

RECEIVED

OCT 30 1980

In the Matter of Final and Binding Final Offer Arbitration Between	:		AWARD
BERLIN PROFESSIONAL POLICEMAN UNION, LOCAL 514-B, AFSCME, AFL-CIO, WISCONSIN COUNCIL 40	:	CASE XIX No. 26122 M/A-498 Decision No. 17957-A	
and	:		
CITY OF BERLIN	:		

I. HEARING. A hearing on the above entitled matter was held on September 3, 1980, beginning at 10 a.m. at the City Hall, Berlin, Wisconsin.

II. APPEARANCES.

JAMES L. KOCH, Representative, WCCME, AFSCME, AFL-CIO,  
appeared for the Union.

MILTON SPOEHR, City Attorney, City of Berlin,  
appeared for the City.

III. NATURE OF THE PROCEEDINGS.

This is a matter of final and binding final offer arbitration under Section 111.77 of the Municipal Employment Relations Act of the State of Wisconsin. The Union on May 2, 1980, petitioned the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration under Section 111.77 (3) of the Act to resolve an impasse between it and the City of Berlin over a reopened agreement. The Commission conducted an investigation through its staff member, Mr. Robert R. McCormick. He reported that an impasse still stood on July 10, 1980. Thereafter the Commission, finding that an impasse within the meaning of Section 111.77 (3) existed, certified that the conditions precedent to initiation of compulsory final offer arbitration existed, and ordered such arbitration on July 23, 1980. The parties having selected Frank P. Zeidler, Milwaukee, as arbitrator, the Commission appointed him on July 30, 1980. The hearing was held as noted. The City made oral summary argument, and supplied additional data. The Union thereafter supplied a brief.

IV. THE FINAL OFFERS.

A. Final Offer of the Union:

June 24 1980

Mr. Robert McCormick  
Med/Arbitration Investigator  
Wisconsin Employment Relations Commission

*Appendix "A"*

FINAL OFFER

Berlin Professional Policeman's Union  
Local 514 B AFSCME AFL-CIO

The parties had negotiated a three (3) year Agreement for the years 1979, 1980 and 1981.

The base rates were to be increased 8%, January 1, 1979; 8% January 1, 1980 and another 8% on January 1, 1981.

The three (3) year Agreement was reached after the parties agreed to a Cost of Living Clause which states as follows:

"Should the cost of living index increase from January 1st to December 31st, three percent (3%) or more above the negotiated increases for any given year, the contract shall, upon request be reopened to negotiate wages only."

In accordance with the language, the Union requested to renegotiate the 1980 wage rates retroactive to January 1, 1980, and mutually agreed to use the attached C.O.L.A. index as an indicator and further agreed to utilize the non-metro urban indicator of 12.1% which is 4.1% in excess of the negotiated 8%.

The parties 1) met and negotiated on March 10, 1980, 2) mediated the dispute with the assistance of Mr. Robert McCormick on April 9, 1980, and 3) had Mr. Robert McCormick investigate the dispute and attempt further mediation without a mutually satisfactory settlement on June 24, 1980.

Therefore, the Union submits as its final offer:

That <sup>an</sup> additional two and one-half percent (2½%) be applied to the base rate of 1979 and thereafter be added to the existing base rates of the 1980 wage schedule for a total of ten and one-half percent (10½%) wage increase retroactive to January 1, 1980, and readjust the 8% base rate for 1981 as per the following example:

PRESENT 1979 rate	1140.68	7 YEAR PATROLMAN	
	x 10.5%		
NEW 1980 rate	1260.40	PRESENT 1980 rate	1231.89
	x .08%		
NEW 1981 rate	1361.23	PRESENT 1981 rate	1330.44

*James L. Koch*  
*Union Representative*

B. Final Offer of the City:

**MILTON SPOEHR**

CITY ATTORNEY

TELEPHONE 361-1777  
AREA CODE 414

*Appendix B*

118 NORTH PEARL STREET  
P. O. BOX 191  
BERLIN, WISCONSIN 54923

Mr. Robert M. McCormick  
Investigator - WERC

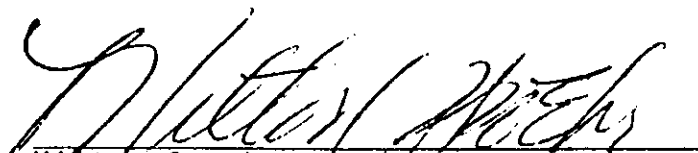
DATE: June 24, 1980

PLACE: City of Berlin

SUBJECT: Police Contract - 1980 - Contract provides for wages to be negotiated if cost of living increases from 1/1/79 to 12/31/79 three percent (3%) above negotiated increase.

