

RECEIVED

NOV 9 1981

In the Matter of Final and Binding Arbitration Between	:		WISCONSIN EMPLOYMENT RELATIONS COMMISSION
KENOSHA PROFESSIONAL POLICEMEN'S ASSOCIATION	:	AWARD	
and	:	WERC Case LXXVI No. 27450	
CITY OF KENOSHA (POLICE DEPARTMENT)	:	MIA-564	
	:	Decision No. 18697-A	

I. HEARING. A hearing in the above entitled matter was held on August 17, 1981, at the Kenosha City Hall, Kenosha, Wisconsin. Full opportunity was given to present testimony, evidence, and argument. Briefs and reply briefs subsequently were supplied.

II. APPEARANCES.

SCHROEDER, VENTURA & BREITENBACH by JEROLD W. BREITENBACH, Attorney, appeared for the Association

LINDNER, HONZIK, MARSACK, HAYMAN & WALSH, S.C., by ROGER H. WALSH, Attorney, appeared for the City.

III. NATURE OF THE PROCEEDINGS. This is a proceedings in final and binding final offer arbitration between the Kenosha Professional Policemen's Association and the City of Kenosha pursuant to Section 111.77 of the Municipal Employment Relations Act of the State of Wisconsin. The Association, representing non-supervisory employees of the Kenosha Police Department in the classifications of Detective, Traffic Officer, Police Sergeant, Police Canine Specialist and Police Officer, petitioned the Wisconsin Employment Relations Commission on February 2, 1981, that an impasse existed in the attempt to negotiate a new agreement successor to an expiring agreement.

The Commission, having appointed Timothy E. Hawks to make an investigation, and Mr. Hawks having reported on May 13, 1981, that an impasse existed and that final offers were made, found that an impasse existed under the terms of the Act, and ordered final and binding final offer arbitration on May 18, 1981. The parties, having selected Frank P. Zeidler as arbitrator, the Commission appointed him on June 11, 1981.

IV. THE FINAL OFFERS.

A. The Association Offer:

"APPENDIX 'A'

"CLASSIFICATION AND COMPENSATION PLAN

"The following monthly rates shall be effective January 1, 1981:

	<u>A</u>	<u>B</u>	<u>C</u>
"Detective	\$1,705	\$1,740	
Police Sergeant	1,705	1,740	
Traffic Officer	1,705	1,740	
Police Canine Specialist	1,658		
Police Officer	1,531	1,583	\$1,638

"The following monthly rates shall be effective July 1, 1981:

	<u>A</u>	<u>B</u>	<u>C</u>
"Detective	\$1,738	\$1,773	
Police Sergeant	1,738	1,773	
Traffic Officer	1,738	1,773	
Police Canine Specialist	1,690		
Police Officer	1,560	1,614	\$1,669

"The following monthly rates shall be effective December 31, 1981:

"Detective	\$1,770	\$1,806	
Police Sergeant	1,770	1,806	
Traffic Officer	1,770	1,806	
Police Canine Specialist	1,721		
Police Officer	1,589	1,644	\$1,700

"NOTE: Those employees assigned to motorcycle duty shall receive an additional \$15.00 per month if they are assigned to such duty more than 50% of their work hours during the month.

"Step Procedure

"A Police Officer will remain in Step A until one (1) year of service is completed. He will then move to Step B. Upon completion of one (1) year in Step B, he will advance to Step C.

"An employee appointed or promoted to a higher classification will be placed in Step A of the new classification immediately upon promotion. After Ninety (90) days he will advance to the maximum rate of the classification.

"An employee appointed or promoted to any position above the rank of Police Officer shall serve a six (6) month probationary period, during which time he may be returned to his previous position should his ability to handle the new work prove unsatisfactory.

"1. Amend Article XVII - Clothing Allowance

"Section 1 by deleting the term one hundred fifteen dollars (\$115.00) and in its place substitute the term one hundred fifty dollars (\$150.00).

"2. Article I - Management Rights

"Revise Subsection 4 to read:

"'4. This Agreement shall be subject and subordinate in all respects, wherever the same may be applicable herein, to the general rules and regulations of the Department of Police, Kenosha, Wisconsin, all of which are in effect on the effective date of this Agreement and as contained in Appendix B of the 1980 contract and attached hereto.'

"3. Article XV - Salaries

"Change '1980' to '1981' and revise Appendix 'A'."

B. The City Offer:

"FINAL OFFER
MAY 12, 1981

"The provisions of the 1980 contract are to be continued for a one year term except as modified by the items listed on the document entitled 'Agreed Items as of May 12, 1981' and as provided below:

"1. Article IV - Grievance Procedure

"A) Add the following to the end of the first sentence of Section D, 1:

""(Saturday, Sunday and holidays excluded)."

