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STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS UNION LOCAL No. 695
For Final and Binding Arbitration
Involving Law Enforcement Personnel
in the Employ of
CITY OF PORTAGE

AWARD
Case IX
No. 23096
MIA-386
Decision No. 16466-A

I. HEARING. A hearing in the above entitled matter was held on September 22, 1978 beginning at 10 a.m. in Municipal Building, Portage, Wisconsin.

II. APPEARANCES.

For the Union:

MERLE BAKER, Business Representative, Teamsters Union
Local No. 695, 1314 W. Stoughton Road,
Madison, Wisconsin 53714

For the Employer:

R. G. HEIN, Negotiator, City of Portage, 115 W. Pleasant,
Portage, Wisconsin 53901

Present for the Union:

Michael Spencer, Business Representative, Teamsters
Union

C. W. Paske
Rick Bautsch

Present for the City:

Hon. F. P. Riley, Mayor
Alma M. Braun, City Clerk

III.BACKGROUND. This is a matter involving final and binding arbitration of an impasse existing between Teamsters Union Local 695, representing Police Patrolmen, and the City of Portage, with respect to wage, hours and conditions of employment of nonsupervisory law enforcement personnel in the employ of the Municipal Employer for 1978 and 1979.

On June 5, 1978, the Union filed a petition with the Wisconsin Employment Relations Commission requesting initiation of final and binding arbitration. An informal investigation was conducted by a Commission staff member, Christopher Honeyman, and he advised the Commission on July 19, 1978 that the parties were at an impasse.

The Commission concluded that an impasse under the meaning of Section 111.77(3) of the Municipal Employment Relations Act existed, and ordered compulsory final binding final offer arbitration on July 20, 1978. The parties having advised the Commission that they had chosen Frank P. Zeidler, Milwaukee, Wisconsin, as arbitrator, the Commission appointed Zeidler on August 4, 1978.

A hearing was held on September 22, 1978 as noted above. Testimony was taken and exhibits entered. The parties supplied briefs which were exchanged on October 7, 1978.

When the Award here is given and not challenged, the first contract between the City and the Police Officers will be in effect. The employees were not organized before.

IV.THE FINAL OFFERS. The final offer of the Union and the City are given herewith:

FINAL OFFER OF THE UNION

This is the Final Offer for agreement between the City of Portage and Teamsters Local 695 representing certain employees of the Portage Police Department for the year of 1978 and the year of 1979.

All agreements prior to June 29, 1978, are to be retained as agreed. Only those issues in dispute will be stated in this Final Offer. They are as follows:

1. Wages:

Effective January 1, 1978:

<u>Start</u>	<u>6 Months</u>	<u>18 Months</u>
\$5.04/hr. \$873/mo.	\$5.25/hr. \$910/mo.	\$5.69/hr. \$986/mo.

Effective July 1, 1978:

<u>Start</u>	<u>6 Months</u>	<u>18 Months</u>
\$5.04/hr. \$873/mo.	\$5.25/hr. \$910/mo.	\$5.79/hr. \$1,003/mo.

Effective January 1, 1979:

<u>Start</u>	<u>6 Months</u>	<u>12 Months</u>	<u>24 Months</u>
\$5.04/hr. \$873/mo.	\$5.50/hr. \$953/mo.	\$5.77/hr. \$1,000/mo.	\$6.04/hr. \$1,047/mo.

Effective July 1, 1979:

<u>Start</u>	<u>6 Months</u>	<u>12 Months</u>	<u>24 Months</u>
\$5.29/hr. \$917/mo.	\$5.75/hr. \$996/mo.	\$6.02/hr. \$1,043/mo.	\$6.29/hr. \$1,090/mo.

2. Fair Share, Check Off and Liability:

Section 1. Membership in the Union is not compulsory. An employee may join the Union and maintain membership therein consistent with its constitution and by-laws. No employee will be denied membership because of race, color, creed or sex. This Article is subject to the duty of the Wisconsin Employment Relations Commission to suspend the application of this Article whenever the Commission finds that the Union has denied an employee membership because of race, color, creed or sex.

