STATE OF WISCONSIN

ARBITRATION AWARD

In the Matter of the Petition of	:	
CITY OF MADISON	:	
For Final and Binding Arbitration Between Said Petitioner and	:	Case LIV No. 22326 MIA-347 Decision No. 16034-A
MADISON PROFESSIONAL POLICE OFFICERS ASSOCIATION	:	

Appearances:

Timothy C. Jeffery, Director of Labor Relations, City of Madison, appearing for the Employer.

Lawton & Cates, Attorneys at Law, by Richard V. Graylow, appearing for the Association.

ARBITRATION AWARD:

On January 17, 1978, the undersigned was appointed by the Wisconsin Employment Relations Commission to issue a final and binding award in the matter of a dispute existing between City of Madison, referred to herein as the Employer, and the Madison Professional Police Officers Association, referred to herein as the Association. The appointment was made pursuant to Wisconsin Statutes 111.77 (4)(b), which limits the jurisdiction of the Arbitrator to the selection of either the final offer of the Employer or that of the Association. Hearing was conducted on April 3, 1978, at Madison, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence, and to make relevant argument. No transcript of the proceedings was made, however, briefs were filed in the matter, which were exchanged by the Arbitrator on May 16, 1978. Reply briefs were filed by both parties, and were received by the Arbitrator by June 5, 1978.

THE ISSUES:

There are two issues at impasse between the parties:

1. Wages
2. Health Insurance Contributions

The final position of each party is set forth below with respect to said issues.

EMPLOYER FINAL OFFER:

1. Wage Increase above 1977 base wage rates:

   Effective 12/25/77 - 5.5%

   Effective 6/26/78 - 1.5%

2. Health Insurance: $45.82/mo. single premium

   $93.59/mo. family premium

3. Change the year in Article XXIV sections E and F from 1977 to 1978

4. Amend Article X Section B(5) to include reference to "or other public employment Fund annuities" and "educational incentive pay"

5. The duration of the agreement from the period December 25, 1977 to December 23, 1978

ASSOCIATION FINAL OFFER:

For purposes of final and binding arbitration in accordance with Section 111.77 of the Wisconsin Statutes, the MPPOA submits the following proposals for consideration of the Arbitrator.

Item #1

An increase in the base pay of all members of the bargaining unit by 42 cents per hour effective December 24, 1977, and an additional 10 cents per hour effective June 25, 1978.

NOTE. Bi-weekly increase would be reflected by $31.50 increase across the board effective December 24, 1977 with an additional $7.50 to be added across the board effective June 25, 1978.

The wage increase proposed is based on a unit average hourly rate of $7.40.

Item #2

Article XI Section (A)(1) will read as follows: The City will pay the full cost of the family plan monthly premium for the group health policy (WPS-HMP 21320 and points) in force during the term of the Labor Contract.

Article XI Section (A)(2) will read as follows: The City will pay the full cost of the monthly plan for single employees.

Item #3

In addition to items one and two listed above, Article XXIV Sub-Sections E & F shall be amended to indicate the date of 1978 rather than 1977.

In addition to the above, the Madison Professional Police Officers Association jointly recognizes and agrees that during the negotiation period for the 1978 Contract, tentative agreement was reached with the City on the language of the entire contract other than as listed above, and further, that tentative agreement was reached to insert in Article X (B)(5) in the first sentence after Wisconsin Retirement Fund Annuities, "or other public fund annuities" and further, in the first sentence after the words "computed at the prevailing rate plus any longivity pay", insert the words, "and educational incentive pay"....the rest of the sub-section shall not be amended.

While the Employer final offer contains five items, and the Association final offer contains three items; only items #1 and #2 of each offer are in dispute, and the undersigned will address those issues only in this Award.

STATUTORY CRITERIA:

111.77 Settlement of disputes in collective bargaining units composed of law enforcement personnel and firefighters.

(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.