UNION REQUEST: Two and one-half percent (2 1/2%) increase over eight percent (8%) contract increase for a total of ten and one-half percent (10 1/2%).

CITY OF BERLIN FINAL OFFER: One and one-half percent (1 1/2%) increase for a total of nine and one-half percent (9 1/2%) increase retroactive to January 1, 1980, PLUS an additional one percent (1%) one-time cash bonus to all employees to be paid fifty percent (50%) on July 1, 1980 and fifty percent (50%) on December 31, 1980. This bonus shall not be used for computing 1981 contract increase.

  
Milton Spoehr  
City of Berlin Negotiator

MS/pb

V. FACTORS CONSIDERED.

Section 111.77 (6) of the Municipal Employment Relations Act is as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

"(a) The lawful authority of the employer.

"(b) Stipulations of the parties.

"(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

"(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with 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."

VI. THE LAWFUL AUTHORITY OF THE EMPLOYER. There is no issue here as to the lawful authority of the City to meet either offer.

VII. STIPULATIONS. The matter here is a reopening of a wage issue as provided in an existing three year contract. All other matters are resolved.

VIII. WAGES - COMPARABLE GOVERNMENTS.

Berlin is a City in the northeast corner of Green Lake County adjacent to Waushara and Winnebago Counties and near the northwestern corner of Fond du Lac County. Green Lake County is adjacent to Marquette, Columbia, and Dodge Counties. For wage comparisons, the Union has supplied information on the following municipalities and counties:

TABLE I

MUNICIPALITIES AND COUNTIES CONSIDERED AS  
COMPARABLE GOVERNMENTS FOR WAGE COMPARISONS

<u>Municipalities</u>	<u>County</u>	<u>Population</u>
Berlin	Green Lake	5,221
Horicon	Dodge	3,622
Kewaunee	Kewaunee	2,898
Mayville	Dodge	4,536
Plymouth	Sheboygan	6,139
Ripon	Fond du Lac	6,915
Waupun	Dodge/Fond du Lac	8,618
<u>Counties</u>		
Dodge		74,257
Fond du Lac		88,985
Green Lake		17,701

The Employer furnished no data on comparisons. The Union argues that it has supplied a proper list of comparables.

A scrutiny of the list by the arbitrator indicates to him that some of the municipalities have a higher value than others. The most comparable municipalities by virtue of size and proximity are Berlin, Horicon, Mayville, Ripon and Waupun. Of secondary value are the municipalities of Kewaunee and Plymouth because of distance, and the Counties because of size and character of the work of deputies/traffic officers.

IX. WAGES - COMPARISON OF BASIC OFFERS.

A. The employees on the payroll as of June 24, 1980, consisted of one sergeant, two patrolmen with seven years of service, two with five years, one with three years, two with one year, one starting patrolman, two radio operators with six months service, one assistant administrator and one police clerk. The rate of top patrolman at seven years service is used for comparison. The following then are appropriate comparisons:

TABLE II

COMPARISON OF FINAL WAGE OFFERS  
TOP PATROLMAN, RATE PER MONTH

<u>Union</u>	<u>Mo. Rate</u>
1979 Rate (7 year patrolman)	\$1,140.64
1980 Rate (10.5% inc.)	1,260.40
1981 Prospective (8% inc.)	1,361.23
1980 Rate at 8%	1,231.84
1981 Prospective rate with 8% in 1980 and 8% in 1981	1,330.44
<u>City</u>	<u>Mo. Rate</u>
1979 Rate (7 year patrolman)	\$1,140.64
1980 Rate (9.5% inc.)	1,249.00
1981 Prospective rate (8% inc.)	1,348.92
Basic salary used for computing 1981 salary	1,249.00

There is an ambiguity in the language of the City's offer on the bonus. The Union in its brief interprets it to mean that on only two occasions will the City pay a bonus, and the bonus will be a 1/2% cash bonus on the monthly rate July 1, 1980, and on December 31, 1980. This bonus, however, is figured at \$11.4064 on July 1 and \$11.4064 on December 31, which is a 1% rate each time.