Section 2. The Union will represent all of the employees in the bargaining unit, members and non-members, fairly and equally and therefore all employees shall pay their proportionate share of the costs of the collective bargaining process

2. Fair Share, Check Off and Liability (continued):

and contract administration by paying an amount to the Union equivalent to the uniform dues required of members of the Union.

Section 3. Check Off. The Employer agrees to deduct the amount of dues certified by the Union as the amount uniformly required of its members from the earnings of the employees affected by this Agreement and pay the amount so deducted to the Union on or before the end of the month in which such deductions is made.

Section 4. Liability. The Union shall indemnify and save the Employer harmless against any and all claims, demands, suits and other forms of liability which may arise out of any action taken or not taken by the Employer for the purpose of complying with the provisions of this Article.

Section 5. Any member of the bargaining unit who is a member of the Union prior to June 29, 1978, shall continue to pay dues, and any member of the bargaining unit who is not a member of the Union and does not wish to pay dues to the Union but who is an employee as of June 29, 1978, shall not be required to abide by the Fair Share Agreement.

Any employee who is hired into the bargaining unit after the June 29, 1978, date shall be required to abide by the Fair Share Agreement as a provision of their employment.

3. Discipline and Discharge:

Employees shall not be disciplined, suspended or discharged without just cause. Written notice of the suspension, discipline or discharge and the reason or reasons for the action shall be given to the employee with a copy to the steward within twenty-four (24) hours.

With regard to disciplinary action, Section 62.13, Wisconsin Statutes, shall apply rather than the grievance procedure until such time as changed, by statute, at which time these matters will be subject to the grievance procedure as herein provided.

4. Existing Benefits:

The following benefits shall be continued as of January 1, 1978, until such time as they may be proven in violation of State Statutes and/or renegotiated.

- 1. Shift trading
- 2. Lunch periods and lunch breaks

Respectfully submitted,

Merle Baker

Merle Baker
Business Representative
Teamsters Union Local No. 695
1314 North Stoughton Road
Madison, Wisconsin 53714
Phone: 608-244-6207

1001201978

Case IX No. 23096 MIA 386

PROCESSED BY THE
BOARD OF COMMISSIONERS

City of Portage - Teamsters Local #695

Final Offer for Arbitration (due to be postmarked on or before June 29, 1978)

City of Portage

The list of issues to be submitted were discussed with Mr. Honeyman, the Union and the City.

1. Wages.

The total wage increase to be 45 cents per hour effective January 1st, 1979. 10 cents per hour to be effective October 1st, 1978, and payable in January, 1979. (During arbitration the City agreed to pay time and a half for Court appearances with a one hour minimum.)

2. Check off.

Membership in the Union is not compulsory. An employee may join the Union and maintain membership therein consistent with its constitution and by-laws. No employee will be denied membership because of race, color, creed, or sex.

The employer agrees to deduct the amount of dues certified by the Union as the amount uniformly required of its members from the earnings of the employees upon written authorization from the employee affected and pay the amounts so deducted to the Union on or before the 10th of the month following the month in ~~xxx~~ which such deduction is made.

This assignment and authorization shall be in force until terminated by the employee upon sixty (60) days written notice to the City Clerk prior to the expiration of the current contract.

It is expressly understood and agreed that the Union will refund to the City or to the employee involved any union dues erroneously collected by the City and paid to the Union. The Union agrees to hold the City harmless from any claims or demands arising out of the City's compliance with the provisions of this Article.

3. Employees in the same classification may trade days off upon 24 hours notice

to and approval of the Chief of Police.

4. All employees shall be entitled to take a paid one-half hour period off for lunch but will be subject to emergency call-up.

5. An employee may be discharged for reasons that are not arbitrary, capricious or discriminatory.

6. This contract to be in effect from the date of ratification through December 31st, 1979.

R. G. Hein

R. G. Hein, Negotiator for the City of Portage

V. FACTORS TO BE WEIGHED. Section 111.77(6) is as follows:
(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 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.

