Waukesha County, and the undersigned is further satisfied that other municipalities in the County are an appropriate comparison. This opinion is buttressed when considering that there is no issue of ability to pay in the instant matter, and when considering the fact that the Employer is the largest municipality in population of those municipalities being compared.

The foregoing table does not take into consideration the additional costs involved with the improved vacation request of the Association. However, the undersigned notes from Association Exhibit #13 that the improvement in vacation from 3 weeks after 10 years to 3 weeks after 8 years provides a vacation schedule for the third week of vacation which will bring the employees in the instant dispute to the minimum standards provided employees in police work in the comparable communities of Waukesha County as shown in the preceding table. It would, therefore, follow that the vacation proposal of the Association is not excessive in applying the statutory criteria of benefits to employees in comparable employment in other comparable communities.

The undersigned will consider the statutory cost of living criteria, and notes that in 111.77 (6) (g) the undersigned is directed to consider changes in the circumstances during the pendency of the proceedings. Employer testimony at the hearing indicated that one of the considerations the Employer took into account was cost of living when he determined that the cost of his wage offer should be 6%. The Employer urges that roll-up costs be considered by the undersigned in evaluating the respective positions of the parties. The Arbitrator agrees that roll-up costs should be considered in determining the cost of the package offered by the Employer or the Association. The Arbitrator, however, distinguishes between the cost of an offer and the percentage of increase offered. While the undersigned accepts the 6% calculation made by the Employer with respect to cost, it is, however, factual that the $52.00 increase offered for 1977 represents a 4.5% wage increase at the top patrolman rate, and if one were to add the .6%, the value attached to the improved vacations, the Employer offer would represent 5.1%. Conversely, in considering the Association final offer at 7% proposed by the Association it becomes 7.6% when considering the improved vacations in the first year and 7.2% when considering the improved vacations in the second year. In considering the cost of living statutory criteria the undersigned is persuaded that the percentage of wage increase offered, rather than the cost of said increase to the Employer, is the appropriate comparison.

The undersigned notes that the cost of living for the year 1976 increased by 4.8% which would compare favorably with the 4.5% wage offer of Employer for the year 1977 at the top patrolman rate. The statutory criteria, however, directs the Arbitrator to consider changes in the cost of living and other criteria during the pendency of the arbitration proceedings. The undersigned notes that the cost of living for the year April, 1976 through April, 1977, shows an increase in the cost of living of 6.8%; and the undersigned further notes that the cost of living for the first four months of the year 1977 increased at an annualized rate of 9.2%. In view of the mandates of the statute, which directs the Arbitrator to consider changes in the cost of living during the pendency of the arbitration proceedings, there can be no other conclusion that the 7.6% increase proposed by the Association is more in line with the current trends of cost of living than the 4.5% increase proposed by the Employer.

The Employer has cited prior arbitration decisions supporting his contention that it is important to labor relations stability and the vitality of collective bargaining that settlements in other City units be given great weight. The undersigned has reviewed the cases cited by the Employer and agrees with the opinions of the arbitrators in those cases. In Local 74, Firefighters v. City of Superior, Dec. No. 11585-C (July 27, 1973), the Arbitrator opined:

> It is an offer which would not disturb the pattern of collective bargaining between the Employer and its several bargaining units since it would not give a greater increase to the last employee group to settle and thus possibly create incentives not to arrive at agreements until other units have concluded bargaining. These are factors which the Board would normally weigh strongly in favor of the Employer's offer absent a clear showing of wage inequity by the employee group seeking a larger settlement through arbitration.

Again, in City of Kenosha v. Law Enforcement Personnel, Dec. No. 12500-A (June 4, 1975), the Arbitrator said:

> This arbitrator recognizes that the agreements of other labor organizations with the City do not and should not govern the hopes of the Policemen's Association. However, he believes that, in performing his function in cases like this, he -- as bargaining agencies, generally -- must be concerned that equitable relationships are maintained between all of the employees and an employer.

The undersigned, while agreeing with the Arbitrators' conclusions in the foregoing citations and with the Employer's contention that collective bargaining settlements in other units of the Employer should be given great weight, nevertheless finds that the comparison of top patrolman rates in other Waukesha County communities and the escalation of the cost of living weighs more heavily in favor of the Association offer than the settlements already agreed to with other units of the Employer.

From the foregoing discussion it follows that with respect to the wage and vacation issues the Arbitrator holds that the Association offer should be adopted. In so holding the Arbitrator is mindful that while the increase involved approximates 7.6% to the Association in the first year inclusive of vacations, the actual cost to the Employer is approximately 9%.

In finding for the Association wage offer the undersigned must now consider whether the remaining issues in dispute between the parties are of sufficient weight so as to compel a finding for the Employer position.

