IN THE MATTER OF THE ARBITRATION

-between-

THE MILWAUKEE POLICE ASSOCIATION, LOCAL 21, IUPA, AFL-CIO

-and-

THE CITY OF MILWAUKEE

OPINION AND AWARD
OF
ARBITRATOR

WERC
Case No. CCXV
No. 27263 - MIA-0550
Decision No. 18459-B

APPEARANCES

For the Association: Gerald P. Boyle, Esq.

For the City of Milwaukee:
Grant F. Langley, Esq., Assistant City Attorney

BACKGROUND

The undersigned was designated on April 6, 1981 by the Wisconsin Employment Relations Commission to serve as the interest arbitrator to determine the issues in dispute over the terms of a new collective bargaining agreement. The matter was certified by order of the WERC dated March 23, 1981 to final and binding arbitration pursuant to Section 111.70(4)(jm) of the Municipal Employment Relations Act. Twelve days of hearing including oral argument were held between April 23, 1981 and July 31, 1981. Sworn testimony was taken, exhibits were received and nearly two thousand pages of transcript were prepared. Post hearing summaries of position were received by the Arbitrator on July 28. After reviewing all of the record and arguments,

the Arbitrator has prepared the following Opinion and Award. The Arbitrator's task has been greatly aided by the clarity and detail of the oral and written presentations by the exceptionally able counsel for both parties.

This is the fourth in a series of interest arbitration awards issued since the enactment of the final and binding interest arbitration law for Milwaukee police officers. The parties have been able to negotiate only one new contract, the 1977 contract, without arbitration since the enactment of the statute. This arbitration concerns a successor to the agreement which expired on December 31, 1980 and involves some 14 issues remaining in dispute. The issues will be considered seriatim; but before doing so it is necessary to describe the background of the current dispute.

The 1977 negotiations resulted in similar increases and the same basic salary for police and fire fighters. In 1979 the Milwaukee Professional Fire Fighters Association,(MPFFA) Local 215 IAFF, settled for a two-year agreement which was effective from August 1979 through August 1981 and provided for a 6.6% increase for 1979 and a 6.4% increase in 1980. This settlement was similar to the contracts voluntarily negotiated by the City with some 17 other City unions. The settlement was within the then existing wage guideline of 7%. The Council on Wage and Price Stability

had established the 7% guideline in October of 1978. In early 1980 a new 7 1/2% to 9 1/2% wage guideline was established.

The Milwaukee Police Association (MPA) refused to accept the City's two year pattern of 6.6% and 6.4% and exercised its right to proceed to arbitration. As a result of the arbitration, they received a 10% wage increase effective January 1, 1979 and a 10% wage increase effective January 1, 1980. Thus, the police officers were awarded a wage package which broke the existing salary parity with fire fighters by over 6%.

The Wisconsin Municipal Employment Relations Act provides various procedures for final and binding arbitration for most municipal employees; but ironically does not provide for final and binding arbitration of disputes involving fire fighters of the City of Milwaukee.

The Milwaukee Professional Fire Fighters Association, after an unsuccessful court challenge of the police arbitration award, engaged in two illegal strikes in the spring of 1980 in order to achieve the same wage gains achieved by the MPA in arbitration. As a consequence of the strikes and the concomitant negotiations, the City of Milwaukee entered into a two-year supplementary agreement with the MPFFA which increased the wages of fire fighters by more than 6% so that effective August 30, 1981 and February 28, 1982 they will be receiving the same rates as

police officers, assuming that the City's proposal of an 8.79% and 8.69% is awarded in this arbitration. The agreement between the City and the MPFFA also contained the following reopener clause:

Reopener Provision:

> During the term of this Agreement between Local 215 and City of Milwaukee, the possibility exists that the City and the Milwaukee Police Association or Milwaukee Police Supervisors' Organization may enter into a labor contract which, by agreement of the parties, or otherwise establishes base salaries for police officers for a period of time subsequent to December 31, 1980. The parties to this Agreement desire to, and hereby do, define their respective rights and obligations upon the occurrence of such contingency.
>
> On the first pay period following an agreement to or award of a pay increase to Milwaukee Police Association, whichever is earlier, or on the first pay period following an agreement to or award of a pay increase to Milwaukee Police Supervisors' Organization, the City shall compare the increases in biweekly base salary rates, if any, granted to a police officer with the increase (exclusive of amounts granted under the terms of the REALLOCATION provision of this Agreement) to members of this bargaining unit.
>
> If the police officer is granted or awarded a general pay increase in base salary in which the increase in biweekly base salary rate is greater than is provided to a firefighter under this Agreement, City shall have the following options:
>
> (a) To reopen negotiations with Local 215 limited solely to the elimination of any disparity in biweekly base salary rates expressed in the two settlements;

(b) In the sole discretion of City, to initiate without negotiations with Local 215 an additional base salary to members of Local 215 to eliminate the disparity in the biweekly base salary rates.

In either event, the base pay adjustment, if any, to members of the Local 215 bargaining unit shall be effective with the start of the pay period next following the date upon which there is an agreement to or award of a pay increase to Milwaukee Police Association or to the Milwaukee Police Supervisors' Organization, whichever is applicable, but in no event earlier than the date upon which the agreement is executed or the award is issued.

After the second illegal strike, the agreement was ratified by the Milwaukee City Council. Negotiations and an arbitration are also pending with respect to other City employee organizations. It is undisputed that the 1979 police arbitration award, the subsequent fire fighters' strikes, the supplementary wage increases, and the pendency of this award have influenced the remaining City negotiations.

The City Attorney of Milwaukee also has challenged the constitutionality of the provisions of Section 111.70(4)(jm) of the Wisconsin Statutes in a proceeding which is now pending in the Wisconsin Court of Appeals. However, there has been no attempt to restrain this arbitration proceeding because of the pendency of the current litigation.

The MPA has stressed repeatedly its concern that the Arbitrator should issue "his award regardless of the consequences of that award on any pending or future litigation that

the City of Milwaukee has or will institute in order to render the award a nullity." The MPA expressed the fear that this Arbitrator might rule in the City's favor in order to induce the City to drop its legal challenge to the constitutionality of the existing statute.

The relevant provision of Section 111.70(4)(jm) are set forth below:

> (jm) Binding Arbitration, Milwaukee
>
> This paragraph shall apply only to members of a police department employed by cities of the first class. If the representative of members of the police department, as determined under paragraph (d), and representatives of the city reach an impasse on the terms of the agreement, the dispute shall be resolved in the following manner:
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> * * *
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> 3. ...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....
>
> 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 determining all noncompensatory working conditions and relationships under subd. 4, including methods of resolving disputes under the labor agreement, the arbitrator shall consider the patterns of employee-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.

* * *

THE PARITY QUESTION

The dominant factor in this arbitration is the parity question. The supplementary agreement of the City of Milwaukee with the Milwaukee Professional Fire Fighters Association increased the wages of the fire fighters so that they are again equal with police officers as of August 1981, assuming the City's wage proposal of 8.79% and 8.69% to the MPA is upheld. The reopener agreement, quoted above, would require the reopening of the fire fighters' contract in order to award an even larger increase to fire fighters in the event this Arbitrator should award the police a larger increase than proposed by the City.

The Association, while seeking an 11.5% increase per year, has pointed to the 14 plus percent received by the fire fighters and has denounced the City's reopener agreement as interfering with its bargaining rights. The City has defended its actions as necessary to achieve an agreement and to terminate a strike.

The City also has maintained that the issue before me is not one of parity, but merely the fairness of the City's offer. However, the City also has repeatedly stressed that I cannot render my decision in a vacuum and must consider the consequences of my Award on the existing fire fighters' reopener

agreement as well as on the City's negotiations with other unions, particularly District Council 48. The MPA has repeatedly stated that it has not introduced the question of parity; but recognizes the importance of the City's parity contract with the fire fighters. Counsel for the MPA argues in his written summary,

> Why should the police coming into an Arbitration case have a 'millstone' around its neck because of an agreement reached between the City and the fire fighters which has the possible effect of creating problems in this Arbitration case that would otherwise not be present. We are asking for an award based on the merits of our presentation and on the law, not an award based on the fact that the City of Milwaukee might have problems with its fire fighters because of contract language they agreed upon, when the police had nothing to do with the agreement or non-agreement between those parties.