VI. THE LAWFUL AUTHORITY OF THE EMPLOYER. In this matter, there is a question of whether the City can lawfully accede to an offer of the Union on trading shifts. The Union offer reads,

"4. Existing Benefits:

The following benefits shall be continued as of January 1, 1978, until such time as they may be proven in violation of State Statutes and/or renegotiated.

- 1. Shift trading
- 2. Lunch period and lunch breaks."

It is the City's contention that trading shifts is contrary to the present statutes and therefore the City can not agree to it. A Union witness said that in the 10 years time that he has been in the department, employees always had the right to trade shifts upon notice to the Chief. The Union says that if this provision is found illegal, there is a Savings Clause which would eliminate it and not effect the remainder of the Agreement.

The section of the Statutes referred to by the City appears to be 62.13(7n). In view of the fact that shift trading has been a past practice which was not challenged, and in view of the Savings Clause in the Agreement, the presence of a provision in the Union offer for continuation of shift trading is not a bar to any further consideration of the offers.

VII. THE STIPULATIONS OF THE PARTIES. The parties have agreed on all other matters in their proposed contracts except the issues here. The City in its brief notes the following gains for the Union over previous conditions:

1. Access to employees own personnel records.
2. Union representatives may meet members on the premises.
3. Time and one-half for court appearances.
4. Better wording on compensatory time.
5. City to furnish guns.
6. City to furnish ammunition.
7. City to furnish second chance vests.
8. City to replace or repair broken glasses.
9. Better wording on benefits section.
10. Improved vacations.
11. First opportunity for promotion.
12. A grievance procedure.
13. Supervisory staff not to replace available members on overtime.

The City says that it and the Union both were benefited by

1. Clarification of sick leave.
2. Better wording on compensatory time.

The City says it had only one exclusive benefit, namely a management rights clause.

DISCUSSION. The point being made by the City in noting the number of gains made by the Union over previous working conditions is that the City's concessions must be counted as a factor in favor of the City. An inspection of the gains by the Union shows economic and non-economic gains. Some of the gains obtained by the Union are quite standard among other jurisdictions e.g. grievance procedure and access to personal records.

Against these must be balanced the Union's concession on a management's rights clause, which recognizes that management possesses very broad powers. This constitutes a trade-off.

However, the economic concessions made by management are a factor in favor of management. These include time and one-half for court appearances, improved vacations, and paying for equipment or damaged property.

VIII. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINANCIAL ABILITY OF THE PUBLIC TO PAY. There is no issue here of the ability of the City to pay, either offer, and the general argument of the City on the City's total offer is that it is more in the interests and welfare of the public for its offer to be accepted than the Union offer. The City is unwilling to meet the Union demands.

IX. COMPARISONS ON WAGE AND HOURS. Various comparisons on the wage and hour offers of the parties will now be made. The following table is useful as a comparison of the offers at the top of the Patrolman range:

TABLE I
COMPARISON OF WAGE OFFER FOR TOP PATROLMEN

<u>Year</u>	<u>Union</u>	<u>City</u>
1977	925/mo.	925/mo.
1978		
Jan. 1	5.69/hr.(1) 986/mo.(1)	5.69/hr.(1) 986/mo.(1)
July 1	5.79/hr.(1) 1,003/mo.(1)	
Oct. 1		5.79/hr.(3) 1,003/mo.(3)
1979		
Jan. 1	6.04/hr.(2) 1,047/mo.(2)	6.14/hr.(1) 1,064/mo.(1)
July 1	6.29/hr.(2) 1,090/mo.(2)	

- (1) After 18 months
(2) After 24 months
(3) Payable on Jan. 1, 1979

The annual incomes of top patrolmen, assuming the retroactive feature of the Employees offer to pay a wage in 1978 on the first day of 1979 is considered applicable to 1978, would be as follows:

TABLE II
ANNUAL WAGE OF TOP PATROLMEN UNDER OFFER AND PERCENTAGE INCREASES

<u>Year</u>	<u>Union</u>	<u>City</u>	<u>City Diff.</u>
1978	11934	11881	-53
1979	12822	12768	-54

From Table II it is seen that the annual cost for the City would be \$53 X 12 patrolmen or \$636 more for the Union offer. The additional cost would be \$648 more than 1979. The total increased cost for the two years would be \$1284 for base wages of the Union offer over the City offer.