The City in its oral argument insisted that it was matching the dollar amount of the Union offer, but was not including the 1% bonus in the base upon which the 1981 rate would be figured.

B. The Union's Position. The Union in its brief states that the City is not meeting its request for the reason stated above. In its brief it makes this comparison which the arbitrator has abstracted from pages 15 and 16 of the brief:

a. The Union offer with a proposed increase of 10.5% on a \$1140.64 base equals \$119.7672 per month increase. This increase over 12 months equals a year's increase of \$1437.2064.

b. The City offer comes to a \$108.3608 increase and a \$1300.3296 yearly increase without the bonus. With two bonus payments of \$11.4064 each, the increase for the year with the bonus is \$1323.1424, according to the Union.

The Union notes that its proposed 1980 rate with a 10.5% proposed increase amounts to \$1260.41, an increase of \$28.52 over the current 1980 rate of \$1231.89, which is an 8.0% increase over the 1979 base. Its proposal for this year of the 10.5% increase when projected to 1981 with an 8.0% increase then would amount to \$1361.24, an increase of \$30.80 over the present projected rate of \$1330.44.

The Union acknowledges that the cash bonus would narrow the spread, but only by \$1.90 per month.

The Union states that the City proposal is novel and not a prevailing practice, and where arbitrators find such novelty, they have a practice of rejecting a novel proposal unless justified by strong evidence. No evidence was given by the City to support its novel proposal of a bonus.

C. The City's Position. The City made only oral argument about its offer. It states that its offer meets the Union request for a 2-1/2% increase, but it does not want to escalate the 1981 contract offer. It is not arguing the amount but the base. The City states that it is an average type community, and therefore a proposed increase of 9-1/2% is ample.

D. Discussion. The first matter requiring attention is whether the offers are numerically equal. On the basis of the offers as the arbitrator reads them, the arbitrator is of the opinion that the City offer is intended and does meet at the end of the year the total amount of money involved in the Union offer. The City bonuses of 0.5% on July 1 and 0.5% on December 1 are not to be interpreted as a 0.5% bonus of the monthly wages for July and December, but 0.5% of the annual total wage to be paid at each time. Thus the calculations are these:

Union offer, total annual wage, top patrolman, 10.5% increase	
1260.40 per month x 12 months =	\$15,124.80
City offer, total annual wage, top patrolman, 9.5% increase	
1249.00 per month x 12 months =	14,988.00
Bonuses	
July 1, 1980, 0.5% of 1140.64 x 12 =	68.44
December 31, 1980, 0.5% of 1140.64 x 12 =	<u>68.44</u>
	\$15,124.88

The Union offer however has a small advantage in giving greater payments earlier, presumably allowing the employee the opportunity to gain interest on savings.

The next question is whether it is in the interest and welfare of the citizens not to raise the prospective base for 1981. Generally an argument can be made that the citizens would find it in their interest not to raise the bargaining platform for an ensuing year.

The question also must be considered as to whether the proposed percentage increase of the Union is too high or the City proposal too low. The answer to this question depends on further comparisons which will be made here as to what other employees get and what has happened to the changes in the cost of living. The answers subsequently developed will not be given here but summarized at the end of this award.

As to the novelty of the bonus proposal of the City, the weight on this issue lies with the Union. The use of a bonus which is not to be subsequently considered in figuring a percentage increase in income for employees is unusual. No compelling argument has been made by the City as to its acceptance by the arbitrator here.

#### X. WAGES - COMPARISONS WITH OTHER GOVERNMENTS

A. The Union supplied exhibits of portions of contracts between other municipal governments and county governments from which the following information has been extracted:

TABLE III  
COMPARISON OF MONTHLY WAGES, 1979 AND 1980, TOP  
PATROLMAN, IN SELECTED GOVERNMENTS AND  
PERCENTAGE INCREASES TO NEAREST 0.1 PERCENT

