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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

VOLUNTARY INTEREST ARBITRATION TRIBUNAL

In the Matter of Arbitration Between:

THE MILWAUKEE POLICE ASSOCIATION

and

CITY OF MILWAUKEE

CASE NO. CLXXXIX
No. 24111 MIA-417

INTEREST ARBITRATION AWARD

Decision No. 16825-A

ARTHUR A. MALINOWSKI
Impartial Arbitrator

APPEARANCES:

For the Association:

Mr. Gerald P. Boyle, Counsel

For the City of Milwaukee:

Mr. Patrick B. McDonnell, Counsel

STATEMENT

In a letter dated March 15, 1979, Mr. Morris Slavney, Chairman, Wisconsin Employment Relations Commission,notified the undersigned of his appointment as interest Arbitrator in the matter between the Milwaukee Police Association and City of Milwaukee. A copy of the Findings of Fact, Conclusion of Law, Certification and Order Requiring Binding Arbitration Pursuant to Section 111.70(4)(jm), Stats., issued by the Commission on February 12, 1979, was also sent to the Arbitrator.

After giving due notice to the Parties, hearings were held on nineteen days between the period of March 30, 1979 and July 26, 1979. Thereafter, on September 4, 1979, the Parties made an oral summation and also presented their respective Post-Hearing Briefs to the Arbitrator for his consideration.

DISCUSSION AND DECISION

The record indicated that the City of Milwaukee, hereinafter City, and the Milwaukee Police Association, hereinafter Association, have been Parties to a collective bargaining agreement covering wages, hours and conditions of employment of the employees in the unit. Such agreement was to expire on December 31, 1978 but was extended on a 48-hour notice basis.

On August 15, 1978, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which was to expire on December 31, 1978. The Parties met by themselves for four negotiation sessions and then on eight sessions which were mediated by Commissioner Marshall L. Gratz.

At the conclusion of the Parties' mediation session on February 6, 1978, the Parties jointly executed a petition requesting that the Commission initiate binding arbitration of their dispute pursuant to Section 111.70(4)(jm), Stats. and further requesting the Commission to supply them with a list of five arbitrators from which list the Parties would select an Arbitrator for the instant dispute.

As stated above, on February 12, 1979 the Wisconsin Employment Relations Commission made the following Certification:

> "It is HEREBY CERTIFIED that the conditions precedent to the initiation of binding arbitration pursuant to Section 111.70(4)(jm) of the Municipal Employment Relations Act with respect to negotiations between the parties with respect to wages, hours and conditions of employment for a new collective bargaining agreement affecting the employees in the bargaining unit referred to in para. 3 of the Findings of Fact have been met.

Further, the Commissions Order, stated in part as follows:

> "1. That binding arbitration pursuant to Section 111.70(4)(jm), Stats., be, and the same hereby is, initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties involving the employes in the bargaining unit referred to in para. 3 of the Findings of Fact...."

The Municipal Employment Relations Act (Subchapter IV, Chapter 111, Wisconsin Stats.) provided in relevant part as follows:

> " 111.70 EMPLOYMENT RELATIONS
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> xxx
>
> 4. This paragraph applies only to municipal employees who are engaged in law enforcement or fire fighting service from January 1, 1978 until October 31, 1981; but after October 31, 1981, applies to all municipal employes, except as provided in s. 111.77(9) or an otherwise expressly provided.
>
> (cm) Methods for peaceful settlement of disputes.
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> xxx
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> 7. "Factors considered." In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal 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 the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and 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 municipal employees, 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.

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(jm) Binding arbitration, Milwaukee. This paragraph shall apply only to members of a police department employed by cities of the 1st class. If the representative of members of the police department, as determined under par. (d), and representatives of the city reach an impasse on the terms of the agreement, the dispute shall be resolved in the following manner:

1. Either the representative of the members of the police department or the representative of the city may petition the commision for appointment of an arbitrator to determine the terms of the agreement relating to the wages, hours and working conditions of the members of the police department.

2. The commission shall conduct a hearing on the petition, and upon a determination that the parties have reached an impasse on matters relating to wages, hours and conditions of employment on which there is no mutual agreement, the commission shall apoint an arbitrator to determine those terms of the agreement on which there is no mutual agreement. The commission may appoint any person it deems qualified, except that the arbitrator may not be a resident of the city which is party to the dispute.

3. Within 14 days of his appointment, the arbitrator shall conduct a hearing to determine the terms of the agreement relating to wages, hours and working conditions. The arbitrator may subpoena witnesses at the request of either party or on his own motion. All testimony shall be given under oath. The arbitrator shall take judicial notice of all economic and social data presented by the parties which is relevant to the wages, hours and working conditions of the police department members. The other party shall have an opportunity to examine and respond to such data. The rules of evidence applicable to a contested case, as defined in s. 227.01(2), shall apply to the hearing before the arbitrator.

4. In determining those terms of the agreement on which there is no mutual agreement and on which the parties have negotiated to impasse, as determined by the commission, the arbitrator, without restriction because of enumeration, shall have the power to:

a. Set all items of compensation, including base wages, longevity pay, health, accident, and disability insurance programs, pension programs, including amount of pension, relative contributions, and all eligibility conditions, the terms and conditions of overtime compensation, vacation pay, and vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance, uniform allowances and any other similar item of compensation.

b. Determine regular hours of work, what activities shall constitute overtime work and all standards and criteria for the assignment and scheduling of work.

c. Determine a seniority system, and how seniority shall affect wages, hours and working conditions.

d. Determine a promotional program.

e. Determine criteria for merit increases in compensation and the procedures for applying such criteria.

f. Determine all work rules affecting the members of the police department, except those work rules created by law.

g. Establish any educational program for the members of the police department deemed appropriate, together with a mechanism for financing the program.

h. Establish a system for resolving all disputes under the agreement, including final and binding 3rd party arbitration.

i. Determine the duration of the agreement and the members of the department to which it shall apply.

5. In determining the proper compensation to be received by members of the department under subd. 4, the arbitrator shall utilize:

a. The most recently published U.S. bureau of labor statistics "Standards of Living Budgets for Urban Families, Moderate and Higher Level", as a guideline to determine the compensation necessary for members to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and

b. Increases in the cost of living as measured by the average annual increases in the U.S. bureau of labor statistics "Consumer Price Index" since the last adjustment in compensation for those members.

6. In determing all noncompensatory working conditions and relationships under subd. 4, including methods for resolving disputes under the labor agreement, the arbitrator shall consider the patterns of employe-employer relationships generally prevailing between technical and professional employes and their employers in both the private and public sectors of the economy where those relationships have been established by a labor agreement between the representative of those employes and their employer.

7. All subjects described in subd. 4 shall be negotiable between the representative of the members of the police department and the city.

8. Within 30 days after the close of the hearing, the arbitrator shall issue a written decision determining the terms of the agreement between the parties which were not the subject of mutual agreement and on which the parties negotiated in good faith to impasse, as determined by the commission, and which were the subject of the hearing under this paragraph. The arbitrator shall state reasons for each determination. Each proposition or fact accepted by the arbitrator must be established by a preponderance of the evidence.

9. Subject to subds. 11 and 12, within 14 days of the arbitrator's decision, the parties shall reduce to writing the total agreement composed of those items mutually agreed to between the parties and the determinations of the arbitrator and the parties, unless either party seeks judicial review of the determination pursuant to subd. 11.

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" 111.77 SETTLEMENT OF DISPUTES IN COLLECTIVE BARGAINING UNITS COMPOSED OF LAW ENFORCEMENT PERSONNEL AND FIREFIGHTERS.

In fire departments and city and county law enforcement agencies municipal employers and employes have the duty to bargain collectively in good faith including the duty to refrain from strikes or lockouts and to comply with the procedures set forth below:

xxx

(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. "

It should be noted at this point that the Arbitrator has read and analyzed the evidence and arguments presented by and on behalf of the Association and the City and that the Awards which follow are based on the preponderance of such evidence, both oral and documentary. The Arbitrator is well aware, furthermore, of the City's repeated arguments that 1. the factors contained in the General Municipal Employment Statute, 111.70(4)(cm), and 111.77 are relevant to this proceeding and must be considered by the Arbitrator 2. that total compensation, rather than individual demands, is a more accurate barometer of the present level of benefits and of the benefit/cost package in question 3. that overall compensation of other comparative employee groups, those within and/or outside Milwaukee, must be given careful thought by the Arbitrator in his deliberations; and 4. that the City's ability to pay along with the welfare of its citizens must be given great weight by the Arbitrator.

By the same token, the Arbitrator is well aware of the Association's position that given the poor economic situation in which the members find themselves, its proposals are reasonable and reflect the real needs of the members, just to maintain their current standard of living and that the members, as part of the best Police Department in the Nation are worth the price of their labor, which cost, the City can well afford to pay.

Finally, the Arbitrator knows that public employers operate under various constraints, fiscal constraints are but one, and that there is a need for fiscal responsibility; however, it would be totally unrealistic for the Arbitrator not to

consider the fact that for a long period of time now there has been a chronic problem with spiraling double digit inflation which shows little, if any, signs of abatement.

Now then, it is within this economic environment that the evidence and arguments presented by the City and the Association must be considered and to repeat, the Opinions and Awards on the individual demands are made in light of the various statutory provisions set out above.