The following information is derived from Union Exhibit 3.

TABLE III

TOTAL PER PATROLMAN ANNUAL WAGE COST TO CITY UNDER
THE OFFERS

<u>Agency</u>	<u>1977 Wage</u>	<u>1978 Wage</u>	<u>% Inc.</u>	<u>1979 Wage</u>	<u>% Inc.</u>
Union	11,107.20	11,939.20	7.44	12,823.20	7.40
City	11,107.20	11,887.20	7.02	12,771.20	7.44
	Union Total for 2 Years			\$24,762.40	
	City Total for 2 Years			<u>\$24,658.40</u>	
	Difference			\$ 104.00	

COMPARISONS OF WAGES PAID BY OTHER GOVERNMENTAL JURISDICTIONS
Union Exhibits 1 and 2 compared Top Patrolmen wages in Portage with those in Baraboo, Stoughton, and Sun Prairie, as comparable communities. Emphasis was placed on Baraboo as the most comparable community. The following table is derived from these exhibits.

TABLE IV

COMPARISON OF WAGES AND HOURS OF TOP
PATROLMEN IN FOUR MUNICIPALITIES

<u>Municipality</u>	<u>Population</u>	<u>Work Week</u>	<u>1977 Wage</u>		<u>1978 Wage</u>		<u>1979 Wage</u>	
			<u>Mon.</u>	<u>Hrly.</u>	<u>Mon.</u>	<u>Hrly.</u>	<u>Mon.</u>	<u>Hrly.</u>
Portage	7,821	40	925					
Union								
1/1/78					986	5.69		
7/1/78					1003	5.79		
City								
1/1/78					986	5.69		
10/1/78					1003	5.79		
Union								
1/1/79							1047	6.04
7/1/79							1090	6.24
City								
1/1/79							1064	6.14
Baraboo	7,931	(78)39.8 (79)38.9	1015		1065 1064	6.17	1125	6.52
Stoughton	6,096	40	970		1035		1110	
Sun Prairie	9,935	37.5	1070		1140		Negotiating	

12.

City Exhibit 1 gave the following information on wages:

TABLE V
1978 WAGES FOR PATROLMEN IN SELECTED MUNICIPALITIES

<u>Municipality</u>	<u>Starting Wage</u>	<u>Top Wage</u>
Berlin	868	1,033
Fort Atkinson	1,014	1,106
New London	964	1,084
Platteville	863	998
Reedsburg	895	995
Ripon	859	1,001
Sparta	4.60/hr.	913 (5.27/hr.)
Tomah		867
Portage		986

THE UNION'S POSITION. The Union notes that there are 12 employees in the bargaining unit and all are at the top step after 18 months of service. The Union final offer to increase the spread between the bottom and top levels of the pay scale introduced another step in 1979, but left the starting pay at \$5.04 an hour until July 1, 1979 when it proposes to pay \$5.29 an hour. This plan of the Union produces a starting rate/top rate ratio which is more in line with the rates paid in other cities.

The Union cites the spread between top and bottom in Baraboo, which comes to \$210 a month as compared to the City spread of \$113 for both years. The Union proposes a spread ranging from \$113 a month in January 1, 1978 to \$174 a month in July, 1979.

The Union says that its Exhibits 1 and 2 show the purpose of the wage increases every six months. These hold down the cost for the Employer but help to achieve parity with other law enforcement units. The difference is small and the cost not excessive.

The Union says that the municipalities it selected for comparison are more comparable than those selected by the City. The municipalities it chose are in the area, and Baraboo is only 17 miles from Portage. The Union did not select Monona because it is within the Madison area.

The Union says that the City's selections are in less industrialized areas of the state, and may include smaller areas, and unorganized departments.

THE CITY'S POSITION. The City says it is offering 45 cents an hour pay raise on January 1, 1979 with 10 cents retroactive to October 1, 1978. This is a 7.9% increase, and the retroactive feature brings \$51.96 additional to each employee in 1978. When the Employer's contribution to the retirement fund is included, the increase is 8%, exclusive of increases in health insurance, life insurance, or other contributions.