The MPA's counsel questions the City's motives in entering into the reopener agreement by suggesting that one reason could be to influence a favorable result in this arbitration. Counsel for the MPA also points out that only the opposition of the Milwaukee Professional Fire Fighters Association to the state interest arbitration statute precluded Milwaukee fire fighters from having the same recourse to arbitration as police officers. The MPA's counsel then argues that an award sustaining the City's position would be a reward to the fire fighters for breaking the law by engaging in two illegal strikes and would also be an insult to the police officers; because it would deprive the police of what is otherwise rightfully theirs under the statutory

standards, an award on the merits of their case. The City's main response is that, while it resisted the fire fighters' efforts to achieve the same wage gains as police officers, it was forced in negotiation to accede to the fire fighters' demands in order to settle the strike.

This Arbitrator is persuaded that some of the MPA's complaints about the unfairness of the City's agreement with the MPFFA are justified. This Arbitrator agrees that there is something inherently unfair about the manner in which the agreement between the City and the fire fighters was arrived at; because the agreement, which in effect fixes the pay status of Milwaukee police at parity with the fire fighters, was reached in a negotiation in which the MPA, as the exclusive bargaining representative of the police officers, was not a participant or invited to participate. The decision of Arbitrator Malinowski also determined the pay status of police and broke the existing parity relationship between police and fire fighters in a proceeding in which the fire fighters did not participate. However, there was no lock step parity pay provision in Arbitrator Malinowski's award. The MPA also has had the freedom to present its wage case in this proceeding; but has been forced to do so under the cloud of the impact of the fire fighters' lock step parity agreement.

The problems caused by lock step parity agreements can be illustrated by asking rhetorically, what would the City and fire fighters do if I awarded that the police officers should at all times during the term of this two year agreement be paid at a rate higher than firefighters, e.g., a 5% differential? How would that award square with the parity reopener? I will not make that type of award for several reasons, not the least of which is that such an award in effect would fix the relative pay status of fire fighters as well as police officers in a proceeding in which the fire fighters had no opportunity to participate although they hold the exclusive bargaining certificate for fire fighters, which is the very point I am criticizing as to the fire fighters' parity agreement.

The concept of comparability, the comparison with other and similarly situated employees, is contemplated by nearly all public employee bargaining statutes including the Wisconsin statute. Because of such comparisons and comparability bargaining, police and fire fighters' pay is at parity in many major cities and was the same in the 1977 negotiations in Milwaukee. The point is not that parity agreements which provide equal pay for police officers and fire fighters are necessarily wrong; but that if such value judgment is to be made, it should be made by the equal participation, or at least after the opportunity to participate, in the decision by all affected parties.

My comments on the unfair manner of arriving at the lock step parity reopener agreement is not a legal judgment, which can only be made by the WERC or the courts. The statement of my views on the problems caused by lock step parity agreements has not resolved the dilemma posed by the existence of such agreement. I have concluded, however, that I must assume that the parity agreement is lawful and represents the City's policy, since it was negotiated by the Mayor's Labor Relations Office and ratified by the City Council. I, therefore, have considered the impact of that agreement on this proceeding.

* * *

RATES OF PAY

The Association has proposed a pay increase of 11.5% effective pay period one 1981 (December 21, 1980) and a second increase of 11.5% effective pay period one 1982 (December 20, 1981). The City has proposed increases effective the same pay periods of 8.79% in 1981 and 8.69% in 1982.

The parties have placed considerable emphasis on the fact that the relevant criteria to determine compensation is found in subdivision 5.a. and b. of §111.70 (jm) namely:

> 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.

These criteria have been utilized; but I also note subdivision 3 of the same statute provides that:

> 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.

This Arbitrator agrees with Arbitrator Wagner's observation in a footnote on page 50 of his award that the obligation to utilize the above quoted standards of section 5 are not a command to apply them mechanically. If that were so, then the present statute would be a prevailing statute requiring only a skilled computer programmer to find the right result. The parties also have presented extensive data as to lawful authority of the employees, the financial ability of the City to pay, comparison with the wages, hours and working conditions of the police with other police and municipal employees and the overall compensation received by police.

Accordingly, I have concluded that I should consider not only the Budgets for Urban Families and the cost of living as measured by the Consumer Price Index, but that I should take "notice" of other data, such as the factors enumerated, §111.70.7 a-h, governing disputes of other municipal, fire and police employees:

§111.70.

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. Stipulation 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with 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 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 proceeding.

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.

In summary, it is the position of the Association that an increase of 11.5% per year for two years is justified because

1) the fire fighters received a 14 plus percent increase in 1981; 2) the increases are needed to make up for previous and anticipated cost-of-living increases as reflected in the CPI; the Association's economic expert forecast an increase in the CPI of 12% for 1981; 3) the City has the ability to pay the increases based on its projected surplus and its unused taxing power; 4) a comparison with the salaries and increases paid to police officers in other major cities justifies the request; 5) the intermediate urban budget for a family of four required an annual income of $24,028 in Milwaukee in order to maintain a moderate standard of living in the autumn of 1980, the higher level budget figure was $35,216; 6) the Social Security adjustment based on the CPI in 1981 was 11.2% which closely approximates the Association's request; and 7) Milwaukee police officers have a difficult and dangerous job which they have performed well and the community should maintain their first class status.

In summary, it is the position of the City that its proposal on rates of pay should be adopted because 1) the total direct earnings received by a Milwaukee police officer increased 130.8% during the last decade while comparable increases in gross weekly earnings for the private sector were 96.2% and 116.4% for manufacturing; 2) the comparative earnings of a Milwaukee police officer as shown in the BLS survey of annual rates of pay of

North Central cities with a population of 100,000 and over for the past decade showed that Milwaukee base salaries increased by 119.1% while increases for officers in other cities in the North Central region averaged 93.5% and for U.S. major cities 98%; 3) the increases of 43.1% in base salary received and offered to Milwaukee police officers in the four year period 1978-82 are higher than increases for Milwaukee suburban police, 40.8%, and for the Milwaukee Deputy Sheriffs, 42.8%; 4) the rate of increase of the CPI has been declining since the March and April 1980 high of an annual 14.7% rate to a June 1981 rate of 9.6% and that reasonable projections indicate a decline to the 8% to 9% range next year; 5) that the CPI is not an accurate measure of cost-of-living changes because of distorted components namely new housing costs and fuel prices; 6) that the total earnings of Milwaukee police officers compare very favorably with the BLS intermediate budget in the last decade going from a ratio of 1.02 in 1970 to a ratio of 1.25 in 1980; 7) that the City's ability to pay the increases requested by the Association would be seriously affected by the cost to the City of an award of $29,000,000 for all of the MPA proposals as compared to the City proposal of $16,000,000; 8) that the City's overall revenue position from all sources is such that it is not prepared to increase its tax rate and thus to increase suburban flight; and 9) the grant of any

further increase to police officers would in turn result in further increases to fire fighters and possibly to other City employees, all of which are against the interest and welfare of the public.

DISCUSSION

I want to make clear that this award has not been influenced by the pending litigation brought by the City Attorney challenging the validity of the statute. I make such declaration only because of the great concern expressed by the counsel for the MPA. I also want to state that my comments concerning the parity settlement, the reopener agreement, and their impact on these proceedings would not have prevented me from awarding a larger increase than proposed by the City, if the facts warranted such conclusion.

The position of the parties on the rates of pay issue has been described in the briefest of terms. However, the position of both parties have been set forth in this proceeding by testimony, carefully prepared exhibits, and thoughtful arguments in great detail on all of the relevant criteria. I am satisfied that on the basic issue of wages, the City's offer is fair and I will so award for the reasons set forth below. Obviously I would not have awarded the precise number of 8.79%

and 8.69%, if they had not been proposed by the City. However, I have concluded that the sum of the City's offer of 17.48% over two years, 18.24% when compounded, might well have been awarded in different combinations of 9.5% and 8% or 9% and 8.5% for example, figures which are on the high side of the pattern of police officer contracts for 1981. The BLS reports that scheduled 1981 increases for police officers in the large cities of the North Central Region, excluding Milwaukee, average 7.4%.