GENERAL CONSIDERATIONS AND POSITIONS

The Association basically contended that its economic and non-economic proposals are reasonable and except for the dental insurance plan, are simply extensions of present benefits; that the economic benefits received, over the past years, either as a result of third party neutral decisions or direct collective bargaining have been significantly eroded as a result of spiraling inflation; that the Association's non-economic demands are such that if implemented, they would improve morale and restore human dignity to the officers with a resulting positive effect on keeping the Milwaukee Police Department the best in the Nation; that the City has the ability to pay the cost of the Association's demands and can do so without harming its financial posture and without placing an undue tax burden on the citizens; that indeed, there are surplus funds which can be used by the City; that moreover, even if taxes had to be raised, they would be minimal and not burdensome to the taxpayers; that there is no evidence to show that citizens want less police protection or are unwilling to pay for the excellent services provided to them by the Police Department; that given the overall compensation payable to other comparable employee groups, the Association members are entitled to the wages and benefits sought herein as a protection against a further intolerable erosion of the wages and benefits presently received; that between the period January, 1977 and July, 1979, the consumer price index has increased more rapidly than the police officers wages and additions; that as to the matters in controversy, the wage award is to be made retroactive to the last pay period of 1978; that a) Overtime Rates b) Longevity c) Deferred Pension (Terminal Leave) d) Unanticipated Duty Pay e) Blue-Cross-Blue Shield for Retirees f) Pension Awards g) Health Insurance and h) Uniform Allowance be made retroactive to January 1, 1979; that the Association is not asking for retroactivity as it relates to a) Seniority b) Parking c) Residency d) Sick Leave e) Grievance Procedure e) Bank of Hours for Association (Seminars) g) Holiday Premium Pay h) Vacations i) Legal Expenses and j) Dental Insurance; that the Arbitrator has the statutory authority to award all the Association's demands; and that because such demands are reasonable, fair, and equitable, the Arbitrator must uphold the Association's position on each.

The City, on the other hand, vigorously contended that the appropriate statutory criteria to be utilized by the Arbitrator include that found in Wisconsin Statutes, Section 111.70(4)(jm) 5. and 6. as well as that found in Section 111.70(4)(cm) 7. and Section 111.77 (6) the latter two being more comprehensive; that the Arbitrator must look at total compensation rather than individual demands and a comparison must be made based on such overall compensation paid to Association members and other City employee groups and families living in Milwaukee; that further similar total compensation comparisons must be made between Association members and other police officers in comparable cities; that if all the Association's demands are granted it would result in an enormous additional cost to the City; that for example, over the term of the two year contract, the costs would range between a high of $30,293,249, if a 2% pension escalator were granted, to a low of $18,581.666 without such escalator; that unlike the Association's excessive and extravagant demands, the City's proposals are reasonable and comparable to that made and agreed to by other city employee groups represented by various labor organizations, including the firefighters and those

represented by the City's largest Union, District Council #48; that the basic settlement pattern established is a 6.6% wage increase in 1979 and a 6.4% wage increase in 1980; that the City's January 25, 1979 proposal would result in a 13.51% increase in total compensation over the term of the contract whereas the Association's most expensive demand would mean a 41.42% increase in total compensation; that the Association's least expensive package would result in an increase of 27.99% over the two year term of the contract; that under the Association's most expensive package, a fifteen year police officer's total compensation in 1979 would be $33,719 and in 1980 it would be $37,499; that even if the City's January 25, 1979 offer were awarded by the Arbitrator, it would cost the City an additional $7.8 million tax dollars to fund the package and emergency borrowing would be necessary with an added tax burden placed on the citizens; that if the Association's demands were awarded, it would result in an out of pattern settlement and more problems among other city workers whose next round of negotiations would be heavily impacted by such an extravagant settlement; that with the exception of Minneapolis, the current total compensation of the Milwaukee police officer, is the highest of any comparable law enforcement group; that because the Association members are currently so very well paid there is no justification for an award of total compensation greater than that accepted by other city workers; that moreover, given such significant total compensation now paid to the Association members, they are and have been consistently better off than the average family living in Milwaukee; that the Association's reliance on the Consumer Price Index and Bureau of Labor Statistics Family Budget, is misdirected because of the inherent weaknesses and problems with the establishment and use of such indexes; that it is a fundamental error to say the Consumer Price Index reflects the actual cost of living when in fact it only measures price changes of a constant market basket of goods and services over time; that because of such errors in the make up of items used and because there is no reflection of a substitution effect, the Consumer Price Index overstates increases in the rate of inflation and is not a good indicator of the actual cost of living; that similar criticisms may be made of the Bureau of Labor Statistics Family Budgets in that they are a very poor indicator of increases in the cost of living and have a bias of showing that cost of living increases faster than it really does; that to repeat, if the Association's demands were granted, the City would find itself with an extremely costly package and given the financial problems being experienced by the City, the taxpayer would be saddled with an added burden to pay for the award; and that in the final analysis, such extremely high and extravagant demands, if awarded, would adversely impact on the interests and welfare of the Milwaukee citizens and would further strain the finances and resources of the City.

As to the matter of retroactivity, the City in its Post-Hearing Brief, indicated that it took no substantial exception to the Union's position on retroactivity as expressed at the hearing and in Association Exhibit 24. However, in terms of clarification, the City stated that "First, any increases in pay rates are to take effect after the last pay period of 1978, commencing with the first pay period of 1979.

Further, any benefit improvements extended to retirees would only cover individuals who retired after January 1, 1979.

Also, the demand on a one-time washout of legal expenses would be retroactive in the sense that it deals with events that have already occurred. "

Accordingly, the City argued and in no uncertain terms demanded that the Association's position in this Interest Arbitration proceeding be rejected; that the Association members should receive no more than the City settlement pattern of 6.9% in 1979 and 6.5% in 1980 and that the non-economic issues be resolved in the City's favor.

ISSUE-BY-ISSUE DISCUSSION

Although the actual order of presentation of proposals at the hearings was different than that discussed in either the Association or City's Post-Hearing Briefs, the Arbitrator will follow the outline found in the City's Brief. Further, while it may be useful to consider the various demands and counter proposals on an individual and economic or non-economic basis, one must not lose sight of the fact that it is a total package of benefits and/or costs that is involved.

ISSUE NO. 1 - SENIORITY

The Association's demand read as follows:

> "Seniority shall apply to district, shift and work assignments. When a vacancy occurs at a specific district and shift, the most senior employee requesting a transfer to that district and shift shall be granted same. Selection of an employee for work assignments shall be made on the basis of qualification and ability, and where qualification and ability are relatively equal, seniority shall be the determining factor. The Department shall be the sole judge of qualifications and ability, provided that such judgment shall not be exercised arbitrarily, capriciously or unreasonably. At the request of the employee covered by the classifications of this agreement, the department head shall provide written reasons for the denial of a senior employee's bid for a vacancy. Disputes shall be subject to the grievance and arbitration procedures outlined in this Agreement."

The Association contended that, unlike the seniority proposals made to Arbitrators Wagner and Forsythe, the above demand was more limited in scope. Further, the Association urged that by its demand, a police officer would be given a seniority right to district, shift and work assignments and that if the demand were awarded by the Arbitrator, it would not hamper the operations, efficiency and administration of the Department because the Department would continue to have the final say on how and when a police officer would transfer.

The City contended that the Association's demand represents the use of strict seniority for the purpose of making district and shift assignments and that seniority and qualifications and ability would be considered for making work assignments, apparently within a district and shift. Further, the City urged that the seniority demand may well be a prohibited subject for bargaining; that in any event, if the demand were awarded, the effective administration of the Department would be severely impeded; and that the Arbitrator must consider the issues of affirmative action which would also be affected if the seniority proposal were to be awarded.

The Arbitrator finds for the City on this issue of Seniority and holds that the present seniority system shall continue. Seniority is provided for in Rule 17, Section 2 and the Association's proposal would broaden the scope of coverage therein. Similarly, and it should be noted that Rule 17, Section 2 provides that "Members shall be assigned to day duty according to seniority in their respective ranks and positions," and that the contract provided for layoffs and recalls on the basis of length of service.

Accordingly, the Arbitrator finds, and the record evidence would indicate, that if the Seniority proposal were awarded, the Chief of Police as well as the other

administrators would find it extremely difficult to function within the grant of authority given them by statute. For example, it is possible if the proposal were awarded, that senior and experienced police officers would choose the more desirable districts and shifts with the result that new and inexperienced officers would be working those very districts and shifts where experience counts. It may well be that Milwaukee's police officers are responsible individuals; however, the first sentence of the Seniority proposal as written, does not provide that anything but strict seniority shall apply to district or shift and work assignments. Note further the fact that as written, the Department head shall be the sole judge of qualificaations and ability as it relates to the issue of selection of employees for work assignments; however, there is no such language when it comes to districts and shifts.

The Arbitrator holds therefore that the demand as presented and testified to, in terms of implementation, is not workable and that there is no hard evidence to prove that changes in the present system are warranted even if the officers deem them to be desirable. Accordingly, the Arbitrator issues the following Award.

AWARD

The Association's Seniority proposal is not granted.

ISSUE NO. 2 - SICK LEAVE

Essentially, the Association's Sick Leave demand concerned the elimination of certain sections of Rule 39 of the Rules and Regulations as well as the elimination of certain "contagious disease" language from the definition of sick leave.

Similarly, the record would indicate that the Association was demanding that unused vacation time be paid to employees who are unable to schedule a vacation before December 31 of a current year and that new language be added to City Ordinance No. 227.

The Association contended that its members are professionals who should not be treated as truant school boys; that there is no good reason for a supervisor to be directed to an officer's home to see if the officer is sick as he claims to be; that the present Sick Leave language is not really a benefit because of the way it is being administered and implemented; that the police officers have not abused the Sick Leave privileges and yet they are being strictly regulated by the Department and that the Association is not asking for anything more than a recognition that changes must be made in the manner of implementing the Sick Leave policy and program.

The City contended that some of the Association's demands are new and have not been negotiated by the Parties; that further, Sick Leave language is found in the Labor Agreement as well as the Chief's Rules; that the Department has every right to regulate the use of Sick Leave; that the present Sick Leave practices are subject to the grievance procedure and that the demands should be rejected.

Based upon the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's position on this issue. The record evidence would indicate that the present Sick Leave program as expressed in the Labor Agreement and the Rules and Regulations is good and the Arbitrator finds no reason to change it.

Because there is a need to verify an employee's illness claims and although individual police officers feel as though they are being treated as "truant school boys"

the plain and simple fact is that such system of verification is appropriate. If there are abuses in the implementation and administration of the program, the matters can be grieved and then resolved in the grievance procedure.

Further, the evidence would indicate that if the Association's demand were awarded, the Department could not effectively control the sick leave program and this the Department has a right to do.

Inasmuch as the Association's demand was not supported by the preponderance of the evidence, the Award shall be as follows:

AWARD

The Association's Sick Leave proposal is not granted.