The City says it selected its list of comparable cities from a list of cities with populations from 2,500 to 9,999 supplied by the League of Wisconsin Municipalities. It says that the median in its list is a monthly salary \$996.50 for 1978. The Portage rate for 1978 is \$986.00 or \$10.50 lower. This amounts to 6 cents an hour. The City says that this 6 cents is being made up in 1979 by its 45 cents/hour offer. The City notes that arbitrators in 1978 made awards of 32 to 41 cents per hour. The rate for 1979 will not likely average over 39 cents.

The City notes that in the case of an arbitrator's decision in the Oregon, Wis. Police Case, the Union proposed 6% on January 1, and 6% on July 1, and the arbitrator gave the City an award at 7½%.

DISCUSSION. There is a difference between the parties as to what are comparable communities. The Arbitrator agrees that Baraboo, because of its proximity to Portage, might be considered most comparable. However, if Sun Prairie and Stoughton are to be considered comparable as a part of the Union presentation, then Ripon, Berlin, Reedsburg and Fort Atkinson are in the same distance range. A review of Table V shows that Portage was below each of these municipalities for 1978.

It was also below Stoughton and Sun Prairie. This information indicates a need for a "catch-up" in the Portage top rate to achieve comparability. This is a factor in favor of the Union's offer. It should be noted that the Union is making its offer in four steps over the two years. The effective pay increase in dollar amount and percentages attached thereto do not show the overall percentage increase from one year to the next. Thus the pay rate at the end of 1978 as proposed by the Union would be \$1,003, an increase of \$78 over the \$925 rate of 1977, or an increase of 8.3%. In 1979 the rate at the end of the year would be \$1090 or an increase of \$87 over the previous year of 8.7%. The Arbitrator is of the opinion that this method of increasing wages in short jumps tends to conceal a possible heavy increase on the employer by setting the final wage at a level upon which new percentage claims for increases could be made without taking into consideration the average wage the employee received. However, in this case the need of the Employee for some catching up outweighs the process by which it is done.

On the whole then, the Arbitrator is of the opinion that the wage offer of the Union more nearly meets the standards of comparability with wages paid for top patrolmen in comparable communities.

COMPARISONS WITH PRIVATE EMPLOYEES. Neither party made any comparison of proposed offers with wages privately paid.

X.COST OF LIVING. Union Exhibit 4 showed that the cost of living under the old index went up 6.6% from January, 1977 to January, 1978 (Old Series). The rate from 1978, January to July was at 5.1% or an annual increase of 10%. From these data, and observing Table III, the City offer is adequate for 1978 in accommodating to the increases of 1977, but it will not meet, in 1979, the cost of living rise which will have occurred in 1978.

The inflationary trend then favors the Union proposal under

the statutory guidelines on changes in the cost of living.

XI. OVERALL COMPENSATION. Both parties presented data on overall compensation of employees. Union Exhibit 2 made a comparison of Baraboo and Portage monthly packages for 1978 and 1979. The items of wages, shift differential, health insurance, pension, clothing, and a cost applied to holidays, costs for vacation, longevity, life insurance or call-in were not given. The following table summarizes the costs of the packages.

TABLE VI
MONTHLY COST OF BARABOO AND PORTAGE PACKAGES

<u>Year</u>	<u>Portage</u>	<u>Baraboo</u>
1978		1.313.54
Union		
1/1/78	1,219.77	
7/1/78	1,238.77	
City		
1/1/78	-----	
1979		1.387.93
Union		
1/1/79	1,286.77	
7/1/79	1,334.01	
City	1,305.45	

Union Exhibit 1 compared fringes offered in Baraboo, Stoughton and Sun Prairie. City Exhibit 1 compared fringes in Reedsburg, Berlin, Fort Atkinson, New London, Platteville, Ripon, Sparta, and Tomah. As noted before, the Arbitrator believes that of these cities only Berlin, Fort Atkinson, Reedsburg, and Ripon are in the same distance range as the Union's selection of municipalities. Using these selections of cities in comparison, the Arbitrator notes the following:

1. Longevity - Portage longevity is better than that offered in two cities, equal to that offered in one and less than that offered in four cities.