HOSPITAL AND MEDICAL INSURANCE

The Employer has proposed language which would pay the full cost of health and medical insurance for the first year of the Agreement (stated as a dollar amount), but which would require the parties to share increased costs in the second year of the agreement if the premiums were to increase and, further, to consider a request by the Association to consider alternate coverage or carriers if the employee's contribution in the second year were to be $5.00 per month or more. The foregoing proposal has been incorporated into the Collective Bargaining Agreements of all other units bargaining with the Employer. The proposal represents a change from prior Contract language in which the Employer, in the predecessor contract, had agreed to pay for any increases in the second year of a two year Agreement, and in which the Employer reserved the right to change carriers providing benefits and coverage were comparable to the existing premium. The undersigned notes from Association Exhibit #14 that the 9 comparable communities in Waukesha County which were considered in the wage issues all provide full payment of medical insurance. In the case of medical insurance premiums the undersigned is persuaded that the most appropriate comparison for payment of medical benefits is the comparison of the provisions governing other employees of the Employer rather than practices in comparable communities. If this issue were standing alone the undersigned would find for the Employer. The undersigned, however, is of the opinion that medical insurance premiums are of insufficient weight so as to outweigh the compelling findings of the wage offer of the Association.

PROBATION

The probation issue involves two sub-issues. The Employer proposed that the following language be added: "During the probationary period, an employee may be terminated without recourse to the Grievance and Arbitration Procedure of this contract"; and the Association proposed that the probationary period be reduced from two years to one year.

With respect to the clarifying language proposed by the Employer prohibiting probationary employees from recourse to the Grievance and Arbitration Procedure the record is clear that with the exception of one case in which a probationary period was extended beyond two years, no recourse to the Grievance Procedure has ever been attempted by a terminated probationary employee or by the Association. The inclusion of language which would specifically set forth what is obviously the understanding of the parties, that probationary employees have no recourse to the Grievance and Arbitration Procedure, would not trouble the Arbitrator, since there is such an understanding in existence. The inclusion of said language is not so compelling however, so as to override finding for the Association on the wage issue.

With respect to the reduction of the probationary period from two years to one year the Arbitrator would find for the Employer if this issue were standing alone. The unrefuted testimony in the record indicates there have been several occasions since 1972 in which probationary employees would have been terminated prior to the end of his first year if the probationary period were of one year duration, but who during their second year of probation showed sufficient improvement so as to become acceptable permanent members of the police force. From the foregoing, the undersigned concludes that a reduction of the probationary period will operate against the interests of the probationary employee who might be performing marginally at the end of the first year in that the Employer undoubtedly would resolve any doubt as to performance in his own favor by terminating the probationary employee. While the undersigned would find in favor of the Employer in view of the foregoing, and in view of the statutory provisions which provide for up to a two year probationary period for police employees, this issue is of insufficient weight in the mind of the undersigned so as to override the finding of the Arbitrator in favor of the wage issue involved herein.

PREVIOUS BENEFITS CLAUSE

The Employer has proposed language that would modify the provisions of the predecessor contract at Section 10.01 so as to delete reference to the word policies and to insert the word "fringe" before the word benefits in the first sentence of the provision. The undersigned has reviewed the testimony adduced at hearing with respect to this issue carefully. From the testimony of witness Higbee in which he testified that the types of benefits the clause was intended to protect were timing of vacations, practice of exchanging days off, breaks and lunch periods; and from the statement of counsel for the Association made at hearing as follows: "He's talking about taking away the man's coffee break or something like that, then we, we've got issues, but if he's relating to management rights that are set forth in the contracts, there is no problem"; the undersigned concludes that the parties have an understanding of the previous benefits that are to be maintained pursuant to the provisions of 10.01. While the inclusion of the language proposed by the Employer would clarify that the previous benefits to be maintained are such items as timing of vacations, coffee breaks, exchange of days off, etc. and, therefore, would be appropriate; in view of the obvious understanding that the previous benefits refer to the items cited above, the failure to include the clarifying language cannot outweigh the importance of the wage issues in dispute here. The parties have lived, without apparent problem, with the existing language for a number of years and presumably can do so for the balance of the term of this Agreement in view of the obvious understandings discussed above.

SUMMARY

In view of the foregoing discussion in which the undersigned has concluded that the wage issue involved in the instant dispute should be decided in favor of the Association offer; and in view of the conclusions arrived at in the preceding discussion that the remaining issues are not of sufficient weight so as to override the primacy of the wage issue; and after consideration of the entire record, the statutory criteria, and the arguments of the parties, the undersigned makes the following:

AWARD

The final offer of the Association is to be incorporated into the Collective Bargaining Agreement between the Employer and the Association for the contract term beginning January 1, 1977, and ending December 31, 1978.

Dated at Fond du Lac, Wisconsin, this 16th day of August, 1977.

Jos. B. Kerkman /s/
Jos. B. Kerkman,
Arbitrator