ISSUE NO. 3 - STEPS IN THE GRIEVANCE PROCEDURE

By its demand, the Association sought to make changes in the language dealing with various appeal response time limits of the grievance procedure. Specifically, the Association wants to provide the following: 1. Step Two (District or Bureau Commander) 25 days, 15 for hearing and 10 for response 2. StepThree (Review Panel) 30 days, 15 for hearing and 15 for response 3. Step Four (Chief) 30 days, 15 for hearing and 15 for response.

Under the current contract, there are no appeal response time limits for Steps Two, Three and Four and the City's proposal was as follows: Step Two - 25 days; Step Three - 45 days and Step Four - 45 days.

The Association contended that presently, grievances are not being processed in a reasonable period of time; that indeed, its members have experienced long delays in the appeal response times with the result that the grievance procedure has not been effective; that given the specific time limits proposed by the Association, the duly authorized administrators would be forced to respond to grievances in a timely fashion; that because there are not too many grievances going beyond Step One, there is no good reason why specific time limits cannot be established; that the business of operating the Department would not be affected if the Association's demand were awarded and that a smooth and quick resolution of grievances is to everyone's benefit.

The City contended that its position was not too different from that of the Association; that although there may be a need for a change, the Association's proposal would be unreasonable and would work an unreasonable hardship on the supervisors who are to respond to the grievances at Steps Two, Three and Four; that simply put, the number of administrators who have authority to deal with grievances after Step One, is reduced and because such administrators including the Chief, have other duties to perform, a fixed time limit would be burdensome; that on the other hand, the City's proposal is flexible and reasonable and that for all these reasons, the Association's demands must be rejected.

Based upon the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's position on this issue.

Certainly, a grievance procedure is more effective when matters are processed within a reasonable period of time and given the fact that the current Labor Agreement

has no time limits for responses at Step Two, Three and Four, it is reasonable that a change is sought and made. In this case however, the Arbitrator finds that the Association's proposals reflect a change from one extreme to another; that is, the Association now proposes fixed time limits without really knowing what the impact will be on the grievance procedure itself or on the administration of the Department.

It should be noted furthermore, that the record showed there was no real problem with the response time at Step Two and that because of the fewer number of authorized personnel at the next two steps, delays were not totally without reason. There is an admitted high work load for supervision and try as they might, the Association's time limits might well not be met by the few number of supervisors available to answer grievances. Without agreement for an extension, therefore, the grievance procedure could well bog down and become even less effective then it is now claimed to be by the Association. There has been no evidence of abuse by the supervisors and the City has offered to make reasonable changes and it is the City's proposal which is awarded herein.

Accordingly, the Arbitrator holds that the more flexible time limits proposed by the City be adopted and that the Award will be as follows:

AWARD

The Association's Steps in the Grievance Procedure proposal is not granted. The City's proposal is awarded effective the date of this Award.

Accordingly, the time for hearing and responding to grievances shall be at Step One, 15 days; Step Two, 25 days; Step Three, 45 days; Step Four, 45 days.

ISSUE NO. 4 - BANK OF HOURS - SEMINARS

In this demand, the Association seeks to add the words "and seminars" to current contract language with the result that, if granted, the Executive Board Members could utilize their 840 bank of hours as follows:

> "1. Such paid time off shall be limited to Association Membership Meetings, Executive Board Meetings, Stewards meetings and seminars." (emphasis added to show this is the new language sought)

The Association contended that the present contract language recognizes the right of members of its Executive Board to receive paid time off to take care of Association business; that specifically, the Association now wants its Executive Board Members to be allowed to attend Seminars when such Board feels attendance is necessary for the good of the Association; that because the Association pays the cost of attendance at Seminars, neither the City nor the Department will incur any costs; that attendance at Seminars will help the Executive Board and the membership and to repeat, because the Association pays the costs, there is no good reason why the demand should not be awarded.

The City contended that it has agreed to increase the bank of hours to 840 from 784; that the impasse relates to the use of hours for attendance at Seminars; that other cities do not have such release time for its police officers; that the bank of hours benefit is a good one and need not be improved and that the Association's proposal should be rejected.

Based upon the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's position on this issue.

The record evidence showed that the City agreed to increase the bank of hours to 840 from 784 and that the Association wanted to use these hours for attendance at Seminars. The testimony of Trustee Dudzik did not make clear just what criteria would be used and/or whether the Association's definition of "primarily labor relations" and/or "contract administration" would be broad, narrow or even such as to fall within the present contractually identified meetings. Seminars, after all, can be formal, informal, internal or external to the Association. Furthermore, Seminars may involve original research under guidance of a professor on a continuing basis as well as regular instruction with reports, discussions and academic study.

Simply put, the record did not show to the satisfaction of the Arbitrator, either the need or the parameters of such Seminars and irrespective of the fact of no additional cost to the City, the Arbitrator holds that the Association's demand will not be granted.

In view of the foregoing, the Arbitrator issues the following Award.

AWARD

The Association's Bank of Hours - Seminar proposal is not granted.

ISSUE NO. 5 - WAGES

The Association's Wage proposal was in the alternative as follows:

> "1. A wage increase of 10% in 1979, beginning with the first pay period of the year, and another 10% increase in 1980, again beginning in the first pay period of that year.
>
> 2. Annual wage increases of 7% for each of the two years, plus 1/4 of the percentage change in the Consumer Price Index for the period, with the CPI adjustment built into the wage base, for pensions and other purposes. "

For its part, the City's proposal as of January 25, 1979 as it relates to base salary was as follows:

> "a. Effective December 24, 1978, an increase in the 1978 base salary rate of 4.25%;
>
> b. Effective July 8, 1979, an increase in the 1978 base salary rate of 2.0%;
>
> c. Effective December 23, 1979, an increase in the July 8, 1979 base salary rate of 4.0%;
>
> d. Effective July 6,1980, an increase in the July 8, 1979 base salary rate of 2.0%. "

The Association basically contended that its alternative wage proposals are fair, reasonable and essential if the membership is to maintain a reasonable standard

of living given the problems of inflation; that the City's proposal is totally unacceptable because, if awarded, only the police officers would be carrying the burden of the ever increasing general level of prices; that notwithstanding what other city worker groups have agreed to receive, the Arbitrator has authority and the right to award a wage increase commensurate with the worth of the excellent services performed by the City's police officers; that further, the Association's proposals are in keeping with what police officers in other large metropolitan communities receive for performing work of law enforcement; that moreover, State public employees not covered by labor contracts are virtually guaranteed a 9% wage increase for the year 1979; that the Milwaukee police officers are entitled to recoup some of the losses in purchasing power experienced over the term of the preceding Labor Agreement; that indeed, the career police officers are in worse financial condition than they were a decade ago; and that because of the City's sound financial standing and its ability to pay, there is every reason to uphold the Association's proposal on this extremely vital and important issue.

The City vigorously defended its proposal and argued in part as follows: that the overall compensation of the Milwaukee police officer is high and although some improvement may be appropriate, the Association's demands are extravagant and extremely costly; that other City workers, including firefighters and those represented by District Council #48 have agreed to the City's wage settlement pattern offered to the police officers as well as other City employees; that there is absolutely no justification for awarding to police officers a wage benefit that goes well beyond such wage settlement package accepted by other workers; that the City's documentary evidence, as well as oral testimony by its expert witnesses, clearly shows that the police officers are highly paid and fare much better than other law enforcement officers so as to be not entitled to the wage increase sought; that because of the inherent weaknesses in the use of the Consumer Price Index and the Bureau of Labor Statistics Family Budget, the Arbitrator cannot rely on such indexes to the degree argued by the Association; that the City's ability to pay and the welfare of the citizens, as taxpayers, must be given great weight and consideration by the Arbitrator; that if either of the Association's proposals were awarded, the City will be forced to borrow, to increase taxes or find some other source of revenue to pay for such costly benefit; that indeed, there will be a need to borrow even if the City's proposal were awarded by the Arbitrator; and that because there is no justification for awarding the Association's excessive and imprudent base wage demand, it must be rejected.

Accordingly, the City urged that its more realistic and fair proposal be awarded.

After a detailed analysis of the record evidence, the Arbitrator finds that he is unable to accept the City's position on this wage issue.

The evidence showed, in no uncertain terms, that since January, 1977, there has been a substantial decrease in the purchasing power of a dollar. This is not to say that the police officers are entitled to recoup all losses but given the fact of double digit inflation, at an annual rate of about thirteen percent, the burden ought not be carried by either the City or the police officers to the exclusion of all others. Indeed, it is quite likely that the citizen taxpayers will have to accept the proposition that there is no "free lunch" and that someone must pay for services received. The record would indicate that the citizens of Milwaukee recognize the excellence of their Police Department and that they want such services to be continued at the same or higher degree of efficiency and effectiveness.

Similarly, and notwithstanding the criticism that may be made of the CPI and the BLS Family Budgets, one should not lose sight of the fact that the statuory authority relied on by the City expressly refers to these criteria. Note further that in Ill. 70(jm)(5)

it is provided that "In determining the proper compensation to be received by members of the department under subd. 4, the arbitrator shall utilize:

> a. The most recently published U.S. bureau of labor statistics 'Standards of Living Budgets for Urban Families, Moderate and Higher Level;, as a guideline to determine the compensation necessary for members to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and
>
> b. Increases in the cost of living as measured by the average annual increases in the U.S. bureau of labor statistics, 'Consumer Price Index; since the last adjustment in compensation for those members."

Not only is the language mandatory in that the Arbitrator "shall utilize" the two indexes but it may be noted that the authors of the legislation somehow equated the Consumer Price index with cost of living. See for example 111.70(cm)(7)(e) and 111.77(6)(e) and 111.70(jm)(5)(b).

In any event and irrespective of the admitted problems with the use of various indexes, the plain and simple fact is that the Association's demand for a 10% wage increase for 1979 and 10% wage increase for 1980 is realistic and was supported by the proponderance of the evidence.

Historically, the Milwaukee police officers have been among the highest paid in the area and have enjoyed a good standard of living. The record evidence showed no reason why such historical pattern should not continue; rather, as stated elsewhere in this Opinion, the evidence showed that a 10% wage increase in 1979 and 1980 will be a move in the right direction so as to allow the police officers to maintain their status in a period of economic stagflation.