At hearing and later in argument the parties relied on statutory criteria (d), (f), and (h). Since the parties rely on the aforementioned statutory criteria, the Arbitrator will consider those criteria in arriving at the Award.

PRELIMINARY CONSIDERATIONS:

The Association has raised issues with respect to the authenticity of exhibits and with respect to the lawfulness of the Employer's final offer, because the Association asserts that it contains an offer based on an unlawful concept of the application of parity. The undersigned will discuss each of the issues under separate headings below.

PROPRIETY OF EMPLOYER EXHIBITS:

The Association contends that certain exhibits introduced by the Employer are improperly admitted into the record and should not be considered by the Arbitrator. At hearing the Employer introduced exhibits Nos. 22 through 29 through the testimony of Timothy C. Jeffery, Director of Labor Relations for the Employer. The contested exhibits are identified as follows:

Employer Exhibit #22 - Agreement between City of Milwaukee and Professional Policemen's Protective Association (November 1, 1976 through December 31, 1978)

Employer Exhibit #23 - Agreement between City of Racine and Racine Policemen's Professional and Benevolent Corporation (1976-1977)

Employer Exhibit #24 - Agreement between City of Kenosha and Kenosha Professional Policemen's Association (January 1, 1976 through December 31, 1977)

Employer Exhibit #25 - Agreement between City of West Allis and West Allis Professional Police Association (January 1, 1978 - December 31, 1978)

Employer Exhibit #26 - Agreement between City of Appleton and Appleton Professional Policemen's Association (1978 - 1979)

Employer Exhibit #27 - Agreement between City of Wauwatosa and The Wauwatosa

In his testimony with respect to the disputed exhibits, Employer's Exhibits Nos. 22 through 29, Jeffery testified he secured the exhibits from the offices of the employer representative who was responsible for the negotiations and administration of the Collective Bargaining Agreements. The disputed exhibits were admitted over the objection of the Association by the undersigned at hearing, subject to the Association having the right, if it could demonstrate posthearing, that the exhibits were something other than what they were represented to be. In its brief the Association renews its objection to the admissibility, relying on Section 909.01 of the Wisconsin Statutes.

The undersigned rejects the Association contention with respect to the admissibility of the aforementioned exhibits, since the proceedings by statutory direction at 111.77 (7) are governed by Chapter 298 of the Wisconsin Statutes, the Wisconsin Arbitration Act. Since the proceedings in the instant matter are governed by Chapter 298, the Wisconsin Arbitration Act; and since it is well established that admission of evidence in an arbitration proceeding is not bound by the strict rules of evidence of those applied in a court of law; and since it is equally well established that in arbitration proceedings arbitrators will liberally admit evidentiary items; and since this Arbitrator is satisfied that Employer Exhibits Nos. 22 through 29 are indeed what they are purported to be; and because the Association was afforded an opportunity to show that Employer Exhibits Nos. 22 through 29 were something other than what they are represented to be, and has not done so; the Arbitrator concludes that Employer Exhibits Nos. 22 through 29 are properly part of the record and will be considered in determining which of the final offers is preferable.

The Association has further challenged the admission of Employer Exhibits Nos. 1, 21, 30, 31, 35 and others. While Employer Exhibit No. 1, which is identified as an article published in U. S. News & World Report (March 13, 1978) titled How to Deal With Stress on the Job, was admitted into the record; the undersigned, in admitting Exhibit No. 1 noted in overruling the Association objection to it, that because of the nature of the exhibit it would be given minimal consideration. Having now had an opportunity to further review the exhibit, the undersigned concludes that because it is a news article and not a learned treatise, Employer Exhibit No. 1 will not be considered in this matter.

Other exhibits were accepted into the record, such as Employer Exhibits Nos. 21, 30, 31 and 35, based on the testimony of Jeffery that his offices conducted telephone surveys with the offices of duly designated agencies of other municipalities, and that the data in said exhibits are the results of said telephone surveys. Employer Exhibit No. 21 is an exhibit setting forth the population of ten municipalities in the state, and clearly sets forth the source of the information as being the Wisconsin State Department of Administration, Demographic Services Center, October 10, 1977. The undersigned is satisfied that the document is what it purports to be; and absent any showing that the data is not accurate, accepts Employer Exhibit No. 21 for its full value.