2. Health Insurance - The City fully pays health insurance. Payment cost is less than in 3 cities, more than in one. Other payment rates are not given.

3. Life Insurance - City fully pays life insurance. Cost is not given. Most other cities do not have this feature.

4. Retirement - All cities pay employee's share of retirement.

5. Vacation - Portage, with a vacation system that includes 18 days vacation after 7 years, and 24 days after 16 years, offers greater benefits earlier than the other cities.

6. Holidays - Portage, with 10 paid holidays, offers more holidays than the other cities, and is tied with one city.

7. Sick Leave - Portage, as the other cities, has 12 days sick leave a year. Its total of 120 days accumulation is less than two other cities and more than two cities. The total accumulations of all the cities aren't given.

8. Uniform Allowance - Portage, with \$250 a year uniform allowance, offers more than two cities and less than one. Data on all cities was not furnished.

9. Shift Differential - Portage offers 15¢ differential on the evening shift and 20¢ on the midnight shift. This is less than Stoughton and Sun Prairie, but more than Baraboo which has no shift differential. The data on all the cities was not given.

10. Call-in Time - Portage, with a minimum of 1 hour call-in at time and one-half has a lower minimum than Baraboo, Stoughton, and Sun Prairie. Data on the others was not given.

THE UNION'S POSITION. The Union says that its Exhibit 1 shows that the City is below par intotal fringe benefits. The Union also says that the overall compensation presently

received by these employees, including fringes and benefits, is not adequate compared to the wages, fringes and benefits of other city employees who work more preferable hours and in less hazardous occupations.

THE CITY'S POSITION. The City notes that its overall effort in compensation will be 8% and it notes the gains cited earlier.

DISCUSSION. There was insufficient data furnished for the Arbitrator to conclude whether the overall compensation in wages and fringes is not comparable to the benefits in comparable cities. The City did not provide a comparison of overall costs, and the Union furnished data which did not include the City's cost of vacations and life insurance, and equipment benefits. The Arbitrator believes that if these factors were calculated, the City's total of wages and fringes would improve. The Arbitrator concludes that the City is meeting the overall standard for fringes in its area.

XII.CHANGES IN CIRCUMSTANCES. The cost of living index for all items for September, 1978, stood at 199.3. This was an increase of 8.3% over September of last year, an increase of 0.8% for the month and a projected annual rate of 9.7%.

XIII.OTHER FACTORS. There are several other factors involved in this matter, and they will be treated under their own headings.

XIV.FAIR SHARE. The Union is proposing Fair Share. Under its proposal membership in the Union is not to be compulsory, and the Union will represent all employees equally. The Union however proposes that the amount of dues certified uniformly of its members is to be collected from all employees affected by the Agreement. The Union proposes to indemnify and save the Employer harmless in any and all claims arising

out of the Fair Share provision. Members of the bargaining unit who were members of the Union prior to June 29, 1978 are to continue to pay dues. Those who were not members of the Union prior to June 29, 1979 will not be requested to abide by the Fair Share Agreement. All employees hired after June 29, 1978 will be required to abide by the Fair Share Agreement.

The City proposal says that bargaining unit members may join the Union, but membership is not compulsory. The City agrees to a check-off of members as certified by the Union. The assignment and authorization by an employee will be in force until terminated by the employee upon 60 days written notice. The Union is to refund to the City or to the employee any dues erroneously collected, and the Union is to hold the City harmless from claims under this provision.

The Union furnished exhibits which show that there are 12 patrolmen in the department, and all 12 joined Local 695 and in an election 12 ballots were cast for Local 695 to represent the employees. (Union Exhibits 8 and 9)

In the hearing, Michael Spencer, a Union Business Representative, said that Sun Prairie, Baraboo, Beaver Dam police have the check-off, as do the Sauk County Deputy Sheriffs. Mr. Spencer said that he deals with 40 communities in the area in which Portage is located and 35 of these communities have Fair Share.