Now then, the Arbitrator is mindful of the fact that the City has great concern about its ability to pay and the affect a high cost/benefit package would have on the citizen. However, the evidence would indicate that there are surplus funds available from which the Association's economic demands, if awarded, can be paid. Additional funds, if necessary, can be borrowed and so if the bottom line consists of having to raise taxes, although distasteful, that may well have to be done. On that point, the record showed that failing receipt of funds from sources other than taxation, the added tax burden would be minimal.

AWARD

The Association's proposal for a 10% base salary increase retroactive to and effective on December 24, 1978 is granted for 1979. Similarly, the Association's proposal for a 10% base salary increase effective December 23, 1979 is granted for 1980, the second year of this two year contract.

ISSUE NO. 6 -OVERTIME RATES

The Association's Overtime Rates proposal analysis was set out in its Exhibit number 2 and read as follows:

"1. This proposal eliminates current seven (7) day notice for cancelling off days enabling the City to pay at straight time.

2. Increases the overtime pay rate in certain categories of overtime to time and one-half (1 x 1/2).

3. Increases rate of pay to double time (2x) for work performed on cancelled regularly scheduled vacation days or regularly scheduled off days during a vacation period. "

For its part, the City proposed retention of present benefits with $1.00 per hour additional on cancelled off days when the seven days' notice was given.

The Association contended that police officers are entitled to receive premium pay at time and one-half for overtime irrespective of whether or not the City gives a seven day notice to such officers; that this means "that the City when it cancels an officer's off day with or without a seven (7) day notice, except for matters that are presently covered in the contract that that officer be paid at time and one-half. This would not effect (sic) an emergency; etc.; that when an officer's regularly scheduled off day occurs during a vacation period or his vacation day is cancelled, that that officer be paid at double time"; that the Association's demands are realistic and must be awarded because of the abuses which have taken place as a result of understaffing within the police ranks; that the seven day notice requirement must be eliminated and when done, there will be fewer cancellations of regularly scheduled days off; that there will be no adverse impact on the efficiency or operations of the Department; and that for all these reasons the proposals must be awarded.

The City contended that the Association's basic demand relates to the seven day notice provision for scheduling overtime on a cancelled day off; that the cost of these premium pay proposals would be $691,172 over the term of the two year contract; that if awarded, the police officers would get in effect, a 2.89% wage hike to which they are not entitled; that based on the City's comparative studies and data, there is no justification for granting any overtime rate demand; that the present overtime provisions are as good as or better than other law enforcement groups and other workers of the City of Milwaukee; that Arbitrator Wagner awarded the complained of seven day notice and there is no reason to set it aside; and that the City's position on this issue must be upheld.

After a detailed analysis of the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's proposal in its entirety. First off, the record indicated that as presently constituted there are no problems with the circumstances (vacation periods) outlined in the Association's demand for double time. Currently, such assignments are compensated for at one and one-half the base salary rate and the Arbitrator finds that shall continue. The Association's position is that in the nature of being "protective" against possible future abuse. It is also conjectural and speculative and for that reason, the double time proposal is rejected.

As to the issue of eliminating the seven day notice language and as to the payment for overtime work at one and one-half times; the Arbitrator upholds the Association's demand on these two points. Currently, if an assignment is made, pursuant to at least one week's advance notice, the City pays at straight time rates for overtime work done on an officer's cancelled day off. This the Arbitrator finds, and the record supports his conclusion, has created serious morale problems among the officers and has had an impact on their personal lives because, not only are their scheduled days off cancelled, but they are paid at straight time for work done on such overtime assignments.

There are disruptions and family plans have to be changed and coupled with the fact that the Department is understaffed there is an increased frequency of having days off cancelled. From all appearances, it has become serious and from the officers point of view intolerable because of its abuse.

Accordingly, the record would indicate that a change at this time is warranted and so it shall be awarded as proposed by the Association.

AWARD

Effective the issuance date of this Award, the current and relevant seven (7) day notice language shall be eliminated and time and one-half the base salary rate shall be paid for overtime work assignments when the City cancels an officer's off day.

The Association's double time proposal is not granted.

ISSUE NO. 7 - LONGEVITY

By its demand, the Association is asking the Arbitrator to change the concept of Longevity to that of years of service from the present criterion of years within a classification.

The current Labor Agreement provides as follows:

> "1. Each employee in a classification covered by this Agreement at the close of the calendar year who has completed at least six (6) years of service but less than fourteen (14) years of service at the maximum pay step in that classification as of that time shall be eligible to receive $250 and each employee in a classification covered by this Agreement at the close of the calendar year who has completed fourteen (14) or more years of service at the maximum pay step in that classification as of that time shall be eligible to receive $500. "

In its argument, the Association stated that a change was necessary because as it presently exists, an officer loses a benefit when he is promoted because of the years in classification concept and that such penalty results in a loss in longevity pay.

Accordingly, the Association wants the Arbitrator to eliminate the classification concept and replace it with that of years of service.

In contradistinction to the Association's proposal, the City urged that no changes be made in the contract language; that it be retained as is; that there was no evidence to justify the change sought by the Association; and that if awarded, the City would have an added cost of $418,060 over the term of the Agreement, or an increase in salary of 1.46%.

Based upon the record evidence presented, the Arbitrator finds for the City on this issue. Simply put, there was no hard evidence to support the Association's claim that a change in philosophy or criteria was justified and from the point of view of officers accepting or rejecting a promotion, the Arbitrator finds no evidence to show

that officers turn down promotions because of a possible loss of longevity pay or because of the way the benefit is now being implemented.

AWARD

The Association's Longevity proposal is not granted.

ISSUE NO. 8 - HEALTH INSURANCE AND DENTAL INSURANCE

In this dual proposal, the Association requested a change in the present health insurance coverage program as follows:

> "The City will provide for the employees covered by this Agreement the health insurance benefits that prevailed in the 1976-1978 Agreement between the parties and any changes in those benefits but (sic) be approved by the Association.
>
> Health insurance shall be available as soon as the retiree retires on normal retirement at 25% cost to the employer.
>
> No conditions on retirees coming back into the City health insurance program.
>
> Medical emergency coverage shall be based on the symptom the patient had upon entering the hospital.
>
> Ambulance costs to be provided in full.
>
> Each employee shall be provided with a current copy of the health insurance benefits no later than thirty (30) days from the signing of this Agreement, or as soon as practical after the signing of this Agreement. "

As to the Association's Dental Insurance benefit demand, the Association proposed the following three alternatives:

1. Dental Plan #1 - The City to pay in full.

2. Dental Plan #2 - The City and the employee to pay 50/50.

3. Dental Plan #3 - The City to pay 60% and the employee to pay 40%.

In response to the Association's Health Insurance proposal, the City urged retention of the present benefits while at the same time, the City urged complete rejection of the three alternative Prepaid Dental Insurance plans sought.

The Association basically contended that it wanted health insurance benefits by contract rather than by Common Council Resolution which can be changed unilaterally; that police officers and their families are entitled to coverage for ambulance transportation to a hospital, without cost; that Blue Cross-Blue Shield must prepare a booklet outlining the health insurance coverage benefits to which police officers and

their families are entitled; that such booklet be made available now, in view of the fact that the last one was furnished in January, 1971; that emergency care coverage be provided to police officers and their families based on symptoms which require them to enter an emergency room, based on the officer's diagnosis irrespective of the final diagnosis of an attending physician; that there should be no conditions placed on retirees coming back into the City's Health Insurance Program; and that for all these reasons, the Association's Health Insurance Proposals should be adopted.

As to the new Dental Insurance Plan proposals, the Association urged that because dental costs have been increasing, both private and public employers have recognized the need and wisdom for providing such benefit to their employees; that indeed, Police Departments in comparable cities to Milwaukee provide prepaid dental coverage; that such plans exist for police officers both within and outside the state of Wisconsin; that if awarded, the dental plan proposals would not cover retirees but would be compulsory for all active police officers; that the three alternative plan proposals vary in terms of their coverage and two such plans are based on shared costs between the City and police officers; that as a result of the shared cost concept, costs to the City are reduced; that there are no good reasons why a prepaid dental insurance plan should not be established at this time; that given the matter of no retroactivity, the plan would exist for about fifteen months at which time an experience factor would be available for the purpose of determining the effectiveness as well as the cost of a plan; and that for all these reasons, the dental plan proposal should be granted.

On the issue of Health Insurance, the City contended that, contrary to the Association's request, there is no need to incorporate any Health Insurance benefits program into a contract because such benefits are provided under Common Council Resolution; that there is no justification for extending benefits to retirees; that it is reasonable and proper for a retiree to have a 270 day waiting period for pre-existing conditions before re-entry into City's Health Insurance Program; that the emergency room benefit sought should not be granted because if awarded, payment would be made on the basis of a diagnosis by a person other than a trained doctor; that further such benefit is in the nature of an office visit benefit which would be very costly even if one could be established; that there was no need for such benefit because present coverage is broad and because no other City workers group has such benefit; and that the same reasoning applies to the Association's proposal dealing with ambulance coverage.

With regard to the Association's demand for a booklet or manual of health insurance coverage, the City took the position that one problem may be that of the thirty day time frame proposed; however, for all intents and purposes, this was not really a matter of serious impasse.

However, the City streneously argued against an award by the Arbitrator for any one of the three Dental Insurance Plans proposed by the Association.

The City repeatedly and consistently emphasized the expense factor and argued that because of such enormous costs, no plan could be accepted by the City or awarded by the Arbitrator. For example, the City in its Post-Hearing Brief wrote as follows: "Plan 1 would cost $83,123 for the last three months of 1979, $340,746 for 1980 and jump to $374,892 for 1981, although it is understood that the Association is seeking a contract which will go only through 1980;. . . . The comparable figures for Plan 2 and 3 respectively were $47,111 for Plan 2 and $68,150 to $76,466 for Plan 3 in 1979; $193,116 for Plan 2 and $279,426 to $313,488 for Plan 3 in 1980; and $212,436 for Plan 2 and $307,335 to $344,778 for Plan 3 in 1981."

Further according to the City, as its Exhibit 15 pointed out,

> "The costs to the City of the three health insurance alternative packages over the term of the contract would be $1,372,089 with dental plan 1, $1,207,767 with dental plan 2, and $1,295,796 with dental plan 3; and these cost figures would translate into a 6.22% increase in base salary for alternative 1; a 5.79% with alternative 2; and a 6.01% with alternative 3. "

After a detailed analysis of the evidence and arguments presented, the Arbitrator finds that he is unable to adopt the Association's position on any of the Health Insurance Plan proposals with the one exception of providing a manual explaining the coverage.