With respect to Employer Exhibit #30, the undersigned is satisfied that the data set forth therein, which is a comparison of longevity pay benefits, and verifiable from Employer Exhibits #22 through #29, except for the data shown for Green Bay. Since the agreement for Green Bay Police is not in evidence, the Green Bay data shown on Employer #30 will not be considered.

With respect to Employer Exhibit #31, the undersigned is satisfied that the data for Madison, Kenosha, Appleton and Oshkosh, are verifiable from Employer Exhibits Nos. 22, 24, 26 and 28 respectively. The undersigned also accepts the data set forth in Employer Exhibit #31 for Racine, West Allis, Wauwatosa and Janesville, based on the testimony of Jeffery that he secured the data from the respective employers. Green Bay data again will not be considered.

Employer Exhibits #32 and #33 are based on information contained in Employer Exhibits #30 and #31 and, therefore, since #30 and #31 are credited as accurate it follows that #32 and #33 are to be credited as well.

The undersigned has reviewed Employer Exhibit #35 and has concluded that the data contained there is not sufficiently weighty so as to influence the decision in the instant matter. Since the data of Employer #35 will have no bearing on the decision, it is not necessary to determine the veracity of the data.

IS THE CITY FINAL OFFER LEGAL?

The Association argues that the Employer final offer is not based on employment consideration unique to the Madison Police Department, but rather is based on what other municipal bargaining units have accepted in bargaining with the Employer. The Association contends that the Employer position constitutes coalition/parity bargaining, which the Association contends has been held by the National Labor Relations Board, Federal courts, and the Supreme Court of the State of Connecticut as being unlawful. Specifically, the Association relies on Firefighters, Local 1219 v. Connecticut Labor Relations Board, 79 LC p 53,842 (1976); and on Oil, Chem. & Atomic Workers v. NLRB (Shell Oil Co.) 486 F. 2d 1266, 84 LRRM 2581 (CA DC, 1973). The undersigned has reviewed the cited cases and notes that in Firefighters, Local 1219 v. Connecticut Labor Relations Board, the court dealt with the inclusion of a parity clause which was embodied in the firefighters contract and held such a clause to be unlawful. The undersigned distinguishes the instant matter because the inclusion of a parity clause is not the issue here.

In Oil, Chem. & Atomic Workers v. NLRB decision, the U. S. Court of Appeals for the District of Columbia, upheld an NLRB decision which found coalition bargaining unlawful. The undersigned distinguishes the instant matter, because there is no evidence that coalition bargaining occurred. While the Employer final offer is based upon a desire to keep uniform the fringe benefits to all employees of the Employer, in view of the statutory criteria found at 111.77 (6)(d) which directs the Arbitrator to give weight to the factor of 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, the undersigned concludes that the statutory direction would lawfully permit the Employer to attempt to establish uniform benefits for all of his employes. Whether the Employer argument that uniformity of fringe benefits should control should be left to a determination based on the facts involved in the instant matter, and will be discussed later in this Award when the substantive issues are considered. Since the undersigned is satisfied that the Employer offer is not unlawful, the Association argument that this Arbitrator may not accept the Employer position because it is illegal under the doctrine set forth by the Wisconsin Supreme Court in Milwaukee Deputy Sheriff's Assoc. v. Milwaukee County, 64 Wis. 2d 651 (1974), is not applicable. The Arbitrator, therefore, will proceed to determine this dispute based on the statutory criteria as discussed above.

ANALYSIS OF THE PARTIES' LAST OFFERS:

As set forth earlier in this Award there are two issues that are in dispute between the parties: the salary issue and the health insurance issue. The undersigned will discuss each issue separately.