<u>Unit</u>	<u>1979</u>	<u>1980</u>	<u>% Inc.</u>
Horicon	1,178 (36 mo.)	1,308	11.0
Kewaunee	1,073	1,200 (36 mo.)	11.8
Mayville	1,201 (36 mo.)	1,321	10.0
Plymouth	559.78 (1) (42 mo.)	618.55	10.5
Ripon	1,123 (60 mo.)	1,213 - 1/1/80 1,238 - 7/1/80	8.0 10.2
Waupun	6.90 (2)	7.50 (2) - 1/1/80 7.60 (2) - 7/1/80	8.7 10.1
Dodge Co.			
Traffic Officer	1,264 (30 mo.)	1,455	15.1
Process Server	1,182 (30 mo.)	1,355	14.6
Fond du Lac, Traffic	1,168 (1/1/79)	1,298 (1/1/80)	
Officer	1,188 (7/1/79)	1,313 (7/1/80)	10.5
Aver.	1,178	1,305.50	10.8
Fond du Lac Co.			
Process Server	1,015 (12 mo.) (1/1/79)	1,105 (1/1/80)	
Aver.	1,035 (7/1/79)	1,150 (7/1/80)	11.1
Aver.	1,025	1,127.5	10.0
Green Lake, Deputy	1,085 (18 mo.)	1,175 (1/1/80) 1,205 (7/1/80)	11.6
Aver.		1,190	10.9
Berlin	1,141 (84 mo.)		
Union		1,260	10.5
City		1,249	9.5

(1) Biweekly  
(2) Hourly



B. The Parties' Positions. The Union in comparing maximum ranges that can be achieved points to the voluntary settlements found in its exhibits as support for its offer on raising base wages 10.5%. The City offered no exhibits on this type of comparison, but its argument that it is meeting the same cost as found in the Union offer is again noted, as well as its contention that it should not be compelled to escalate next year's cost. The Union notes that the work of sheriff's deputies is not exactly the same, but nevertheless the percentage increases of such voluntary agreements are pertinent.

C. Discussion. The arbitrator notes that the average of percentage increases in base wage without bonus for the most comparable communities is as follows for top rate achieved:

Horicon	11.0%
Mayville	10.0%
Ripon	10.2%
Waupun	<u>10.1%</u>
	$41.3 \div 4 = 10.3\%$

The arbitrator finds that the Union offer more nearly approaches this average although it is a higher rate than found in three of the most comparable communities.

The Union offer is also closer to the averages of the rates achieved in the two cities of secondary value used in comparison and to the rates achieved in the counties listed.

In base wage the Union offer is fourth in amount among five most comparable communities, and so is the City offer. This is the same relationship as existed in the previous years.

The arbitrator therefore finds that, considering percentage increases, the Union offer more nearly meets the factor of comparability.

#### XI. WAGES - COMPARISONS WITHIN THE CITY SERVICE.

A. The Union submitted exhibits on the wage rates found in a three year agreement between the City and Local 514A, AFSCME, AFL-CIO. Union Exhibit 11 showed that these employees achieved a percentage increase of 7% for 1980 and a prospective 8% for 1981. The top classification in this Union went from a rate of \$5.46 in 1978 to \$6.60 in 1979, an increase of 20.8%. In comparison the top patrolman went from \$1033 monthly in 1978 to \$1140.64 in 1979, a 10.4% increase. The top patrolman went from a rate of \$944.27 in 1977 to the \$1033 rate in 1978, a 9.4% increase.

The Union raised an issue concerning the percentage increases of the Chief of Police and the Captain of Police. Press accounts of an undated time reported that the Berlin City Council was raising the Chief's salary for 1980 from \$14,591 to \$18,000, a 23.2% increase. The Captain's salary was raised from \$14,537 to \$17,500, a 20.3% increase (Union Ex. 4 and 5).

The City supplied information on the base salary of the Chief and three officers designated as Officers A, B, C. The exhibit of the City showed that since 1973 the Chief had a substantially smaller take-home pay than the three top patrolmen. However, his base wages were higher than theirs, being from about \$230 to about \$600 per year higher than the highest paid patrolman. In 1979 the Chief was reported as having a base rate of \$14,546.01 as compared to a rate of \$14,361.17 for the highest paid patrolman. The following percentage increases are abstracted from this exhibit:

TABLE IV  
PERCENTAGE INCREASES OF WAGES OF CHIEF  
AND 3 PATROLMEN 1977-79

<u>Officer</u>	<u>Percentage Increase</u>		
	<u>1977</u>	<u>1978</u>	<u>1979</u>
Chief	9.3	7.15	7.94
Patr. A	6.8	8.76	9.3
Patr. B	11.03	8.88	10.4
Patr. C	6.65	8.63	10.4

The Union Exhibit 33 indicated that for 1977 it had negotiated for the Captain. This was also true in 1978 (Un. Ex. 8). However the Union is not negotiating for the Captain in this matter.