Turning to the specific criteria of subdivision 5, I recognize that a case can be made for the larger increases proposed by the Association based alone on the changes in the CPI since the last arbitration. The change in the CPI for Milwaukee from January 1980 to January 1981 was 12.9% and for the U.S. was 11.7%. The more recent 1981 CPI figures indicate a declining trend to a 9.6% annual rate in June 1981. However, the national CPI figures for July 1981 produced an annual rate of increase of 15.2% or a 10% increase since July 1980. The July 1981 figure was published after the close of the hearing. There are other credible predictions in the record which suggest that the CPI will moderate for the balance of the year; but the evidence is far from conclusive that the CPI increases will moderate this year to approach the City's offer.

I am also not persuaded by the City's criticism of the CPI as an appropriate measure of the cost of living. First of all it is statutory and while economists have different views as to what makes up the cost of living as measured by the CPI,

the legislature has clearly set forth the popular concept that the cost of living can be measured by annual changes in the BLS CPI. Adjustments may be eventually made in the CPI by the BLS or by Congress; but until they do, the CPI stands as an appropriate measure of the cost of living.

However, as stated, I do not read the statute as mandating that the change in the CPI since the last contract is the only applicable wage standard. As mentioned, Section 3 of the statute requires the Arbitrator to take judicial notice of all economic and social data presented by the parties which is relevant to wages, hours and working conditions of Police Department members. A look at the larger picture of the decade, 1970 to 1980, of increases in police earnings shows that the direct earnings of Milwaukee police officers have increased 130.8% and their base salary increases have totaled 119.1%. The Milwaukee CPI increases for the same decade have totaled 121.6% under the old Index and 117.3% under the new Index. Thus, the evidence shows that over the longer period covering the history of bargaining and arbitration under Section 117.70(4)(jm) of the Wisconsin statutes, the MPA and the City have done a good job as measured by the CPI of securing salary increases and maintaining earnings for police officers to match increases in the cost of living.

While changes in the CPI are a relevant criteria, so also is the most recent "Standard of Living Budgets for Urban

Families." The autumn of 1980 Urban Family Intermediate Budget for a family of four was $23,134 and the Milwaukee Urban Intermediate Family Budget for 1980 was $24,028. The total 1980 earnings figure for Milwaukee police officers was $24,183 which compares favorably with the Milwaukee Urban Family Intermediate Budget figure of $24,028. An examination of the total earnings figure of $24,183 shows that it was composed of $20,705 in base salary, $2,728 in overtime, and the remainder in other fringe benefits. Another City exhibit shows that the average annual paid overtime for police officers to be higher, 250.7 hours for a total of $3,168.88.

The Association has argued that I should not consider overtime earnings, because they are not guaranteed and because all officers do not receive substantial overtime. I do not agree because overtime earnings are a significant part of the officers' overall compensation, which is one of the statutory standards. City records show that overtime earnings for police officers have been consistent, have been increasing and that substantial overtime is projected to continue for the foreseeable future.

A comparison of Milwaukee police officer earnings with the earnings in other major cities also shows Milwaukee police in a very favorable comparison. While the basic salaries in Detroit and Chicago are higher, recent events cast a cloud over their rates. Detroit police officers have recently

agreed to a three-year no-wage increase contract. This action followed a series of actual and threatened layoffs, because of the continuing fiscal crisis. Chicago police received only a 6.5% increase as of January 1, 1981. Their base salary as of January 1, 1981 is only $22,927 as compared to the new Milwaukee base pay for the same date under the City's offer of $22,525. City Exhibit #19 reports Chicago police base salary and additional earnings for 1980 as $27,991 compared with a Milwaukee figure of $31,154 as shown in Table 2 of City Exhibit 13.

City Exhibit 16 contains a very detailed and comprehensive comparison of the net compensation and total labor costs per capita for police officers in eight cities in the North Central Geographic Region with populations in the 370,000 to 1,000,000 range. The cities are Cincinnati, Cleveland, Columbus, Indianapolis, Kansas City, Milwaukee, Minneapolis and St. Louis. In this 1980 group Milwaukee ranked number one in net compensation per hour worked by a significant margin. When the larger cities of Chicago and Detroit are added, Milwaukee ranks second, exceeded only by Detroit.

When Milwaukee police base salary and earnings are compared with other suburban Milwaukee police departments, the City rates most favorably, outranking all other communities.

Most of these jurisdictions also are covered by the state's municipal arbitration act for police and fire fighters.

The BLS reported that in 1979 and 1980 the average wage settlements for state and local employees in bargaining units of over 5000 employees were 7.2% and 6.9% respectively. The guidelines of 7% in late 1978 which persisted until early 1980, clearly influenced the earlier City settlements in the near 7% range with the fire fighters and other City unions. The 1979 award did not mention the federal wage guidelines and the record shows that the City representatives did not argue that the award should be governed by the guidelines. In any event, the 1979 police award resulted in an award of up to 6% higher than might have been expected under the wage guidelines and has also resulted in the higher total earnings and compensation which have been considered in this proceeding.

After reviewing all of the data and arguments and considering all relevant statutory criteria including the cost of living changes and the Urban Budget, it is my conclusion that an award which endorses the City's wage proposal is justified. The proposal is fair and should enable Milwaukee police officers to maintain their excellent relative standing with respect to earnings and base salary with other police officers in Wisconsin and the North Central Region.

In reaching this result, I have considered also the City's and the Association's arguments with respect to ability to pay.

Both parties have presented extensive arguments and exhibits as to the City's financial status. I will not detail their contentions here, because my decision does not rest in this instance on the issue of ability to pay. Since I have adopted the City's position as if it had been made in a last offer proceeding, I have concluded that no issue remains as to the City's ability to pay the wage award. Furthermore, as I understand the City's position, it is really a question of the inadvisability of agreeing to all of the Association's proposals, not an inability to pay, assuming the Arbitrator was inclined to grant the Association's proposals in their entirety. While I have awarded certain other economic items, I do not find that any of the remaining issues awarded are outside the ability of the City to pay. For all of these reasons, it is my

A W A R D

The City's proposal as to wage increases is granted, namely, an 8.79% increase as of the first pay period in 1981 and an 8.69% increase as of the first pay period in 1982.

* * *

UNANTICIPATED DUTY ALLOWANCE

It is the Association's position that the Unanticipated Duty Allowance should be increased to 5% of the base salary of the top police officer and that under no circumstances shall the

allowance be terminated during the term of the agreement. During the current negotiations, the MPA proposed that the allowance be increased to $365 per year. However, after the WERC declaration on March 12, 1981 of an impasse in this proceeding, the MPA, subsequent to the fire fighters' strike settlement, increased its proposal in these proceedings to 5% of base salary at the top of the range. The City has proposed that the allowance should be increased from $165 per year to $180 per year; but that the following proviso should be added:

> ...Only employees required by State Statute, Charter Ordinance and Chief's rules to take police action while off duty shall be entitled to receive this allowance.

Presently each police officer receives a $165 annual unanticipated duty allowance. The MPA proposal to increase the allowance to 5% of the base pay at the top pay range would mean annual payments to each police officer of approximately $1100 in 1981 and $1200 in 1982.

The bargaining history of the Unanticipated Duty Allowance, which was formerly called Gun Allowance, shows that it resulted from a 1971 negotiation during which the City had assumed the employee's share of pension contribution for all other employee groups including the fire fighters. The MPA, however, wished to retain the right to contribute 1% of their salary to the pension system. Therefore, the City and the MPA in bargaining agreed to create a gun allowance which was approximately equal to 1% of salary. The rationale was to compensate police

officers who were required to wear their revolvers off duty. In 1978, the Milwaukee Police and Fire Commission suspended the rule requiring police officers to carry their guns off duty and the gun allowance was ended. Thereafter, the 1979 arbitration award granted a MPA proposal to replace the lost gun allowance with an Unanticipated Duty Allowance in the amount of $165 per year.

City Exhibit 12, item 10, details the increases in the allowance from 1971 when it was $90 to the present $165. While the City has offered to increase the allowance in these proceedings to $180, it would require $205 to equal 1% of the current maximum salary step for police officers. Under the City's wage proposal, $225 would be required in 1981 and $245 in 1982.