SALARY ISSUE

The Employer has offered a 5.5% increase effective December 25, 1977, and a 1.5% increase effective June 25, 1978. The Association has offered a 42¢ per hour increase effective December 24, 1977, and an additional 10¢ per hour effective June 25, 1978. The undersigned is satisfied that the cost of the respective wage offers of the parties is so close so as to be almost indistinguishable. The Employer asserts that the value of the Association proposal is 6.4% while that of the Employer is 6.3%.

At issue here, then, is whether the percentage application of the dollars involved as proposed by the Employer is more reasonable than the flat cent per hour proposed by the Association. The Employer has argued that the cents per hour will narrow the percentage differences between the classifications covered by this Agreement. The Employer argument that the compression of the schedule, by reason of the Association proposal for a flat cents per hour across the board compresses the salary schedules, is not persuasive. Given the history of successive percentage increases in prior collective bargaining between these parties, it is reasonable to apply an across the board increase in these negotiations in order to afford the same amount of increase to all members of the unit. It is the opinion of the undersigned that an across the board increase in these negotiations will not so compress the salary schedules as to remove financial incentives to seek promotions as the Employer argues.

The undersigned is equally unimpressed with the Employer argument that cents per hour across the board to the police would destroy the wage relationship with the firefighters of the Employer. The value of the settlement would be the same as that agreed to by the firefighters, and should the firefighters prefer an across the board settlement in subsequent negotiations as opposed to a percentage increase, the parties are capable of entering into such an agreement without seriously disrupting the financial cost of the settlement. Given the above, it is the opinion of the undersigned that the salary proposal of the Association is preferred over that of the Employer.

The Employer points to the final offer of the Association, which would make the wage issue effective December 24, 1977, rather than December 25, 1977. The undersigned is persuaded that the reference of December 24, 1977, in the Association final offer can properly be considered a clerical error, and that the effective date for the increase should properly be December 25, 1977, the first day of the new Agreement. Having concluded that the proposed date of increase of December 24 embodied in the Association offer is erroneous, it would follow that the erroneous date is not sufficient reason to adopt the Employer offer.

HEALTH INSURANCE ISSUE

The Employer has proposed that the contribution rate for health insurance be set at $45.82 per month for single coverage and $93.59 per month for family coverage. The Association has proposed that the Employer pay the full cost for family and single coverage for the group health policy.

At hearing the Association adduced considerable evidence from the testimony of George L. Kelling, Evaluation Field Staff Director of the Police Foundation. Dr. Kelling's testimony establishes that police officers as a group are subject to higher stress than other occupations generally, and that those employed as police officers have a higher incidence of illness than the general population or those of other occupations. The undersigned accepts the testimony of Dr. Kelling with respect to the incidences of illnesses for police officers compared to the general public or those of other occupations. The testimony, however, is not persuasive reason to accept the offer of the Association. If the issues here were whether there should be health insurance coverage; or if the issues were to have improved coverage for certain categories of illness; or if the issue were a higher disability insurance coverage; the undersigned would consider Dr. Kelling's testimony to be persuasive. Here, however, we have at issue the amount of premium to be contributed by the Employer. The undersigned concludes that the issue is more akin to a wage dispute than that of an insurance dispute. Consequently, the increased experience with respect to utilization of health insurance is not persuasive in disposing of the instant dispute.

There is also testimony in the record from Union representatives of police associations from the cities of Milwaukee, Kenosha, Racine, West Allis, Wauwatosa, Waukesha and Janesville. From the testimony of the representatives of the foregoing communities, as well as all other exhibits in the record, it is clearly established that all of the employers in the foregoing cities pay 100% of health insurance coverage, with the exception of the City of Janesville. In the City of Janesville the employer contributes 100% of the hospital and surgical insurance; however, the major medical insurance requires a contribution of $4.18 per month from the employee. Additionally, the record establishes that Dane County Sheriff's Department enjoys 100% health insurance contributions. The foregoing testimony establishes that 100% health insurance contribution for police officers employed by cities of first and second class in the state enjoy 100% health insurance contribution by the employer. This fact alone, however, is not controlling in determining which offer is to be preferred on health insurance.