Simply put, the preponderance of the evidence did not support the Association's claimed entitlement to have benefits for active employees and retirees put into the contract as opposed to Common Council Resolution; that emergency benefits ought to be paid based on symptoms diagnosed by a police officer or someone in his or her family rather than a trained physician or that ambulance costs are to be provided in full.

The evidence would indicate that no other City worker groups receive such benefits and the Arbitrator holds that as to these proposals, such reason along with the high costs, justify a rejection of the Union's proposal.

Similarly, the Arbitrator rejects the Associations demand that would eliminate any conditions on re-entry into the City Health Insurance Program by retirees. The evidence would indicate that on this issue, not only would such elimination of the 270-day waiting period for pre-existing conditions be very costly but that as presently constituted, such waiting period does not apply to a situation where an individual suffers an injury, becomes incapacitated or becomes ill as a result of a matter which is not a "pre-existing condition". Further, it is entirely possible that such retiree who has taken a position with another employer and is covered under such second employer's plan, may well be able to exercise a conversion option and retain coverage thereunder for such pre-existing conditions during the 270 day period.

For all these reasons therefore, with the exception of the booklet proposal, the other Health Insurance demands are rejected.

As to the Prepaid Dental Insurance Plans, the Arbitrator finds that there is merit to having a start-up plan and because of the potential cost factor, it will be a shared cost plan. Moreover, because this is a new demand, a start-up plan, which is adequate without necessarily being totally comprehensive would be reasonable. Such a plan is that testified to by the Association's dental expert and described in Association Exhibit 15, as Plan No. 1. Such Plan No. 1 will be established with compulsory coverage for all active police officers (no retirees) with the City contributing 40% and the employees paying 60% of the costs of such Prepaid Plan No. 1.

It may well be true that no city worker groups receive any dental insurance coverage; however, the evidence would indicate that there are cities comparable to Milwaukee where dental plans are provided to police officers with various levels of coverage and contribution between the City and the employees. Moreover, the quality of dental care is important and there are literally millions of Americans who have some form of coverage again with the sharing of costs in one degree or another.

Plan No. 1 is not all that comprehensive although the record would indicate, it is adequate as a start-up plan and as pointed out by the Association because such

benefit will not be retroactive, experience gained over the term of this contract will be of use to the Parties when they next look at how to deal with the matter.

In view of the foregoing the Arbitrator issues the following Award.

AWARD

The Association's Health Insurance plan proposal is not granted except for the proposal dealing with the booklet of benefit coverage. Accordingly, each employee shall be provided with a current copy of the health insurance benefits no later than thirty (30) days from the signing of this Agreement, or as soon as practical after the signing of the Agreement.

Further, effective the date of this Award, the Association's Prepaid Dental Insurance Plan No. 1 is granted and awarded for all active police officers (not retirees) with the City contributing 40% and the employees paying 60% of the cost for such new benefit.

ISSUE NO. 9 - BENEFIT IMPROVEMENTS FOR DEFERRED RETIREES

The Association had three separate demands dealing with the issue of deferred retirees and as shown in Association Exhibit 7, the Terminal Leave Benefit proposal read as follows:

> "(a) Person(s) within the bargaining unit of the M.P.A. with 25 years of service or more but have not reached the minimum retirement age of 52 and opts to select the 'Deferred Pension Provisions' shall receive 'Terminal Leave Pay' upon his/her departure from the Police service.
>
> (b) Terminal Leave Pay shall be determined using the formula of:
> A. Base pay range for the retiree at the time of departure
> B. Maximum of 45 days
> C. Accumulated 'Unused Sick Leave Days' used to determine maximum days of 'Terminal Leave Pay' in Paragraph B. "

The Association's Life Insurance Benefit for the Deferred Retirees was set out in Association Exhibit 12, as follows:

> "(a) Person(s) within the bargaining unit of the M.P.A. with 25 years of service or more but have not reached the minimum age requirement of 52 years and opts to select the 'Deferred Pension Provisions' shall be permitted to maintain status in the life insurance program.
>
> (b) The premium for maintaining status in the life insurance program shall be borne by the retiree.

The Health Insurance Benefit proposal read as follows:

> "(a) Person(s) within the bargaining unit of the M.P.A. with 25 years of service or more but have not reached the minimum retirement

age of 52 and opts to select the 'Deferred Pension Provisions' shall be permitted to maintain status in the present or amended Blue Cross/Blue Shield health program, with the full cost to be borne by the retiree.

(b) Upon reaching the age of 52 years, the premium cost to the person(s) on deferred retirement shall be reduced to 75% borne by the retiree and 25% cost shall be borne by the City of Milwaukee.

(c) In the event the retiree wishes to select the 'Family Plan Coverage' as apposed to the 'Single Plan Coverage', said retiree shall pay the difference between the two existing plans.

(d) The retiree shall be subject to a standard 'Non-duplication' provision."

The Association contended that currently an officer after 25 years of service and having reached age 52, upon his retirement is entitled to a maximum of 45 days terminal leave pay if he has 45 or more days of accumulated sick leave; that officers who retire before age 52 but with 25 years service are penalized and lose such terminal leave benefit; that the number of persons who would be awarded such benefit, is minimal; that such deferred retirees should be permitted to enter the City's Health Insurance and Life Insurance Programs without first having to wait until reaching age 52; that unless the deferred retiree is allowed to receive such benefits, the retiree is penalized and unable to take advantage of programs which would cover him/her at age 52 had the officer worked until age 52; that such retiree would be paying premiums in accordance with the language set out in the proposal; and that for all these reasons, the Association's proposals must be granted.

The City took the position that the Arbitrator should reject all three Association demands as they relate to this issue of deferred retirees.

Specifically, the City argued that the present Labor Agreement excludes deferred retirees from obtaining terminal leave pay; that no other city workers receive such benefit; that only two of the 1,750 Association members would be affected by such deferred retiree benefits sought; that there was no evidence that any comparable group of workers receive these benefits and that the Association's proposals must be rejected.

Based upon the evidence and arguments presented, the Arbitrator finds that he is unable to accept all the proposals made by the Association.

However, as to the Terminal Leave Pay, the Arbitrator finds no evidence to support the City's assertion that Terminal Leave Pay should not be paid to deferred retirees. Certainly, if such retiree remains at work until age 52, there would be no question but that such payment would be made. There is no hard proof in this record, to hold that such payment ought not be made when one retires after 25 years of service but before age 52. It may well be that other City workers do not now receive a similar benefit; however, that fact alone does not warrant a finding against the Association. Obviously, the added cost would be minimal because of the very small number of officers (two) who could take advantage of this benefit improvement.

As it relates to the Health Insurance and Life Insurance Benefit proposals, the Arbitrator again finds for the Association with the caveat that on re-entry, if at all, to the City's Health Insurance Program, the retiree must comply with the current

270 day pre-existing conditions requirement. It is also understood, that the deferred retiree will bear the full cost of the Health Insurance Program until age 52 and that there will be no duplication of benefits. Similarly, the Family Plan v. Single Plan cost difference will be borne by the retiree if the Family Plan is selected.

The Life Insurance benefit for the deferred retiree shall be handled in the same fashion as that of Health Insurance. Namely, the deferred retiree will maintain his status in the program with the full cost being borne by such retiree.

Accordingly, the reasons underlying the Arbitrator's decision on Terminal Leave Pay are applied to the Health Insurance and Life Insurance proposals and so the following Award is issued.

AWARD

The Association's Terminal Leave, Health Insurance and Life Insurance Benefit proposals for deferred retirees are granted as proposed, retroactive to January 1, 1979. However, the 270 day pre-existing conditions requirement on re-entry to the City's Health Insurance Program will apply to the deferred retiree in the same fashion as that for the normal retiree.

ISSUE NO. 10 - VACATIONS

The Association's Vacation proposal and analysis were set out in its Exhibit No. 8 and read in part as follows:

> "
>
> ANALYSIS
>
> 1. This proposal allows employees selecting vacations pursuant to Rule 39, Sec. 8, to start vacations on the day selected by the employee.
>
> 2. This proposal allows employees with three (3) or more weeks of vacation earned, to split one of these vacations by taking less than one week at a time. "

As described above, the Association basically contended that police officers should be able to start their vacation on the day they wish and that, subject to the approval of their Commanding Officer, those with more than three weeks vacation entitlement should be able to split one week into periods of less than one week at a time.

It was the Association's position that if its demands were awarded, there would be no adverse impact on staffing or departmental efficiency; that because of the officers' work schedule it is extremely difficult to make the necessary vacation reservations and arrangements if the vacation will be spent outside of Milwaukee; that the present rule on starting vacations after two regularly scheduled days off, has worked a hardship on the police officers and should be changed; that such practice requires officers to make arrangements for mid-week starts and this is very hard to do; and that the Association's proposal is not retroactive and can be easily implemented by the administration by merely changing and making the work schedules more flexible.

Accordingly, the Association urged that its proposal be awarded in its entirety.

The City, on the other hand, contended that the Association's proposal should be rejected and that the present vacation scheduling be continued.

Further, the City urged that the Association's proposals raise serious issues concerning administrative control over the vacation scheduling; that at present, such authority is in the hands of the Chief and is provided for in the Rules and Regulations and the Parties' Labor Agreement; that there is no need to award the changes proposed if, as the testimony revealed, the administration continued to have complete veto power over the individual officer's vacation requests; and that for all these reasons, the proposals should be rejected.

After a detailed analysis of the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's position on this issue.

The record evidence showed that at present, vacations are tied to an officer's off days, which the Association argued meant that oftentimes vacations begin at mid-week when arrangements for out of town travel are difficult to make.

Even if one were to assume that there are some problems making reservations and travel arrangements(and there was no hard evidence on this point) the fact is that individual officers can switch work schedules with each other with approval of the Commanding Officer, (so long as manning is not adversely affected) and so to that extent, the claimed problem is abated if not completely eliminated.

Moreover, the record would indicate that at present, officers with more than three weeks entitlement may split a week, once again, at the sole discretion of the Commanding Officer.