The Union states that exorbitant wage increases were given to the Chief and the Captain. The Union notes that it had negotiated for the Captain who had received the same increases as had the other Union employees. The Union holds that the Chief had not fallen behind the patrolmen's wages, because the Chief has been paid slightly more than the Captain who had received the same increases as had the rank and file employees.

The City states that because of differences between the Chief and some members of the legislative body, the Chief did not progress in wage increases to the extent the others had.

B. Discussion. The evidence in the matter shows that the City, in its offer, is offering a higher percentage increase than that afforded the members of Local 514A.

With respect to the wages of the Chief, Table IV indicates that there was a "catch-up" situation which the City had to meet on those wages.

On the basis of this information, the arbitrator concludes that the weight of the factor of comparison of wages within the City services falls to the City.

XII. COST OF LIVING. Union Exhibit 7 provided information from the Bureau of Labor Statistics on the changes in the Consumer Price Index for nonmetro urban areas, with releases from December 21, 1979, to August 22, 1980. This exhibit showed that the CPI for nonmetro urban areas for urban wage earners and clerical workers rose 12.1% from December 1978 to December 1979. By February 1980 the CPI for urban wage earners was 12.6% higher than the previous year. By June it had risen to 13.0% higher than the previous June.

The City did not address this issue.

Applying the factor of the changes in the cost of living, the arbitrator finds that the Union offer more nearly meets this statutory factor than the City offer when applied to increase in base wage, but otherwise the City offer and Union are equal in terms of total costs.

XIII. OVERALL COMPENSATION. Neither party addressed this aspect of the statutory factors.

XIV. CHANGES DURING THE PENDENCY OF THE PROCEEDINGS. The one change during the pendency of the proceedings is that reflected in the change in the rate of increase of the CPI. For August 1980 the change for the CPI, all items, urban wage earners, was at 12.7%. While this reflects a drop in the rate of increase, yet the continuing increase of the CPI is a factor in favor of the Union offer.

XV. OTHER FACTORS. The arbitrator, having discussed the bonus proposal included in the City offer, finds no other special factors to consider.

XVI. SUMMARY. The following is a summary of the arbitrator's findings on the respective offers:

1. There is no issue here as to the lawful authority of the City to meet either offer.

2. The parties have earlier reached an agreement on all other matters in a three year contract, and the dispute here is with regard to a reopener permitted under that agreement.

3. There is an ambiguity in the language of the City offer on wages. The Union has interpreted the City offer to amount to a 1% bonus payment only on the monthly pay of the employees for July and December 1980. The City contends that its offer of 9-1/2% increase in base pay and of a 1% bonus, half to be paid in July and the other half to be paid in December 1980, is the numerical increase in cost for the year found in the Union offer. The arbitrator finds that the City interpretation of its offer is the correct interpretation of what is intended; however under the Union offer the employees would come into possession of more of the total money earlier.

4. The bonus feature of the City's offer not to be included in the base wage for 1981 is unusual, and the Union's proposal to include all monies received as being considered in the base wage from which the next year's salary is to be reckoned is the prevailing practice.

5. There is no question of the ability of the City to meet either offer. The interests of the public, however, lie with the City's proposal in seeking not to escalate the wage base for 1981 bargaining.

6. The Union offer more nearly compares with voluntary settlements made in nearby cities of comparable size as reflected in such exhibits as were submitted. The Union offer also more nearly reflects the conditions reflected in wage settlements of governments with a secondary importance in comparison.

7. The City offer is more comparable to the settlement achieved with another bargaining unit of City employees.

8. The City was justified in raising the wages of the Chief and Captain to a higher level than that of the patrolmen in that a salary catch-up situation was demonstrated in the exhibits.

9. Neither party addressed the factor of overall compensation as affected by the base wage offer.

10. The Union offer more nearly meets the statutory factor of changes in the cost of living than does the City offer, and this situation has continued during the pendency of the proceedings.

Of these factors the most weighty are the greater comparability of the Union offer to the percentage increases granted to patrolmen in the governmental units both of primary and secondary importance, and the fact that the Union offer more closely meets the changes in the cost of living. The following award is therefore made:

XVII. AWARD. The agreement between the Berlin Professional Policeman Union, Local 514B, AFSCME, AFL-CIO and the City of Berlin for 1980 shall include the offer of the Union.

*Frank P. Zeidler*

FRANK P. ZEIDLER  
Arbitrator

*October 28, 1980*