As set forth earlier in this Award, the Arbitrator is of the opinion that the question of the amount of contribution for health insurance by the Employer should properly be considered as a wage matter. The health insurance proposal of the Employer carries with it a cost of $17,710 while the Association proposal carries a cost of $83,524, representing a difference in proposals of $65,814.[1] The total

1) Employer Exhibit No. 11

value of the Employer offer is $382,431, which represents an 8.5% increase for the year. The total value of the Association offer is $452,819, which represents an increase of 10.09% for the year. The 8.5% settlement represents the cost of settlement with all other bargaining units of the Employer. The settlement with other units is persuasive to the undersigned in that it is the area in which settlement should occur, unless a comparison with other police units - with other employers, shows clearly that this Association suffers in the comparison of wages with other employers.

Both parties to this dispute have cited previous interest arbitration awards in support of their respective positions. The Association has cited prior awards issued by this Arbitrator in LaCrosse County Traffic Police and Deputy Sheriff's Assoc., MIA-315, (15467-A) 7/77; Waukesha Professional Police Assoc., MIA-295, (15355-A) 8/77; Vernon County Sheriff's Department Local 2918, MIA-291, (15259-B) 6/77. The Employer has also cited this Arbitrator's prior awards in the Waukesha Professional Police Association and Vernon County Sheriff's Department cases relied on by the Association. Additionally, the Employer has cited Madison Professional Police Officers Association, MIA-85 (12409-B) 9/1974 and Oshkosh Professional Policemen's Association v. City of Oshkosh MIA-277 (15258-A) 4/1977. The parties have been selective in excerpting portions of this Arbitrator's prior awards.

In LaCrosse County Traffic Police and Deputy Sheriff's Association, this Arbitrator made a comparison of the shuttle service with other sheriff's departments, and concluded that the shuttle service was such a unique benefit to the LaCrosse deputies that if the issue were standing alone and had no adverse economic impact on the employees (emphasis added) the undersigned would decide in favor of the Employer on this issue as an independent item. In the summary of the decision, however, the undersigned clearly set forth that the economic impact of the deletion of the shuttle service on the employees would result in a significant adverse economic impact on the employees, and for that reason the undersigned found for the Association. It is clear from the foregoing that the ultimate decision in LaCrosse Deputies award was made on the basis of the total economic impact to the deputies when combining the wage offers and the impact of the shuttle service issue together. Consistent with the LaCrosse decision the undersigned, in this matter, is viewing the contribution of total health insurance premiums on the basis of total economic impact.

In Waukesha Professional Police Association decision, this Arbitrator stated that 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. This Arbitrator further indicated in the opinion that if the medical insurance issue were standing alone he would have found for the Employer, but that the wage issue was more compelling than the amount of contribution of health insurance, and found for the Association on the basis of the wage issue. Again, to consider the matter of health insurance in conjunction with wages is consistent with the prior opinion issued in the Waukesha police matter.

In Vernon County Sheriff's Department opinion this Arbitrator, with respect to fringe benefits which included the amount of contribution for hospital-surgical care premiums, held:

> There is considerable arbitral authority to the point that law enforcement personnel should be compared with other law enforcement personnel, and that fire fighting personnel should be compared with other fire fighting personnel. The undersigned agrees with arbitral opinion in this regard on wage matters. However, on matters of fringes, such as those involved in the instant case, this Arbitrator does not consider fringes to be peculiar to law enforcement personnel; but rather common to all employees of the Employer. Since there is no showing in the record that law enforcement personnel of the Employer in the instant case are entitled to superior fringe benefits than other employees of this Employer, the Arbitrator would decide the fringe benefit issues in favor of the Employer.

Again, in the Vernon County decision, this Arbitrator compared the cost impact of the wage issue with those of fringes, and ultimately determined that the wage issues that

were in dispute were more compelling than the fringe benefit issues, and found for the Union, based on the combined economic impact of the wages and fringes.