THE UNION'S POSITION. The Union notes that all 12 members in the bargaining unit are in the Union, and it notes the grandfather arrangement in the clause showing that an employee who was already working would not have had to join. Fair Share does not cost anything, it is not uncommon in the area, and there are police departments in the area who do have Fair Share.

THE CITY'S POSITION. The City said that this is a new Union and it should not be granted fair share payment of dues until it has existed long enough for the members to determine whether they want to obligate themselves to pay dues as long as this union is the bargaining agent. All contracts do not include "Fair Share."

DISCUSSION. The information presented by the parties for Fair Share is inadequate to make an affirmative case for it. The Union said that there are a large number of Fair Share agreements in near-by communities, but no specific data was presented on how prevalent it is in the Police Departments. Departments in near-by areas which were named were said to have check-off. This is not Fair Share.

A factor for the Union is that all patrolmen are in the bargaining unit. Weighing the lack of information on prevalence of Fair Share and the presence of the entire classification of Patrolmen in the bargaining unit, the Arbitrator believes that the weight here is with the Union.

XV. DISCIPLINE AND DISCHARGE. The City's offer on a Discipline and Discharge clause is that "an employee may be discharged for reasons that are not arbitrary, capricious or discriminatory." The Union clause says that "Employees shall not be disciplined, suspended, or discharged without just cause." The Union proposal further calls for written notice, 24 hours in advance and says that disciplinary action shall be under Section 62.13, Wisconsin Statutes, rather than the grievance procedure unless this procedure is changed by Statute at which time the grievance procedure will apply.

Section 62.13(5), Wisconsin Statutes, provides for disciplinary action. A subordinate officer can be suspended as a penalty and may be suspended when charges are filed, such as from the chief, commission, or elector.

If the chief suspends an employee, he is to file a report to the commission immediately. The employee may appeal whereupon the chief has to file written charges. A hearing then is to be held between 10 and 30 days later, with the parties having the right of representation and the President of the Board having powers of subpoena. The board can then make a judgment not sustaining or sustaining with appropriate penalties thereafter. Determinations are in writing and are to follow the hearing within 3 days and be filed. No one is to be deprived of compensation pending disposition

of charges.

The grievance procedure is Article XIII of the proposed agreement between the parties. It defines a grievance "as a dispute between any employee or the Union and the employer with respect to the meaning or interpretation of this Agreement." The grievance procedure has four steps with time limits. There is an arbitration procedure provided for.

The Union supplied an Exhibit (Union 6) which was a copy of a current Agreement between the City of Baraboo and Local 695. In Article V of the Agreement, on Grievances, the disciplinary action, job classification, and promotion procedures as provided by Section 62.13 were excluded from the clause, and these matters were to be treated under Section 62.13 rather than the Agreement.

THE UNION'S POSITION. The Union notes that its proposal in this matter is almost identical to its provision in the Baraboo Agreement. It notes that Section 62.13(5)(c) says that suspension may be for cause. It says that a concern of the City was that the Collective Bargaining Agreement eliminated the Fire and Police Commission and/or the Statute. The Union then conceded to this Police and Fire Commission procedure for discipline and discharge, but the Union has a concern about a bill which was vetoed by the Governor and which may be reintroduced, taking away powers of the Commission. If this happens, the Union wants a grievance procedure to cover discipline and discharge.

THE CITY'S POSITION. The City's position is best expressed in the words of the City's Brief.

"Our offer is to have the State Statute govern rather than write other provisions into this contract. The Statute has been in effect for about ten years. It must be working satisfactorily for the majority of people or the Legislature would have been requested to change it.

"In order to give some assurance of our interest in justice, we are willing to add the sentence, 'No employee may be discharged for reasons that are arbitrary, capricious or discriminatory.'"

DISCUSSION. In consideration of the two offers, it is to be noted that the City's offer speaks only of discharge, and

not of discipline short of discharge. The Union statement is more comprehensive in this regard. It also adds one feature, not found in Section 62.13, and that is that written notice for discipline be given within 24 hours. The Union offer also provides that if the Statutory powers of the Fire and Police Commission are diminished, then the grievance procedure shall be used. These latter two provisions of the Union are not unreasonable. The Arbitrator is of the opinion that the Union offer more nearly meets the purposes of the guide lines on comparability by including in its provision reference to disciplinary action short of discharge. The City offer to include another sentence is a valuable concession, but the Arbitrator is constrained by statute to accept the final offers as presented.