To this date the City has continued to pay the entire employees' share of the pension contribution for all City employees except for police officers who have continued to contribute 1% of salary toward their pension costs. The record also shows that in most other respects, the fringe benefits for fire fighters and police officers are the same.

It is the position of the Association that the increase is justified because a Milwaukee police officer is expected to take police action even when off duty and is subject to recall to duty at any time. The Association points out that police officers can be disciplined for failure to take proper police action when off duty and that officers should therefore

be compensated for such requirement at a fair rate and not the present minimal sum of $165 per year. The Association adds that the 5% payment would not be considered in computing pensions or any other contract fringe benefits.

The Association also suggests that the grant of its request, or a part thereof, would resolve the dilemma posed by the reopener agreement with the fire fighters because the Unanticipated Duty Allowance would not be a part of the police officers' base salary and thus would not have to be paid to the fire fighters. The Association emphasizes that the award on this issue should include the proviso that the sum cannot be revoked during the term of the agreement because the City might change the present rule under which police officers are required to take affirmative police action for law violations when off duty.

It is the position of the City that the obligation of the police officer to take affirmative police action while off duty has substantially decreased and therefore the 600% increase requested for the Unanticipated Duty Allowance is not justified. The City adds that any police officer who elects to take police action while off duty receives overtime pay at the rate of time and one half. The City suggests that the Association's proposal is an attempt to insure that police officers receive more pay than fire fighters because the fire fighters' reopener clause applies only to base pay. The City points out that only one other city, Duluth, was cited as having an Unanticipated Duty Allowance and that City pays the same amount, 3 1/2%, to fire fighters as well.

It is my conclusion that the Association's request for the substantial increase of 5% should be denied. The only plausible reason for the extraordinarily large increase is to defeat the strike settlement lock step parity agreement and the reopener clause. Such an award would be a subterfuge in dealing with the real issue of the size of the wage increase. Furthermore, there is absolutely nothing in the record to support the huge amount of the increase requested.

As set forth above, the allowance is related to the police officers' contribution of 1% of their pension costs. While the City's Labor Negotiator has expressed the concern in his testimony over the impact that an award of an increase in the allowance in excess of 1% might have on present and future negotiations with other employee organizations, the clear inference is that an award which fixed the allowance at 1% of the top base salary would not have a negative impact. Thus, an award of 1% should have a stabilizing impact on relations with other employee groups because it would represent a further step towards equalizing pay and benefits for police and fire fighters. It is, therefore, appropriate to increase the allowance to 1% of the top base salary and thus equate the allowance with the 1% pension contributions made by the police. All City employees including fire fighters will then receive an equivalent benefit, the police officers by the 1% Unanticipated Duty Allowance and all other City em-

ployees by the 1% higher City payment of employee pension contributions. The record also shows that this equalization can be accomplished at a rather modest cost.

It is, therefore, my

A W A R D

That the Unanticipated Duty Allowance shall be increased to 1% of the top base salary effective in 1981 and that such payment will be continued in 1982 and maintained for the duration of this Award.

* * *

SENIORITY

The Association has proposed the following Seniority Clause:

> 1. Seniority shall be determined by the date of appointment to the various classifications covered in this agreement.
>
> 2. An employee shall forfeit his seniority rights only for the following reasons:
>
> a. Resignation
> b. Dismissal with no reinstatement.
> c. Retirement on regular service retirement.
>
> 3. When an involuntary shift transfer of an employee is to be made, the employee to be transferred must be the employee who has the least seniority in his/her rank.
>
> 4. No involuntary transfer shall be made between shifts on a department wide basis unless the employees seniority is the sole consideration.
>
> 5. This provision shall not apply in cases of the need for special skills or other specialty.

The present collective bargaining agreement contains a seniority clause for layoff purposes. Seniority is defined in the agreement as the length of service measured from the date of original hire in the police department with police powers. Departmental rules also provide that seniority is a factor in the selection of vacations and in transfers to the day shift. The testimony and the record also established that seniority is given consideration as a matter of practice in other police assignments and shift transfers.

The MPA proposal set forth above is primarily directed to shift assignments. Seniority would be measured by the date of appointment to the various classifications. Various aspects of this seniority proposal have been submitted by the MPA in three prior arbitrations. In each instance, the Arbitrator has denied the request. The Association states that it has made this request in order to insure that a police officer once assigned to a shift cannot be taken from that shift over a more senior employee who has more seniority and would like to fill the slot made available by a vacancy. The Association argues that police officers, who have been working on a 12 to 8 shift for a number of years, should not be required to transfer involuntarily to a 4 to 12 shift, if they do not wish to be so transferred when there are persons with less seniority available to fill that transfer demand. The Association argues that such transfers unnecessarily interfere with the developed lifestyle of police officers.

The Association also states that it seeks the prohibition against involuntary transfer between shifts on a departmental wide basis unless seniority is the sole consideration in order to prevent transfers being made at the whim and fancy of the Department. The Association denied that such a clause would inhibit the operation of the Department by stating that it expects that any transferred officer would have the experience necessary to fullfil their required assignment. It is the Association's position that the expansion of seniority rights to the early and late shifts will be just as workable as the seniority preferences have proved to be in day shift assignments under the present rules and agreement.

It is the City's position that the MPA has not demonstrated any need for the requested clauses based upon alleged arbitrary or capricious shift transfers as an informal means of discipline as charged by the Association. The City points out that while the Association has made such charges it has failed to present any testimony or evidence to support the claim. Furthermore, the City asserts that the MPA's seniority proposal is not limited to arbitrary and capricious transfers resulting from informal discipline, but applies to all involuntary transfers regardless of the validity of the reason for the transfer.

The City asserts that the testimony of Deputy Inspector Jahnke demonstrates that the seniority proposal could seriously impede the ability of the Chief of Police to carry out his statutory obligations. The City points out that seniority

is a factor taken into consideration in making assignments; but that discretion is required for the effective deployment of forces and that the application of the provision would be particularly difficult at a time when the Department is under federal court orders with respect to the hiring of women and minority officers. The Department is now required to hire 40% minority employees and 20% females. In order to insure that all officers are properly trained, the City states that it may be necessary at times to make involuntary shift transfers in order to have a balance of experienced minority and female officers on each shift. Since the day shift is now manned by seniority preference, further inhibitions in the City's ability to assign employees could jeopardize the effective deployment of the police force.

The Arbitrator is persuaded that the Association's request must be denied. While the statute empowers the Arbitrator to "determine a seniority system, and how seniority should affect wages, hours and working conditions," I do not regard such authority as a mandate to change the existing agreement, work rules and practice concerning the application of seniority in making assignments absent a convincing case for such change. The Association has not made such a case. The primary thrust of the Association's presentation for its seniority proposal centered on alleged arbitrary and capricious transfers which were the equivalent of disciplinary actions. No cases were

presented to illustrate this point. On the contrary, the Department's practice of giving seniority preference in day shift assignments, the contract protection of seniority rights in layoff procedures and the practice of the Department in considering seniority with respect to voluntary transfers and shift preferences demonstrates that there is no need for the request made by the Association.

Furthermore, I find the City's argument persuasive that it is important for the Police Department to maintain the broadest discretion in the assignment of its forces. The City has made a convincing case that it has some special problems in achieving balanced assignments because of the significantly increased numbers of minority and female officers who have joined the force in the last few years. The City must be able to insure that all new officers acquire the necessary experience and training and that may require some assignments including shift transfers regardless of seniority.

The Arbitrator also notes that Milwaukee police, unlike the majority of other major police departments, do not rotate their shift tours. Such fact makes it all the more necessary for the Department to have flexibility in making transfers and assignments, involuntarily if necessary, in order to insure a high level of police performance. While the Association has qualified its proposal by recognizing the need for exceptions for special skills or specialties in the making of assignments, I do not believe such qualification alone affords the Department sufficient discretion.

An examination of the seniority proposals from a limited number of other jurisdictions submitted by the Association reveals that in most instances they are not nearly so limiting as the proposed clause. Also no evidence has been submitted as to how or why those clauses were negotiated. For the reasons given, it is my

A W A R D

That the Association's seniority proposal is denied.