It would appear therefore that because the Commanding Officer now has sole discretion in the handling of vacation requests, the Association's proposal is unnecessary. According to Association witness, Trustee Thomas Repka, the Commanding Officer's decision on the proposed vacation scheduling would not be grievable and that, the record shows, is the way things operate under the current Rules and Regulations and the Labor Agreement.

Indeed, paragraph 2 of the present Vacation article specifically states that the Chief of Police administers and controls the Vacation entitlements and the Arbitrator holds such control shall remain in the Chief as presently constituted.

In short, the Arbitrator finds that the preponderance of the evidence did not support the Association on this Vacation proposal and that the testimony against the proposal is given more weight.

Indeed, according to City witnesses, Inspector Yahnke and Mr. Ellis, if the Association's demand were awarded, there would be an imbalance in manpower and because vacations may already be split, given approval by a Commanding Officer, there is no real need for a change in the Vacation article. The Arbitrator agrees with their conclusions and so issues the following Award.

AWARD

The Association's Vacation proposal is not granted.

ISSUE NO. 11 - HOLIDAY PREMIUM PAY

The Association's Holiday Premium Pay proposals were set out in its Exhibit No. 9 as follows:

> " ANALYSIS
>
> 1. The proposal adds three (3) holidays, namely, Easter Sunday, Memorial Day, and Thanksgiving Day to present four (4) days compensated in cash at a rate of one and one-half (1-1/2) x times the employees base salary.
>
> 2. Increases rate of pay to double time (2x) for the above listed days if employee is scheduled regular off and these days are cancelled. "

The Association contended that under the present contract, employees assigned to duty on four named holidays receive cash compensation at one and one-half their base salary; that police officers are entitled to have three additional holidays paid at such premium rates for work done; that given the nature of police work, as well as the desire of police officers to be at home with their families, it should be recognized that premium compensation is warranted for work done on such holidays; that the cost of such proposals is not great when compared to the higher employee morale which would ensue; that further, when officers must work on a scheduled off holiday, they should receive double time rather than time and one-half; that such double time is needed to protect officers against potential abuse in the administration of holiday benefits; and that because of the great importance placed on holidays by police officers as well as the public in general, the Association's proposals must be awarded.

The City contended that the Association's proposals must be rejected in their entirety; that the present contract language must be retained; that the added expenditure resulting from the Association's proposals would be $218,748 over the term of the two year contract; that when measured against the relevant comparable North Central cities, the current Holiday Premium Pay benefit is very good; that Milwaukee fire-fighters receive no holiday premium pay and receive only seventy-two hours of compensatory time in lieu of holidays; and that for all these reasons the proposals made by the Association must be rejected.

Based upon the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's position on this issue.

The record evidence provided that under the existing Labor Agreement, police officers who are assigned to duty on Independence Day, Christmas Day, January 1, and/or Labor Day of a calendar year, shall be compensated in cash at one and one-half times their base salary. They are also paid at one and one-half times their base salary if required to work and if their regularly scheduled off day falls on any of these days.

Now then, the Association demanded an improvement in such present benefits and yet the evidence did not support such entitlement. Certainly, millions of Americans are off work on various holidays and it is true enough that those who are not off but rather are at work feel left out of the mainstream. That alone however, is neither determinative nor controlling in this case. What is important is the fact that the evidence did not demonstrate a need to add three holidays, or even one more at this time, to the present four days. It may well be that some comparable cities provide for more

holidays; however, the Association's City of Philadelphia survey showed that Milwaukee police officers are not lacking compensatory time or cash premium pay. Nor are the Milwaukee police officers unique as to premium pay at one and one-half times their base salary for working such holidays as a result of cancellation of their regularly scheduled off day.

To repeat therefore, the preponderance of evidence did not support the Association's claim for an extension of Holiday Premium Pay benefits from that presently found in the Labor Agreement and for that reason, the Arbitrator rejects the Association's proposals.

AWARD

The Association's Holiday Premium Pay proposals are not granted.

ISSUE NO. 12 - UNIFORMS AND EQUIPMENT

In its Analysis of the Uniform and Equipment proposal, the Association wrote as follows:

> "This proposal will: Provide two (2) additional pairs of uniform trousers in the initial uniform allowance. In addition, current uniformed employes would receive an additional pair of trousers in each of the contract years.
>
> Provide an increase in the clothing allowance of plain clothes employes. "

The Association contended that police officers do not have sufficient clothing and/or a clothing allowance to adequately meet the needs and requirements of their job; that specifically, uniformed police officers need more of a clothing allowance as well as extra pairs of trousers; that plain clothes employees need their clothing allowance to be raised to $225.00 a year; that police officers have an important duty to perform and must project a good appearance and image; that therefore, a proper number of uniforms and/or outer garments for those in plain clothes is absolutely essential to get the job done and that because the clothing needs are not now being met, the Association's proposals must be awarded.

The City contended that it would agree to increase the maintenance allowance for uniformed employees to $100.00 a year if no other increases in uniform allowance were given; that further it has offered to increase the non-uniformed employees clothing allowance to $190.00 a year from the current figure of $155.00; that presently, uniformed officers receive an adequate number of complete uniforms (initial issue) and by virtue of a Quartermaster System, may replace worn out pieces of equipment and clothing; that there is no need for any more summer and/or winter trousers to be provided; that despite the Association's claims, the evidence did not support their proposal and for all the above mentioned reasons, such proposal must be rejected in its entirety.

After a detailed analysis of the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's position on this issue.

To begin with, the record evidence established that uniformed officers receive an adequate initial issue of equipment and clothing for the winter and summer seasons Further, the City presently has offered to increase the annual clothing allowance for uniformed officers to $100.00 a year from $75.00 a year. Coupled with this is the fact that there is a Quartermaster System which permits an officer to replace worn out equipment and clothing.

Moreover, and as to the plain clothes officers, the City has offered to raise th clothing allowance to $190.00 a year from that of $155.00 a year whereas the Associat has demanded an increase to $225.00.

Now then, the record established that the Quartermaster System has worked well and neither the testimony nor any documentary evidence presented, supported th Association's claimed entitlement to an increase in the annual clothing allowance to th degree sought or for extra summer and winter trousers for recruits or current office

Even if one were to agree there is a need for an increase, the City's offers were reasonable and fair and should more than adequately take care of some of the cleaning and maintenance bills testified to by the officers during the Arbitration heari

Accordingly, the Arbitrator finds that the Association's proposals will not be granted and so issues the following Award.

AWARD

The Association's Uniform and Equipment proposals are not granted; however, effective and retroactive to January 1, 1979, the maintenance allowance benefit for uniformed employees shall be increased to $100.00 a year and such maintenance allowance benefit, for non uniformed employees, shall be increased to $190.00 a year

ISSUE NO. 13 - UNANTICIPATED DUTY ALLOWANCE

By its proposal, the Association seeks to retitle "the old benefit known as Gun Allowance" to that of Unanticipated Duty Allowance and to increase such allowanc to one percent (1%) of an employee's base salary from the present gun allowance of $160.00 per calendar year.

The Association contended that in 1978, a change was made by the City with the result that police officers no longer have to carry their weapon at all times when off duty and when out of their own residence; that accordingly, the City does not have to pay a "gun allowance" as it once did; that because the Association does not propose to recognize, by contract, that officers are on duty twenty-four hours a day, the pay sought should be called "unanticipated duty allowance"; that since police officers are required to take affirmative action upon seeing a violation of state or municipal law, they are entitled to such unanticipated duty allowance in the amount of 1% of the base salary; that if the Association's proposal were awarded, the City would not be adversely affected; and that for all these reasons, the Association's position must be upheld.

The City, on the other hand, contended that it was willing to continue payment of $165.00 a year based on the statutory requirement that police officers take action while off duty; that by virtue of state law, city ordinances and the Chief's Rules, an officer is required to take affirmative action when a City ordinance or State law is

being violated; that the testimony, contrary to the Association's position, would indicate that removal of the 24-hour requirement for performing police duty was not an issue in these proceedings; that the City's language for paragraph one of the proposed contract provision should be adopted by the Arbitrator; that further, as to the amount of money involved, although there is not much of a difference between the figures relied on by the Parties, the actual cost to the City, if the Association's position were adopted, would be $691,268 over the two year contract; that with the removal of the off-duty gun requirement, Milwaukee would be the only city to pay officers to take affirmative action while off duty; that although the City has no objection to the substitution of an off-duty allowance for the former gun allowance, the City's proposed language for paragraph number one should be adopted and that further, if the proposal were awarded,a proportional decrease should be made in the wage benefit sought by the Association so as to keep within the previous city worker settlements.

Based upon the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's proposal in its entirety.

The record evidence showed that the Parties' prior Labor Agreement as it related to Gun Allowance read in part as follows:

> "1. The City will provide the employee a gun allowance of $160.00 per calendar year in calendar years 1977 and 1978. The Association agrees that only employes required to carry a gun while off duty and employes in the Police Matron classification shall be eligible for the aforementioned compensation...."

By its proposal, the Association wants to retitle the benefit to Unanticipated Duty Allowance; to change paragraph one to reflect such change in title and to provide an increase in such allowance from $160.00 a year to one percent (1%) of the employee's annual base salary.

For its part, the City has offered to pay $165.00 a year to officers on the theory that such officers are required to take affirmative action while off duty; however, the City also urges that its proposed language for paragraph one be adopted.

In this case, the Arbitrator finds that both Parties recognize an officer's entitlement to some compensation for taking affirmative action and that the actual difference in dollar amounts is small. To repeat, the City has offered a very slight increase over the $160.00 provided in the prior contract and because there was no hard proof to uphold the Association's demand for a one percent (1%) of base salary figure, the Arbitrator will award the $165.00 amount offered by the City.

More important however is the fact that because police officers no longer must carry a gun, there is a basic disagreement between the Parties as to the language to be used to identify and describe the benefit in the Labor Agreement.

According to the Association, the proper title is that of Unanticipated Duty Allowance whereas the City wants such benefit and language in paragraph one to be called "Off Duty Allowance". But more than that, the City has proposed (See Joint Exhibit 2, page 64) the addition of certain state law, city ordinances and Chief's Rules references as a basis for such payment and this, along with the so called twenty-four hour rule, is what the Association finds unacceptable.