In Madison Professional Police Officers Association by Arbitrator Johnson as cited by the Employer, Johnson found for the Employer, at least partially, because of his expressed concern of the spiraling cost effect to the City in subsequent bargaining with other unions if he were to adopt the Union offer. The undersigned is persuaded that the Johnson Award has no applicability in the instant matter.

The Employer also cites Arbitrator Stern in Oshkosh Professional Policemen's Association, in which Arbitrator Stern held:

> The arbitrator believes that the City offer is preferable to the Association offer for the following reasons. Where an employer has persuaded the other groups of employees with which it bargains to adopt a uniform contribution toward health insurance, a final remaining group should not be able to use the power of the arbitrator to achieve a result in bargaining that differs from that achieved by other groups unless there is good reason for such difference.

From the foregoing then, based on prior arbitration decisions as cited, as well as arbitral opinion generally, the undersigned concludes that the most appropriate comparison for hospital insurance contribution purposes is the method of contribution used for other employees of the same employer. While it is the opinion of the undersigned that the comparisons with other employees of the Employer is the most appropriate; it is not necessarily an overriding and controlling comparison. If the wage comparisons show that the employees in the instant dispute are considerably disadvantaged when comparing law enforcement personnel of the Employer with law enforcement personnel of other comparable employers; this Arbitrator will not hesitate to find for the Association. It remains then to make that comparison.

Employer Exhibit #33 sets forth a comparative salary survey for 1978 wages, which includes applicable longevity pay and applicable educational incentive pay. The undersigned accepts Employer Exhibit #33 as properly showing the applicable comparisons between the City of Madison and that of Milwaukee, West Allis, Janesville, Oshkosh and Appleton. From the forementioned exhibit Madison ranks third behind Milwaukee at $1,112 per month when considering the Employer final offer as of June 25, 1978, for starting salary. Only Milwaukee at $1,227 per month and West Allis at $1,116 per month exceed the Employer in monthly rates of pay for starting employees. In viewing the impact of longevity and educational incentive pay, the employees of the Employer rank first after 5, 10, 15, 20 25 years. From the foregoing, the undersigned concludes that on the matter of wages the Employer maintains his leadership position. Even if one were to subtract the $23.95 per month which the employees in the instant dispute are required to contribute to health insurance, which other police officers are not, the position of the Employer would remain approximately the same when comparing with the cities of Milwaukee, West Allis, Janesville, Oshkosh and Appleton. Only after 5 years, 10 years and 15 years would the City of Milwaukee surpass the employees of the City of Madison in total wages, if the $23.95, employee health insurance contribution, were subtracted from the wages of employees of the City of Madison.

As stated above, the undersigned is of the opinion that comparisons with other employees of the Employer should control in the matters of fringe benefits, unless it is shown that the employees are entitled to a wage increase by reason of a disadvantageous position when compared to other police officers in comparable communities. Since this record establishes, to the satisfaction of the undersigned, that no wage disadvantage is involved herein, it follows that the final offer of the Employer, with respect to health insurance is preferred. If the Association had proposed a lower wage increase which would have offset the cost of the added health insurance contribution, their case would have been more persuasive.

SUMMARY

The undersigned has found that the wage issue standing alone would favor the across the board increase proposed by the Association. The undersigned has further found that the health insurance offer of the Employer is to be preferred. In weighing

the two issues, the undersigned is not persuaded that the distribution of the wage increase would be sufficiently detrimental to the Association so as to outweigh the preference given to the Employer position on health insurance. It would follow, then, that the Employer position is the more reasonable and should be adopted, and the Arbitrator makes the following:

AWARD

Based on the statutory criteria, the exhibits, the arguments of the parties, and for the reasons as stated in the discussion above, the Arbitrator determines that the final offer of the Employer be incorporated into the Collective Bargaining Agreement, effective December 25, 1977.

Dated at Fond du Lac, Wisconsin, this 12th day of July, 1978.

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

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