XVI. SHIFT TRADING. The Union said that shift trading should be continued as a benefit until it may be proven in violation of the State Statutes. The City is proposing that employees may trade days off on 24 hours notice to and approval of the Chief.

THE UNION'S POSITION. The Union says that it has had this right to trade shifts on notification to the Chief for at least ten years. There never was a problem with this; it is not an uncommon practice, and it gives the employees some social flexibility in their social life. If the provision is illegal, it can be removed from the Agreement under the Saving's clause.

THE CITY'S POSITION. The City said it is agreeable to trading days off, but not shifts as this could result in an employee working two shifts, which is contrary to state law.

DISCUSSION. Section 63.13(7A) of the Statutes provides for the eight hour day except in emergency. This being so, the Arbitrator find that the City's offer more nearly meets the Statutory guide lines here.

XVII.LUNCH BREAKS. The Union is proposing a continuation of a one hour lunch break which it has had up to now. The City is proposing a one half hour lunch break.

THE UNION'S POSITION. The Union said that the one hour lunch break is a benefit employees currently enjoy and have enjoyed for ten years. The officer is subject to call and they have been called. If the officer takes his lunch break in a public place, he has considerable contact with the public and answers inquiries. The time is therefore productive.

THE CITY'S POSITION. The City said there is no written rule for a one hour paid lunch break although there seems to have been such a custom. The City said that there is a trend toward shorter lunch breaks and the city believes that a one-half hour paid lunch break is reasonable.

DISCUSSION. The argument of the City that a paid one-half hour lunch break is reasonable has more weight in the opinion of the Umpire.

XVIII.DURATION. The Union proposes that the Agreement start on July 1, 1978 and the City proposes it start as of ratification. The parties propose the contract to run through December 31, 1979.

XIX.SUMMARY DISCUSSION. The Arbitrator makes a summary here of his findings or conclusions.

1. The proposal of the Union on trading shifts is not a bar to any further consideration of the offers. Although it may be illegal, it has been an unchallenged past practice, and there is a Savings Clause in the Agreement which would allow the rest of the Agreement to stand if this is declared illegal.

2. The number of concessions, economic and non-economic, which the City stipulated to in the provisions of the Agreement so far agreed to is a factor in the City's favor.

3. There is no issue of ability to pay.

4. The wage offer of the Union more nearly meets the standards of comparability with wages paid in comparable communities.

5. In the cost of living, the City's offer for 1978 meets the Consumer Price Index rise from 1977 to 1978, but it appears not to be meeting it for 1979.

6. Data was insufficient to make a judgment on whether the overall compensation of the City was comparable to that in other communities, but the City's status toward fringe benefits is adequate.

7. The weight of the Fair Share offer lies with the Union because although the prevalence of Fair Share among police departments in the area was not established, all eligible patrolmen belong to the Union.

8. The Union's offer in a Discipline and Discharge Clause more nearly meets the factor of comparability in that it includes references to procedure for discipline short of discharge, whereas the City's proposal deals only with discharge.

9. On shift trading, while the Union offer is not necessarily a bar to the acceptance of the offer, yet the City's provision is more reasonable in light of the statutes governing an eight hour day for patrolmen.

10. The City's offer on the Lunch Break Clause is more reasonable when it provides for a one-half hour paid lunch, instead of an hour paid lunch.

In reviewing the above matters, the Arbitrator believes that the weightiest of the factors is that dealing with comparability of basic wages, and in this factor the weight lies with the Union. For this reason, the Arbitrator is of the opinion that the Agreement between the parties should include the Union's offer.

AWARD.

For the 1978-1979 Agreement between the City of Portage and Local No. 695, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, I.B.T.C.W. & H. of A., the final offer of the Union should be included in the Agreement.

Frank P. Zeidler

FRANK P. ZEIDLER
Arbitrator

November 9, 1978