As stated above, the Association has expressed serious concern about an issue of whether police officers are on duty twenty-four hours a day because of the potential

impact such contractual recognition may have on benefits now received by the police officers. Further, the Association urged that the Arbitrator should grant the Unanticipated Duty Allowance proposal and to have the Parties themselves deal with the fundamental issue of being "off duty".

Given the foregoing, the Arbitrator finds for the City on the dollar amount involved; namely, $165.00 a year; however, the record would indicate that the benefit should be called "Unanticipated Duty Allowance" rather than "Off Duty Allowance" as urged by the City.

To summarize therefore, it appears that both Parties, and the officers as well, recognize that officers are required to take affirmative action upon seeing a violation of State law or Municipal Ordinance and that some compensation is appropriate. Short of calling it Affirmative Action Allowance, the Arbitrator holds that the Association's suggested title is descriptive of what the payment is all about. It is so held and paragraph one will reflect that title without the added language proposed by the City.

In view of the foregoing, the Arbitrator issues the following Award.

AWARD

The Association's Unanticipated Duty Allowance proposal is granted in part. Retroactive to January 1, 1979, the former Gun Allowance benefit shall be called Unanticipated Duty Allowance and paragraph one of the relevant article shall so describe the benefit.

The Association's proposal as to amount of allowance is not granted; however, the benefit shall be increased to $165.00 per calendar year retroactive to and effective on January 1, 1979.

The City's proposal relative to the language for paragraph one is not granted.

ISSUE NO. 14 - PARKING

In its description of this proposal, the Association wrote in part as follows:

> "Members of the bargaining unit with a permanent work assignment at the Police Administration Building will be provided free parking at MacArthur Square Parking structure if they meet the following car pooling criteria:...
>
> xxx
>
> All members of the bargaining unit who are required to appear at the P.A. Building, the Courts or the District Attorney's Office on off duty time for official job related functions, shall be provided free parking at MacArthur Square.
>
> Parking structure and their official overtime card shall serve as a record of attendance and when the overtime card is stamped out, a request for parking shall be rendered and approved on an individual basis."

The Association contended that its present demand is different in form and concept from that previously made to the City and Interest Arbitrators; that there is a real, indeed recognized, need for additional parking in and around Central Police Headquarters; that officers working and/or having business at such Headquarters are entitled to free parking in the same way as other officers who work out of other Police Districts throughout the City; that the concept of car-pooling is creative and would result in energy saving as well as in meeting the needs of police officers; that the Association's proposals, if awarded, are feasible, and will create no undue burden on the City; and that because the proposals are reasonable and fair, they must be granted.

The City, argued on the other hand, that the Association's proposals are not workable and indeed are unnecessary and costly.

Further, the City urged that although the Association may not be asking for the City to build another parking structure, the net effect of the proposals is to have the City subsidize police officers and to modify a presently existing lease agreement between the City and the MacArthur Square operator.

Moreover, the City contended that there are not a sufficient number of parking spaces available to meet the Association's demands; that given the nature of overlapping shifts, the problem of providing free parking becomes very complex and not workable; that the MacArthur Square parking facility is used by the general public and such use would be adversely affected; that the City's public transportation is available and free to the officers who have work assignments at the Police Administration Building; that the Association's demand would cost $99,379 over the two year contract term and that because Arbitrator Wagner previously rejected the Association's parking proposals, the current demands should be handled in the same way.

Based upon the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's position on this issue.

According to the Association, its current proposal is different in form and concept and yet when stripped to its bare essentials it appears to be "old wine in a new bottle".

In its Association Exhibit 13, the following data were presented.

> "A. With 4 members to a car pool:
>
> 1. Day Demand - 77 Parking spaces and officers going to court.
> 2. Early Demand - 63 Parking spaces & officers going to court.
> 3. Late Demand - 37 Parking spaces. "

Further, the evidence would indicate that about one hundred additional spaces would be required for those officers appearing at Court with the result that over two-thirds of the monthly parking spaces allowed under the existing lease would go to police officers. These, if awarded, would be "free" and would reduce the City's receipts from the current lease arrangement.

Assuming, for the purpose of argument, that the Association's proposals were workable, and even if the lease arrangement could somehow be modified, (and there is serious doubt about both these issues) there is simply no hard evidence to support this "free parking" demand when there are reasonable alternatives to such demand and when, if awarded, the proposal would be costly to the City because of a loss in revenue.

The Association's car pool arrangement makes sense; however, the termination point of such car pooling does not have to be at MacArthur Square. Rather it can be at a place where the Milwaukee public transportation system can be used. In the alternative, police officers can drive and take their chances along with the other users of parking facilities, on and off the street near the Administration Building.

Finally, even if police officers assigned to other Districts have free parking available to them, it does not necessarily follow that the specific officers involved herein are contractually entitled to free parking at the MacArthur Square parking facility. The circumstances and availability are different and because the preponderance of the evidence did not support the Association's claim, the demands shall be rejected.

AWARD

The Association's Parking proposals are not granted.

ISSUE NO. 15 - LEGAL EXPENSE REIMBURSEMENT

In its Exhibit No. 17, the Association stated, among other things, as follows:

> "The Association recognizes that it owes the City of Milwaukee $47,504.25....and that the City of Milwaukee owes the Association $41,982.50 plus other uncalculated fees for representation of the employees of the City of Milwaukee Police Department.
>
> The Association further recommends that as an inducement to dropping the above listed legal expense reimbursement demands, the Association offers that both the City of Milwaukee and the Association cancel out each others bills. If this is unsatisfactory, then the Association's demands are as follows: ...."

The Association basically contended that its claim for legal fees is legitimate and arises from the fact that a number of its members and other officers were involved in an incident (called the Bus Stop Tavern incident) and that the Association had to retain private legal counsel to act on their behalf and in their defense.

According to the Association, the City wrongfully refused to provide legal counsel for such members who were on duty at the time of the incident; that the officers were found innocent of any wrongdoing and the Association is now entitled to reimbursement for all legal expenses incurred on behalf of its members; that the City has a duty to pay for such legal expenses; that the matter in question concerns a condition of employment and may properly be awarded by the Arbitrator; that the Association admittedly owes the City $47,504.25 and so there would be a wash out of claims if its proposal were awarded; and that for all these reasons, the Association's position must be upheld.

The City contended that, in effect, the Association wants the City to drop its claim for salaries paid to two liason officers and also to pay for legal expenses incurred by the Association in connection with the bus-stop incident; that the above incident involved a criminal investigation and the City Attorney's office does not represent employees in such matters; that further, by state statute, the payment of legal fees

for representation of municipal employees in criminal matters is permissive and not mandatory as urged by the Association; and that therefore, the Association's proposal must be rejected in its entirety.

Based upon the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's position on this issue.

It may be noted at the outset that in his letter dated October 13, 1977 to Mr. James Brennan, the Milwaukee City Attorney, Mr. Jerome J. Dudzik, the President of the Association, asked for an explanation for the City's refusal to represent the Association's members involved in the bus-stop incident. At the same time, Mr. Dudzik asked " If your office will not provide legal counsel, can our members then *retain private counsel, and if they are exonerated, will the City then reimburse* them for any monies expended by them in their defense?"

On October 26, 1977, in response to Mr. Dudzik's letter, the City Attorney wrote a letter in which he quoted the applicable law as it related to providing a defense in Civil Actions and further included Zerox copies of the applicable state law. There was nothing in the City Attorney's letter indicating the City agreed to pay such legal expenses.

Furthermore, the record would indicate that the City pays legal fees or provides for representation for all City employees involved in civil actions which arise out of conduct within the scope of their employment; however, the City Attorney does not represent City employees in criminal matters.

Moreover, the relevant language in the Wisconsin Statute would indicate that payment of legal fees for representing city employees involved in criminal matters is discretionary. Specifically, Section 895.35 of the Wisconsin Statutes uses the permissive word "may" and so in this case, the Arbitrator finds that such permissive language cannot be read as being mandatory insofar as the City's obligation in criminal matters, if any, is concerned.

Nor can the mandatory language and the City's obligation involving civil matters be transferred to cover criminal matters.

Accordingly, in view of the fact that the record did not support the Association's demands by a preponderance of the evidence, the Arbitrator holds for the City on this issue.

AWARD

The Association's Legal Expense Reimbursement proposal is not granted.

ISSUE NO. 16 - RESIDENCY REQUIREMENT

The Association's demand read as follows:

> "Employees of the bargaining unit representated by the Milwaukee Police Association shall be allowed to reside in the County, or any county contiguous to Milwaukee County;

namely, Racine, Waukesha, Washington, and Ozaukee Counties."

The Association contended that police officers should be free to live where they choose; that an employee's residency is a condition of employment and may properly be awarded by the Arbitrator irrespective of the City's present residency requirement; that if the Association's proposal is not granted, then police officers are entitled to additional compensation for having to live in the City without being able to exercise a choice in the matter; and that because the demand is reasonable and fair, the Association's position must be upheld.

The City contended that the Association's demand has been twice rejected by previous Arbitrators; that its residency requirement applies to all City employees and has been vigorously enforced; that other comparable cities have similar residency requirements; that there are very basic reasons underlying such requirement for all its employees; that the Arbitrator has no jurisdiction to award the Association's demand; that further, if the Arbitrator were to find for the Assocition, the City would lose over a million dollars in federal and state aid because of the probable population loss; and that for all these reasons, the Association's demand must be rejected.

After a detailed analysis of the evidence and arguments presented, the Arbitrator finds that he is unable to accept the Association's position on this issue.

It should be remembered at this point that the City's residency requirement is found in Section 5.02 of the Milwaukee City Charter and that all City employees are covered. Now then, although the Association, in its oral and documentary presentation, urged a number of reasons why such residency requirement should not be applicable to police officers, the plain and simple fact is that there are many more valid reasons why it should. For example, the uncontroverted testimony of Inspector Yahnke was that the administration and the Chief favored residency for the reason that "well the feeling is that over the long haul that the availability would be greater and, of course, also in line with that we feel that the officer would, it would be a greater tendency for the officer to identify with the community that he serves should he live in the, or be required to continue to live in that community. Obviously an individual working in a community has a greater interest in the community than one that or that is living in the community and working in that community has a greater interest in that community than one who does not reside in that community."