* * *

HOURS OF WORK

The Association has proposed the following amendment to the present contract provision governing Hours of Work dealing with the subject of Working Out of Shift:

> The normal hours of work for an employee covered by this agreement shall be defined as an eight (8) consecutive hour work shift to which the employee is assigned on the permanent district or bureau roster sheet which in the aggregate, result in an average work week of forty (40) hours.
>
> Upon the execution of this agreement, every employee covered by this agreement shall be informed of his work shift. Any deviation from that work shift except a permanent deviation shall constitute overtime.

According to the Association, the proposal would enable the police officer to qualify for overtime relating to authorized eight hour shift assignments which fall outside their regularly scheduled eight hour shift.

The City has advanced the following counter-proposal:

> Within the normal hours of work, any shift assignment of eight consecutive hours, which is of 10 consecutive 8-hour work shifts in duration or longer, with eight 8-hour work shift starting at

> the same time or in the case of special assignments such as vice-squad with possible differing starting times for each 8-hour work shift, shall be deemed to be a regularly scheduled 8-hour shift assignment.

Arbitrator Wagner had awarded that hours worked outside a regular shift and not announced at least a week in advance should be compensated at time and a half the straight time rate, but that the total number of hours worked on the shift should not be changed. Thus, if any employee, who was regularly scheduled from 4 to 12, was requested to work the hours of 3 to 11, the employee would be paid time and a half for the first hour of work, but would only work a total of eight hours. Arbitrator Wagner denied the Association's request that the regular shift hours be guaranteed, since the premium pay for the off shift hours compensated the employee for the inconvenience of a change in shift. Arbitrator Malinowski cancelled the seven-day notice requirement which had been awarded by Arbitrator Wagner. As a consequence of Arbitrator's Malinowski's award, certain confusion existed as to when a permanent shift change had occurred.

It is the position of the Association that the normal hours of work for an employee and the starting time for their shifts are established by the permanent roster sheet in each Department district or bureau. It is the contention of the Association that when a regular assignment is changed, the employee should be entitled to premium pay for the hours worked

outside of the shift. The Association recognizes such payments need not be made for what might be considered regular deviations from regular assignments, for example, special hours for Summerfest, Christmas details, or for weeks spent in training. In such circumstances, the Association would recognize that an employee's regular shift hours had been changed, but for a defined period of assignment and no extra compensation would be expected. However, as illustrated by the testimony, if an officer, who was regularly assigned to the 4 to 12 shift, was asked to report for three days during his regular week to the jail at 3 PM, the officer would expect to be paid premium pay for the hour between 3 and 4 PM unless the officer's duty assignment was permanently changed to the jail. The Association rejects the idea that such regular assignments can occur for short periods of time, one, two or three days.

The City has recognized the need for a precise definition of a regularly scheduled shift and accordingly offered the proposal set forth above. The City proposal would make exceptions for special assignments or details such as various starting times for vice squad officers, Christmas store details or Summerfest.

It is the Arbitrator's decision that the City's counter proposal should be adopted because it defines the regular work week to be at least ten consecutive eight-hour shifts, yet permits

deviation in the regular schedule for special details which occur on a regular and continuing basis. The City proposal also meets one of the main Association's objection to the existing practice of scheduling, the calling in of an officer for jail duty an hour earlier for one, two or three days a week without paying the overtime premium of time and a half for the first hour. Under the City's proposal, the officer would be compensated for such earlier or later reporting time unless the changed shift schedule was for a period of at least ten consecutive eight-hour work shifts and thus became a new regular schedule. The proposal also recognizes that certain special assignments such as the vice squad may have varying starting times. It is understood that overtime for the first two hours of court time, training time, and roll call shall be paid at straight time.

For the reasons stated, it is my

A W A R D

That the City's counter proposal for defining the regular schedule is granted to be effective with the first pay period after the execution of this award.

* * *

OVERTIME

The Association has proposed the following clause:

1. Overtime shall be all authorized assignments outside the regularly scheduled eight (8) hour shift as hereinbefore defined under the paragraph 'hours of work,' all overtime shall be compensated at time and one half (1 1/2x) except as otherwise herein provided.

2. There shall be no interruption within the overtime period while said assignment is authorized until finally released from said authorized assignment. However, a minimum of two (2) hours pay at straight time (1x) shall be granted employees covered by said agreement when employees are officially required to appear in court on their own time provided said employees are excused before completing the two hour miminum. All court time over the two hour period shall be paid at time and one half (1 1/2x).

3. Roll call time shall be exempted from the time and one half provision.

4. All other overtime shall be compensated at time and one half (1 1/2x).

The City has counter proposed that:

> ...overtime earned as a result of that portion of an employe's 8-hour shift assignment falling outside the employe's regularly scheduled 8-hour shift assignment and being one-half hour or less in duration shall be compensated at base salary rates (1x) for the first 2 such instances in any calendar month.

It is the position of the Association that all hours in excess of 40 hours per week, 80 hours in a pay period, are to be paid at the rate of time and a half except for roll call and for the first two hours of court time. The Association also seeks that there be no interruption within the overtime period when it is authorized until the employee is released from the

overtime assignment. The Association states that the City's objection to costs are not justified, because the Department controls the overtime assignments. The Association adds that, if the City is required to pay a premium for court assignments lasting longer than two hours, it will find a way to curtail unduly delayed court appearances by officers.

It is the position of the City that the present overtime benefits should not be changed because the police officers have enjoyed substantial overtime earnings under the present contract and that such benefits are substantially better than those received by other City employees. The City reports that MPA members received 62% of all overtime paid by the City and that 54 1/2% of that overtime was at time and a half while fire fighters received almost all of their overtime at straight time.

The Arbitrator is persuaded that there is merit to the Association's proposal. While recognizing the substantial overtime earnings already received by the police officers, there is nevertheless logic to imposing a premium for work beyond the normal 40 hour work week with certain exceptions. I find the Association's proposal for overtime to be reasonable and will grant the benefit under certain conditions. First, no premium shall be paid for one hour of lunch recess during court proceedings. For example, if an officer reports for court duty at 9 AM on an overtime day, the first two hours are at straight

time. If the officer is required to remain until noon, he is paid at time and a half for the next hour. If court recesses at noon for an hour or more, the officer shall not be paid for the first hour of lunch recess; thereafter, he shall be paid at the rate of time and a half even if the court's lunch recess is longer than one hour. It should also be understood that the award does not apply to normal training time and roll call.

I shall also deny the City's request that overtime outside of the employee's regular schedule for a half hour or less in duration for the first two instances in any calendar month be exempt from the time and one half requirement. No good reason exists to grant a proposal which would nullify part of the objective of granting the Association's Working Out of Shift proposal as already modified by the City's counter proposal.

For these reasons, it is my

A W A R D

That the Association's overtime proposal is granted effective with the first pay period after the execution of this award. The payment of court overtime shall not include the first two hours of court time or one hour of court ordered lunch recess. Nor shall the premium pay apply to training time and roll call. The City's request for a limitation on premium pay for work outside of regular shift schedules is denied.

* * *

PROTECTIVE SURVIVORSHIP OPTION

The Association has made the following proposal:

> An employee who has completed twenty-five (25) years of service may elect a protective survivorship option coverage. Benefits will commence upon the death of an employee to his surviving beneficiary during said beneficiary's life. Such election shall be made within a thirty (30) consecutive day period ending six (6) months prior to the date upon which the employee has completed twenty-five (25) years of service. Or, in the case of those employees who have not heretofore elected such an option and who have exceeded the 25 years of service, within sixty (60) consecutive calendar days immediately following the execution of this agreement.

Police officers are eligible to retire after 25 years of service at age 52. Under the Employee's Retirement Act, an officer eligible for retirement may select a spouse option under which the employees' retirement pension is reduced by 5% and in turn the employee's spouse upon his death would receive a retirement pension at 50% of the employee's pension for the duration of the spouse's life. The Association seeks the opportunity for an employee, who has completed 25 years of service but who is not eligible to retire because he has not attained the age of 52, to have the same option that employees who are eligible to retire have with respect to the survivorship option. The Association argues that employees who are eligible to retire, but who have not retired, are able to protect their spouse in the event that they should die between the time that they are eligible for retirement at age 52 and the time they retire. The Association states that the benefit can be granted without

great cost to the City.