Further, Inspector Yahnke testified on cross-examination that residency and visibility of police officers are crime deterents in that a person is not likely to engage in criminal action if such person knows a police officer is around to take appropriate police action; namely, affirmative action when a violation of law is observed.

Not only are the above valid reasons for retention of a residency requirement for police officers but the Arbitrator has also considered the potential loss of a substantial amount of federal and state aid because of a population shift. It is of interest to note that throughout the entire Arbitration proceedings the Association took the position that police officers perform a vital function within the City and that because they do it so well, they are entitled to be highly compensated. Assuming that to be true, then the Arbitrator holds, it is incumbent that police officers remain residents and citizens in Milwauke so as to identify with the financial burdens faced by the City and help defray the costs of this benefit package rather than reduce the source of funds from which payments can be made. If police officers are entitled to high wages and benefits, then they have a responsibility to the community and other citizens to live in the City and to protect persons and property of the very community in which they live. To repeat, as home owners and residents, police officers can better relate to the City's financial status and can identify with the relevant problems and solutions.

The Arbitrator finds therefore that the City's residency requirement is sound and reasonable and that the evidence simply does not persuade the Arbitrator to grant the Association's demand.

AWARD

The Association's Residency proposal is not granted.

ISSUE NO. 17 - CONTRACT LANGUAGE FOR RETIREES (AGE 60-65)

This Association demand concerns a clarification of retiree health insurance provisions contained in the 1974-1976 Labor Agreement.

The record evidence indicates that although neither the City nor the Association intended to terminate such benefits, because of an oversight, such benefits were not included in the now expired contract.

During the course of this Arbitration proceeding, there was agreement between the City and Association witnesses relative to such oversight and from all indications, there was no impasse on the issue. Accordingly, the Arbitrator finds that the oversight should be corrected and will so award.

AWARD

The Health Insurance for Retired Employees (age 60-65) benefit which had been provided in the Parties' 1974-1976 Labor Agreement, and which by oversight was left out of the 1977-1978 contract, shall be written into the 1979-1980 Labor Agreement, retroactive to January 1, 1979.

ISSUE NO. 18 - PENSIONS

Essentially, the Association's Pension demands were set out in the alternative in its Exhibit No. 3 and may be repeated in the following summary fashion:

1. Two percent (2%) Post-Retirement Escalator Clause.

or

2. Change in Benefit Formula to:

   a) 2.5% of final average salary per year of service, or
   b) 2.4% of final average salary per year of service, or
   c) 2.25% of final average salary per year of service for each of first 25 years and 3% of final average salary per year of service for each year in excess of 25, or
   d) 2.5% of final average salary per year of service for all service from and after January 1, 1979.

As shown above, the demand is in the alternative and both the Association and the City presented very detailed oral and documentary evidence to support their

respective positions on each option proposed including the two percent (2%) Post-Retirement Escalator Clause.

The Association basically contended that its pension proposals are reasonable and realistic and reflect a philosophy that pensions are deferred wages for services rendered; that pension benefits should be high enough to provide a retiree with a reasonable standard of living without having to obtain another job or a spouse having to go to work; that the pension benefits sought would not apply to officers who retired before January 1, 1979; that the City's reliance on total cost data is misdirected because such current costs include amounts directly attributable to the System having been under-funded in the past; that police officers had no control over the events which led to such under-funding; that with the possible exception of Post-Escalator option, the City can carry the cost of providing a pension benefit formula increase without an adverse impact on the System itself; that because such pension cost outlays will not become payable until January, 1981 at the earliest, they can be properly budgeted prior to such date; that it is neither relevant nor material for the Arbitrator to consider the impact, if any, on the City's bargaining posture with other Unions, by virtue of granting one of the pension benefits sought herein; that, admitting the two percent (2%) Post-Retirement Escalator option may be costly, the Association is willing to have awarded any of the four options dealing with a change in benefit formula; that each such option is realistic and not very costly to the City; that police officers are entitled to receive a pension benefit formula increase; and that for all these reasons, the Association's demand should be granted.

The City, vigorously and repeatedly argued against any changes in the present pension benefit system; that irrespective of which option is considered, the added costs are clearly excessive and not called for; that even under the present system, the City must make a thirteen million dollar annual contribution covering previous benefit increases as well as unfunded liabilities; that any pension benefit awarded would simply add to the millions of dollars now being spent; that indeed, presently, the City is making an annual contribution for police officers of over 30% of salary which amount is greater than that paid on behalf of other city employees; that the relevant data for comparable cities show that pension benefits have been decreasing rather than increasing; that further, other worker groups in Milwaukee do not have the level of benefits sought by the Association but, if granted, will certainly demand such level in the next round of negotiations thereby further increasing the cost to the City and the taxpayers; that the present pension benefit after thirty years service is about 68% of final salary and is adequate to meet the needs of such retiree; that contrary to the Association's stated purposes for having an increase in pension benefits, the result of such an award would be more early retirements by police officers who would go into the labor market and get other employment for the purposes of obtaining social security benefits at a later date in addition to the City's pension; that retirees have other sources of income on which they can rely to maintain an adequate standard of living and so there is no need to increase their pension benefits; that it is absolutely unreasonable for police officers to expect that the Milwaukee taxpayers will pay for such extravagant pension demands; and that for all these reasons, the Association's proposal must be rejected out of hand and in its entirety.

After a careful analysis of the evidence and arguments presented, the Arbitrator finds for the Association on this pension issue and awards the following option: "2.5% for final average salary per year of service for all service from and after January 1, 1979."

The record evidence established that at present there are two pension systems covering members in the bargaining unit. There are approximately 28-30 officers

(hired before July 30, 1947) who are covered by the Policemen's Annuity and Benefit System whereas, the overwhelming majority of members, approximately 1,720, belong to the Employes' Retirement System. Inasmuch as these two groups are involved in this demand the award is applicable to each group.

Now then, this Opinion should reflect the fact that there was extensive and detailed testimony and documentary evidence presented by consulting actuaries on behalf of the Association and the City. Furthermore, other expert witnesses were brought in to testify on the issues and although each Party dealt with the matter from their respective benefit/cost point of view, a common theme was discernable. That is, the Association's demands on their face were not unrealistic and that the goals sought were within the range of reasonable expectancy of employees as related to a pension benefit plan.

The major and basic differences between the consulting actuaries were in the area of actuarial assumptions and impact on the City and taxpayers because of the costs involved in awarding any of the options proposed by the Association.

Despite such differences, it must be recognized that there was a fundamental agreement on philosophy and concept of the pension plan proposals by such experts, and that the bottom line of this issue, as is true in most of the other demands herein, is the cost factor.

According to the City, it already carries a heavy burden because of the millions of dollars which are spent annually to do nothing more than maintain the present level of benefits. Although the City urged that such outlays are very high, the record would indicate the monies being expended include amounts necessary to correct previous underfunding. Such underfunding resulted from the fact that certain actuarial assumptions made years ago proved to be in error. Accordingly, the City is playing a game of "catch-up" with the cost outlays and it is simply not true that the blame for high costs of annual payments are to be laid solely at the feet of police officers or the Association and the benefits now being enjoyed by them. It is simply not logical to maintain and argue such issue of annual expenditures, under these particular facts and circumstances, as a basis for rejecting reasonable proposals for an increase in a benefit formula.

Certainly, costs of a pension system are the other side of the benefit coin and it would be totally wrong for the Arbitrator to make any award without first giving full consideration to the costs which will follow the awarding of a change in pension benefits.

However, the prospective option demanded and awarded; namely, 2.5% a year for all service from and after January 1, 1979 is the least costly of the alternatives proposed and as stated above, the testimony and documentary evidence presented by the consulting actuaries is that such proposal is reasonable and realistic given the nature of pension plans and the present and future economic environment.

Although the actuaries differed in some of their basic assumptions; for example, anticipated retirement age, long range rate of inflation, future rate of interest, they were not far apart at all when it came down to the fundamental issue of a trend for liberalization of pension benefits at an increased cost of 2.3% of payroll. Simply put, the City's consulting actuary put it as follows, "It is not an unheard of event" and that generally speaking public employees have better plans than employees in the private sector.

Aside from the costs involved, the record would indicate that a change in benefit formula (from 2.25% of the member's final average salary times the number of years of creditable service up to and including 25 years of service and 2.40% of

the member's final average salary times the number of years of creditable service thereafter) to that awarded herein, may well affect the young officers more than those who are close to retirement and may furthermore encourage officers to stay on the force for a longer period of time with the result that the Milwaukee citizens will benefit from having experienced officers in the department.

Furthermore, good wages and benefit programs, including pension plans, are useful in attracting competent and qualified individuals to join the ranks of others in the Milwaukee Police Department.

Perhaps a comment should be made relative to the City's argument that if a pension benefit were to be awarded to police officers, there would be an impact on other city workers who at a later date would also demand similar benefits. Assuming that to be true, it does not follow that police officers are not to obtain a change in benefit formula. There is no automatic carry over in pension benefits to other city workers groups and what other employees may or will demand and/or receive sometime in the future is speculative and not determinative of the question presented herein.

Finally, the Arbitrator recognizes and understands that on retirement, a police officer cannot expect to have a pension plan provide 100% of his/her pay and that retirees may have other earnings or income to supplement monies received from the City's pension plan. The prospective option awarded should and is expected to generate a little more than the present 68.25% of final average salary and it should be remembered that, according to the actuaries, such percentage would be within the range of reasonable expectancy.

Further, because the pension cost payments are not made until January, 1981 for the year 1979 and January, 1982 for the year 1980 there is time for the budgeting process to perform its work.

Accordingly, and given the fact that the preponderance of the evidence supports the conclusion the option awarded is realistic and reasonable and because there was no hard evidence to prove the cost of such award could not be supported by the City, the Arbitrator issues the following Award.

AWARD

The Association's proposal of 2.5% of final average salary per year of service for all service from and after January 1, 1979 is granted. It shall be retroactive to January 1, 1979. The remaining pension alternatives proposed are rejected.

Arthur A. Malinowski
Arbitrator

Dated at Chicago, Illinois

this 2nd day of October, 1979