It is the City's position that the proposal which is now modified to apply only to the spouse, would cost the City approximately 1/4 of 1% annually and should be rejected. The City states that it has already agreed in these negotiations to increase the survivorship benefits for the widow from $140 to $280 per month and for the surviving spouse with a minor child from $200 to $400 per month. The City's expert witness also testified that the cumulative value of all present death benefits for employees who die in service is equivalent to 4 3/4 times the officer's annual salary and that, therefore, an expenditure of additional monies for this particular benefit is not justified. The City also argues that, since the benefit is sought for employees who have not yet qualified for retirement, there is really very little difference in the needs of the police officer who has 25 years or more of service than an officer with say 20 or 15 years of service who dies before reaching retirement age.

The Arbitrator is persuaded that the benefit requested should be denied because the City's existing survivorship benefits are generous, particularly the significant improvement made in the current negotiations for increasing the survivorship benefit to $280 per month for the spouse and up to $400 per month for the spouse with minor children.

For these reasons, it is my

A W A R D

That the Association's request is denied.

* * *

BANK OF HOURS AND CONTRACT ADMINISTRATION

The Association has made the following proposal:

> A. Increase the number of hours paid time off per calendar year to 1344. Such paid time off shall be limited to Association Membership meetings, Executive Board meetings, Stewards meetings and proceedings where a Board member is requested for representation of another member. The members who regularly scheduled off days fall on days that fall under Section 2(b), shall be allowed to switch the off day and time subtracted from the bank of hours.
>
> B. The City will provide that the Association be authorized to use 2080 hours as an additional liaison officer position. The Association will pay the full salary and the City will pay the fringe benefits. The President of the Association may from time to time dictate which of the members of the Board shall fill the liaison position for any period of time required.

Presently the MPA receives a bank of 840 hours time off per calendar year to be used by its members for the purpose of attending Association membership meetings, executive board meetings and steward meetings. The MPA reimburses the City for the base salary of the employees for the hours involved. The Association also has the benefit of two full time police liaison officers on release time. The City presently pays for Association activities one half of the base salary of the

release time liaison officers and all of the fringe benefits of the full time employees. The MPA proposal argues that, because of the additional burden of representation which has been occasioned in recent years, an additional bank of hours is needed in order to permit Association board members to represent individual employees. The Association also alleges that the additional liaison officer position is needed with respect to contract administration, particularly because of the greatly increased number of duties that release time employees are required to perform in connection with the Association's membership in a national police union affiliated with the AFL-CIO.

It is the City's position that the substantial increase of 504 hours in the bank of hours proposal and the additional officer on release time represents an increase of 52% in the amount of release time and that the record does not support such a substantial increase in the benefit. The City asserts that there has not been such a substantial increase in the number of disciplinary actions or other representation requirements by the Association to justify the request. The City adds that if the MPA membership believes that additional time is needed for union activities at the state and national level then the MPA membership should pay for such services rather than have them subsidized by the City of Milwaukee. The City also points out that the present

bank of hours benefit enjoyed by the MPA exceeds those of the fire fighters and District Council 48. The City cites that under present benefits, the MPA has available to it the equivalent of 2.78 hours per employee for union activity while the fire fighters have 2.15 hours per employee and District Council 48 1.49 hours per employee.

The Arbitrator has decided that the Association's request for an additional 504 bank of hours should be granted; but that the request for an additional liaison person should not. The additional bank of hours is the equivalent to a quarter time position for one employee, but would be apportioned among various MPA board members to serve as requested in representing MPA members. The MPA will be responsible for the salaries of the additional release time of board members and the City will be required to pay for their fringe benefits. The additional bank of hours awarded are not a significant burden upon the City in terms of either cost or in terms of effective deployment of services. I have denied the request for an additional liaison person because the Association has not shown that the City has an obligation to further subsidize, even by way of paying the fringe benefits, the equivalent of another full time employee since the duties of the additional person would be primarily related or caused by the additional state and national union activities engaged in by the Association. This is not a criticism of the

purpose of such activities; but merely a conclusion that the City of Milwaukee should not be required to pay for them.

For the reasons stated, it is my

A W A R D

That effective in 1981 the additional bank of hours request of the Association for 504 additional hours shall be granted with the understanding that the Association shall reimburse the City for the salaries involved and that the City will pay the fringe benefits involved.

The Association's request for an additional liaison person is denied.

* * *

SICK LEAVE

The Association proposes that the present sick leave clause be amended to read as follows:

> Employees reporting an absence due to sickness shall be governed by the same sick leave procedure as that which governs other employees in the City of Milwaukee.

Presently it is a practice of the Department to assign a supervisor, normally a sergeant, sometimes two, to visit the residence of each officer who reports in sick on the first day of illness. Such visitation is made regardless of whether the officer has any history of alleged sick leave abuse or not. The Association charges that the present practice of the Police Department of home visitation is embarrassing, nonsensical and

childish. The Association asserts that the testimony does not demonstrate that there has been one instance reported where the supervisor, upon viewing the police officer in question, has reported back that the officer was not sick, or where the supervisor ordered the officer, who is claiming sickness, to go to work because in the supervisor's opinion the officer was not sick. The Association proposes that officers be allowed to file a City of Milwaukee form C.B.P. 156 which requires a City employee to attest that his absence was due to illness with the understanding that "false or misleading statements will be considered cause for suspension or discharge." The Association says that it is not asking for permission for the officer to leave his home or work at another job; but merely that the officer be subject to the same rules which apply to all other municipal employees.

It is the City's position that the members of the MPA presently enjoy a most generous sick leave benefit, an annual accumulation of 15 work days up to a maximum of 365 calendar days. Because of the liberality of the Department's policy, it is reasonable, the City asserts, that supervisors call at the residence to verify whether or not the officer who claims illness is in fact ill at home. The City states that under Department rules, the officer has an obligation to remain at home unless he needs doctor's attention and, therefore, the home visit is not a burden. The Department states that there has been an

increase in sick leave abuse and that it must maintain existing controls to avoid further abuse. The Department's records show that the average MPA employee used approximately 82 hours of sick leave in 1980 in comparison to 73 hours used by the Milwaukee fire fighters and 74 hours used by District Council 48 employees.

The Arbitrator is persuaded that the Association's request should be granted. It is the practice of all other City departments that supervisors can make home visitations, if they believe a sick leave benefit is being violated; but it is my understanding from the record that home visitations are not mandatory in all instances. The grant of the Association's sick leave proposal does not mean that supervisory visitations cannot be made; but only that home visits are not to be mandatory regardless of circumstances because that would not be the same policy as for all other City employees. Primary reliance should be made on the filing of the City form C.P.B. 156, which is signed by all other municipal employees. This statement is made under penalty that falsification could lead to discipline or discharge. The statistics cited by the Department show that other City employees have a lesser sick leave utilization than police officers even though they are not subject to the mandatory home visitation rule. Furthermore, the Arbitrator is impressed by the fact that the record does not demonstrate that any police supervisor has at any time reported that an officer

was not sick. There is no persuasive reason why a verifying phone call to the officer at home would not serve the same purpose as home visitation in most instances.

For the reasons stated, it is my

A W A R D

That effective with the execution of this award, the Association's Sick Leave proposal is granted.

* * *

ORDERS AND MEMOS FROM CHIEF OF POLICE

The Association has proposed:

> The Milwaukee Police Association demands that it shall receive all copies of orders and memos issued by the City of Milwaukee Police Department that in any way affects wages, hours and conditions of employment.

After the presentation of this issue at the hearing, the Milwaukee Fire and Police Commission on June 19, 1981 issued the following amendment to its rules:

> Rule 1, Section 2.
>
> The Chief of Police, in the exercise of his duties, shall have the power to prescribe, promulgate, and enforce Rules and Regulations for the government of members of the Department.
>
> In establishing new Rules or in effectuating changes in existing Rules, the following procedure shall apply:
>
> Whenever the Chief of Police proposes to establish a a new Rule or change in an existing Rule which proposal in its operation will affect wages, hours, or conditions of employment of members of the bargaining unit represented by the Milwaukee Police Association (here and after referred to as the MPA), he shall present his written proposal to the president of the MPA. At a mutually agreeable time, not more than 30 days following presentment, the Chief shall meet with not more than three representatives of the MPA and shall confer in good faith with said

> representatives with the intent to reach an agreement consistent with the Chief's powers, duties functions and responsibilities under law. If no agreement is reached between the Chief and the Association through its representatives within 30 days of such initial meeting, the Chief of Police may establish the proposed change in an existing Rule unilaterally.
>
> In cases of emergency, the emergency to be determined by the Chief, the Chief shall have the right to establish a Rule or Rules unilaterally, and such Rule or Rules shall become effective immediately.
>
> Any Rule prescribed by the Chief of Police shall be subject to review and suspension by the Board of Fire and Police Commissioners. The Board may prescribe a Rule to replace any Rule the Board suspends. The Chief of Police may not suspend any Rule prescribed by the Board. The Rules of the Police Department shall be made available to the public by the Police Department at a cost not to exceed the actual copying cost. Copies of the Milwaukee Police Department Rules and Regulations shall be made available for inspection by the general public by placing a copy of such Rules at all District Stations, City Library and its branches, and in the Legislative Reference Bureau of the City of Milwaukee.

The City requests that the Association's proposal be rejected primarily on the ground that it is too broadly stated and that no distinction has been made between rules and regulations which primarily affect wages, hours and working conditions and rules which primarily relate to the administration of the policies of the Milwaukee Police Department and only incidentally refer to wages, hours and working conditions. The City relies upon the decisions of the Wisconsin courts in Beloit Education Association v. WERC 73 Wisconsin 2nd 43 (1976 and Unified SD #1 of Racine County v. WERC 81 Wis. 2d 89 (1977). These decisions define at great length the duty to bargain and distin-

tinguish between mandatory subjects of bargaining on the basis of whether they "primarily affect" wages, hours and conditions of employment or whether they are subjects "primarily related" to the formulation and administration of policy. The City argues that the blanket request of the Association makes no distinction as to confidential matters which, if released, could hamper the ability of the Department to provide effective police services; because those orders are primarily related to the management direction and administration of the Police Department.

It is my decision that the Association's request should be granted except that the words "in any way" should be deleted from the Association's proposal and that confidential police matters be excluded. I have been influenced by the action of the Police and Fire Commission, which recently has required the Chief of Police before establishing rules or amendments to existing rules which in their operation affect "wages, hours or conditions of employment of members of the bargaining unit represented by the MPA" to present a written copy of the rule proposals to the President of the MPA. The rule further requires the Chief to attempt to bargain regarding the implementation of such new rules. Only after such effort has been made for a period of at least thirty days is the Chief permitted to establish the proposed change unilaterally, except of course in situations of emergency. No

provision was made in the above quoted rule to limit rule changes to matters which "primarily affect" wages, hours and conditions of employment. While the cited court language sets forth a clear definition of the duty to bargain over wages, hours and conditions of employment, I will not make such a requirement a part of this award; because the Chief's rules can be mandated ultimately as a condition of employment regardless of whether they meet the court test.

I will, however, condition the award so that the Chief of Police may delete from any rule given to the Association any matter which is confidential and thus deemed to hamper the administration of the Police Department. This should not present a problem, because the Association asserts that it is not seeking confidential information, but only information affecting wages, hours and working conditions.

For the reasons stated, it my

A W A R D

That effective with the execution of this award, the Association's request is granted, except that the words "in any way" are to be deleted from the proposal and the Department may exclude confidential police matters.

* * *

OTHER CAUSE DAY

The Association has proposed:

> A leave of absence, with pay, for one day shall be granted by a commanding officer to any member of his command in case of serious illness in his immediate family or other extraordinary emergency.

The Association requests that an officer be allowed as a matter of right to a leave of absence for one day with pay when there is a case of serious illness in his immediate family or other extraordinary emergency. Presently the rules of the Milwaukee Police Department authorize commanding officers to grant such leave, but they are not required to do so. The Association argues that, since officers have in the past been denied requested days off in cases of serious illness in the immediate family or other extraordinary emergency, a change in the contract provision is necessary to protect the right of the employee to such leave.

The City acknowleges that a series of grievances were brought several years ago concerning the subject of leave because of illness in the family or other emergency. There were seven grievances in the period 1973-77; but that there have not been any grievances since. The City points out that there were 133 days of such leave granted in 1979 and 132 days in 1980, and that no grievances were filed in those years. The City adds that other City employees do not have a similar benefit. The City expresses the concern that if the MPA proposal is granted, it would remove all discretion from the commanding officer with the possibility of abuse.

It is my determination that the Association's request should be denied, because the record clearly does not support

the Association's claim of the need for the mandatory grant of personal leaves. The established practice of the Department indicates that commanding officers, at least since 1977, have exercised reasonable and generous discretion in granting such leave because of serious illness or other family emergency. No persuasive reasons have been advanced therefor as to why the discretion of the commanding officer should be taken away.

For these reasons, it is my

A W A R D

That the Association's request is denied.

* * *

LOCKERS

The Association has proposed:

> Each member of the bargaining unit shall be provided with a locker which shall not be shared with any other member of the bargaining unit.
>
> The City shall be held liable for any loss, theft or damage to an employee's personal belongings, if the City inspects an employee's locker without said employee being present. City shall continue to retain the right of inspection provided the employee whose lockers are inspected are present.

The present collective bargaining agreement provides:

> The shared lockers provided for by paragraph entitled Lockers in the 1971-1972 Agreement between the parties shall continue to be provided. The City shall continue to retain the right of inspection provided the employees whose lockers are inspected are present during such inspection and the City shall continue to be held blameless against loss, theft, or damage.

Presently lockers in precincts are shared by two officers except in the Fourth District station where a sufficient number of lockers are available so that each officer has an individual locker. The Association by testimony and photographic exhibits illustrated the amount of equipment assigned to each officer, much of which is customarily kept in lockers. The equipment includes squad jackets, belts, night sticks, overcoats, ranicoats, caps, shoes, boots, flashlights, memorandum books, ticket books and other miscellaneous items. When the comparatively small lockers are shared by two officers, it is obvious that the lockers are overcrowded. The Association acknowledges that there is a problem of sufficient existing space being available in some police Districts and, therefore, has modified its demand during the hearing to request individual lockers, if there is sufficient space which can be made available for individual lockers in each police District. The Association states that under these circumstances, its demand is not costly and would rectify an obvious source of inconvenience to police officers.

The Association points out that superior officers are entitled to individual lockers and sees no reason why police officers should not be afforded the same privilege. The Association also asks that members be made whole for any damage, loss or theft which occurs when lockers have been opened without the officer being present.

The City says that it would cost approximately $34,000 to provide each officer with an individual locker, which the City asserts is a substantial expense. The City points out that the adding of lockers in the First District would require the elimination of inside parking spaces which are needed for the operation of the Department. The City acknowledges that lockers could be added at the Second District station where there is sufficient existing space and that a similar accommodation could likewise be made at the Third District station. The Fourth District station already has a sufficient number of lockers at the present time since each officer is assigned an individual locker. The City states that the Fifth District does not have the adequate space available to accommodate additional lockers without extensive and expensive remodeling. The City asserts that similar space limitations exist in the Sixth District where lockers can only be accommodated in an undesirable basement area. The City states that the Seventh District station could accommodate additional lockers only by utilizing space which is presently used for other purposes.

The City also objects to the proposal to place all the liability on the City for any losses sustained by an officer, if the City enters a locker without the officer being present. The City asserts that lockers are not entered into without the officer being either present or having been notified that this

will be done so that he can be present. The City acknowledges that locker entries have occurred without the officer having been present, but that such entries are made because an unauthorized locker is being occupied and that entry has only been made after the posting of a four day notice.

I am persuaded that the Association's request should be granted with the proviso that the City shall be obliged to provide a locker for each individual employee where that can be done without substantial additional expense. I do not refer to the cost of the locker, the City shall bear that cost. However, I will not require that extensive remodeling or construction be done at any District station. By the City's own account, however, it appears that additional lockers presently can be accommodated in the Second and Third Districts in addition to the Fourth which already has individual lockers. It is possible that by a reallotment of existing space utilization that additional lockers may be accommodated in the other stations. If sufficient space is not available to accommodate every officer, then individual lockers shall be assigned on a seniority basis.

I will not grant the liability language change requested by the Association. There is no proof that the existing clause has not provided adequate protection for the members of the Association.

For the reasons given, it is my

A W A R D

That effective with the execution of this award, the Association's request is granted under the conditions stated in the opinion.

* * *

HEALTH INSURANCE FOR RETIREES

The Association has proposed:

> The same benefit shall prevail to all employees covered by this agreement as were in the 1979-80 agreement with the exception being the City of Milwaukee to pay 50% of the Blue Cross/Blue Shield Health Insurance premium for employees who retire during the term of this agreement between the ages 52 years of age and 65 years of age.

At the present time, officers who retire between the ages of 52 and 65 can continue in the City of Milwaukee health insurance program by assuming 75% of those costs. The Association proposes no change in the basic health insurance program only a change in the sharing of the cost.

The Association believes that the cost of its request is not as high as estimated by the City because the majority of officers who retire at age 52 go into other employment and are covered by health insurance by their new employer. The Association argues that other suburban municipalities have afforded retirees reduced health insurance rates. The Association points out that the Milwaukee County Deputy Sheriffs' Department now pays for all of the health insurance for retirees. The Association argues that, since Milwaukee County Deputy Sheriffs are regularly compared in their earnings with Milwaukee police, it would

be equitable to extend the retiree health insurance benefits to Milwaukee police officers.

It is the City's position that the requested increase in the share of the City's contribution is a substantial expense costing nearly $427,000 and amounts to 1.5/6% of the payroll. The City's expert witness testified that the retired employees' medical costs have been increasing at a faster rate than for active employees. For example, in 1979 to 1980, retired employees' health insurance costs increased 29.2% while the costs for active employees increased 19.6%. The City stated that the costs for active employees also will increase significantly, 15% in the period 1981 to 1982. The City also argues that the present pension benefits enjoyed by police officers are virtually the same as those enjoyed by fire fighters. Since present retiree benefits for health insurance for police are similar to the health insurance for retirees in the Fire Department, the City argues that the benefits should not be changed. The City also argues that non-uniformed City employees receive no retiree health insurance benefits until age 60, which is their minimum retirement age with the City paying 25% of the basic retiree premium. The same premium is paid for police and fire fighters and the City sees no reason for paying a larger benefit to police officer retirees.

After considering the relative costs involved as well as the pattern of reimbursements for all other City employees, I have decided to deny the Association's request. The fact that police officers retire at an earlier age does not support their position. The fact of earlier retirement provides the retiree with the opportunity for alternate employment which most of them take. Such employment often includes coverage under another health insurance program. While this might mean a lower cost to the City than estimated, it hardly shows the need for the benefit. While it is true that Milwaukee County provides a greater benefit, a comparison of the total compensation received by Milwaukee Police Officers with Deputy Sheriffs, as shown by City Exhibit 14, shows Milwaukee police officers ahead. No persuasive reasons have been advanced why the City has an obligation to pay a larger health benefit to police retirees than to other City retirees, uniformed or non-uniformed.

For the reasons stated, it is my

A W A R D

That the Association's request is denied.

* * *

DENTAL CARE PROGRAM

The Association proposal is as follows:

> The City of Milwaukee to pay 60% of the monthly Blue Cross/Blue Shield dental plan premium. Benefits to remain the same as in the 1979-1980 agreement with the exception as follows: 60%

of premium paid by City. Increase of annual maximum per person from $500 to $1000 per year per person. Program to include orthodontia coverage to 60% of $2,000 lifetime maximum.

The City of Milwaukee presently pays 40% of the present dental plan premium. The dental plan was instituted as a result of Arbitrator Malinowski's award in 1979. The dental plan is a benefit not enjoyed by other City employees.

The Association estimates that the proposed benefit would increase the cost to the City by approximately $4.00 per month and that the employees will be paying an additional $3.50 per month. The City's objection to the program is based upon cost. The City states that it presently pays approximately $133,000 for the current program and in order to maintain the current plan for the next two years, the City will pay approximately 15% in 1981 and 29% in 1982 over the 1980 costs. The City further argues that a survey of Wisconsin municipalities shows that a very small percentage of municipalities provide a dental benefit. A City exhibit showed that only 30% of the suburban Milwaukee communities provide the benefit for police officers. The City argues also that only 50% of the persons in the United States are covered by some form of dental plan and that many of those do not cover orthodontia. The City also stresses that 60% of dental expenses are covered by the current plan, and that the average additional dental expenses are not of such consequence as to impose a hardship on employees

if they are required to pay for their own dental care.

After considering the costs involved and the value of the benefits provided, I have decided to grant the Association's request in part. Specifically, I will award that the cost of the improvements sought by the Association and the costs of the existing plan be paid for on a 50% basis. I recognize that the present dental plan is a relatively new benefit not enjoyed by other City employees. Half of the cities in the North Central Region do provide some form of dental plan. A growing number of Wisconsin municipalities also provide dental coverage.

Since the plan exists and appears to be a very desirable benefit, I have concluded that for a relatively moderate increase in cost to the City and the employees, a significant improvement can be provided and the existing plan maintained. However, I believe that the costs of this pioneering program should be shared equally.

For the reasons stated, it is my

A W A R D

That effective thirty days (30) after the execution of this award the Association's request is granted except that the costs of the Dental Plan shall be shared 50% by the City and 50% by the employee.

* * *

UNIFORM ALLOWANCE

The Association has made the following uniform proposal:

A. Employees designated by the Chief of Police as uniform personnel shall receive two (2) additional pairs of uniform trousers, one pair of

summer and one pair of winter trousers.

B. An additional two (2) uniform shirts replaced by the City per year being either long or short sleeves at the choice of the employee.

C. The City will provide an open holster to all employees required to carry same.

D. City shall provide employees uniform and equipment maintenance allowance of $150 per year.

E. The City shall provide non-uniform employees a clothing allowance of $240 per year.

F. Officers shall maintain the option of wearing a short sleeve shirt between the dates of May 1 through November 1.

At the hearing, the issue concerning short sleeves was settled by the parties. The City currently provides incoming officers with the necessary uniform and equipment items and maintains them through a voucher system replacing worn out equipment and clothing. In addition, the City pays a maintenance allowance of $100 per year for uniformed employees and $190 per year clothing allowance for non-uniformed employees. The 1979 award increased the present maintenance allowance by $25 for uniformed officers and $35 for non-uniformed officers.

The Association's basic position is that the cost of equipment and maintenance has increased significantly and, therefore, an additional provision for equipment and for clothing should be awarded.

The City feels that the request is not justified, because its present method of furnishing uniforms has been proved to be satisfactory. The City's records show that only 50% to 75% of what could be ordered by officers on a replacement basis for shirts are ordered. The City states that if officers are not using their current allocations, there is no reason to increase the existing benefit. The City further argues that there is no support in the record for increasing both the maintenance allowance and the clothing allowance by $50 per year since the 1979 award increased the benefits. The City states that a comparison with the similar equipment and maintenance afforded fire fighters shows that the present system is fair. Fire fighters receive a uniform replacement allowance of $155; but the police officers in addition have a voucher system which is valued at $80 per year for maintaining their worn out equipment and uniforms.

The Arbitrator is not persuaded that the Association has sustained its burden of proof for the additional items of equipment or an increase in the uniform and clothing allowances. The City has demonstrated that the present voucher system is adequate to maintain the present equipment. Furthermore, there is nothing specific in the record to support a 50% increase in the clothing and uniform allowance, especially since those amounts were increased by $35 and $25 in the 1979 award.

For the reasons stated, it is my

A W A R D

That the Association's request is denied.

DATED: New York, N.Y.
September , 1981

Arvid Anderson, Arbitrator

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

On this 17th day of September 1981 before me personally came and appeared ARVID ANDERSON, to me known and known to me to be the individual described herein and who executed the Award herein, and he duly acknowledged to me that he executed the same.

Steven C. DeCosta
Notary Public

STEVEN C. [illegible] York
Notary Public [illegible]
No. 30-[illegible]
Qualified in [illegible] County
Commission Expires March 30, 19[illegible] 83