"B) Add the following after 'Mayor' in the first sentence of Subsection D, 2:

""or to the designee of the Mayor, if the Mayor has appointed a designee for this purpose and has notified the President of the Association in writing of such appointment,"

"and add 'or his designee' after 'Mayor' in the second and third sentences of Subsection D, 2.

"C) Revise the first paragraph of subsection E to read:

""If any party is dissatisfied with the disposition of the Mayor or his designee, said party may invoke final and binding arbitration of the grievance or dispute by serving written notice of intention to do so within fifteen (15) calendar days following receipt of the written decision of the Mayor or his designee."

"2. Appendix 'A' (Wages)

"Revise as attached.

"3. Article I - Management Rights

"Revise Subsection 4 to read:

""4. This Agreement shall be subject and subordinate in all respects, wherever the same may be applicable herein, to the general rules and regulations of the Department of Police, Kenosha, Wisconsin, all of which are in effect on the effective date of this Agreement and contained in Appendix B, attached hereto.

"It is further agreed that effective on the execution date of the 1981 Agreement, the general rules and regulations in effect on the effective date of this Agreement will be amended as provided in Appendix 'C' attached hereto, provided however, that the effective date of those rules and regulations included in Appendix 'C', attached hereto, will be stayed pending the resolution of their reasonableness through the grievance procedure contained in this Agreement. The parties agree to submit this matter directly to arbitration as provided in Article IV (E) of this Agreement as soon as possible."

"1981
CLASSIFICATION AND COMPENSATION PLAN

"The following monthly rates shall be effective January 1, 1981:

	<u>A</u>	<u>B</u>	<u>C</u>
"Detective	\$1,721	\$1,756	
Police Sergeant	1,721	1,756	
Traffic Officer	1,721	1,756	
Police Canine Specialist	1,674		
Police Officer	1,545	1,598	\$1,654

"Note: Those employees assigned to motorcycle duty shall receive an additional \$15.00 per month if they are assigned to such duty more than 50% of their work hours during the month.

"Step Procedure

"A Police Officer will remain in Step A until one (1) year of service is completed. He will then move to Step B. Upon completion of one (1) year in Step B, he will advance to Step C.

"An employee appointed or promoted to a higher classification will be placed in Step A of the new classification immediately upon promotion. After ninety (90) days he will advance to the maximum rate of the classification.

"An employee appointed or promoted to any position above the rank of Police Officer shall serve a six (6) month probationary period, during which time he may be returned to his previous position should his ability to handle the new work prove unsatisfactory.

"APPENDIX B

"(This appendix will contain the general rules and regulations that were contained in Appendix B of the 1980 Contract)

"APPENDIX C

"RULES OF CONDUCT

"II. ALL SWORN AND CIVILIAN MEMBERS OF THE DEPARTMENT, WHILE ON DUTY, AT ALL TIMES, SHALL:

"s. Not engage in conduct which would be demeaning to the Department or unbecoming of an officer thereof.

"III. ALL SWORN MEMBERS OF THE DEPARTMENT, AT ALL TIMES, WHILE ON DUTY, SHALL:

"f. Not publicly speak or divulge information to persons outside the Department, except the Mayor, on matters in which the Department is or may be involved in an investigatory capacity, trial, administrative hearing or disciplinary action, outside of the scope of labor negotiations, where such expression does not involve a matter of public concern or where such expression involves bickering or running disputes with superiors, or where expression is extremely disrespectful or grossly offensive. Further, such public speaking and divulging of information is prohibited where such public speaking and divulging of information:

"1. Will disrupt discipline and harmony in the Department;

- "2. Will breach a great need for confidentiality;
- "3. Might be difficult to confer due to a presumed greater access of facts by the speaker;
- "4. Will interfere with the proper performance of the duties of the speaker;
- "5. Relies on statements which are so unfounded that the speaker's basic capability to perform his duties is called into question; and
- "6. Will jeopardize a close, personal working relationship requiring personal loyalty and confidence."

V. FACTORS GIVEN WEIGHT.

The following is found in Section 111.77 (6) of the Wisconsin Statutes:

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

"(a) The lawful authority of the employer.

"(b) Stipulations of the parties.

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

"(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

"1. In public employment in comparable communities.

"2. In private employment in comparable communities.

"(e) The average consumer prices for goods and services, commonly known as the cost of living.

"(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

"(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

"(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

These factors will be applied to the issues where they are appropriate.

VI. **LAWFUL AUTHORITY.** There is no issue of the lawful authority of the Employer to meet either offer.

VII. **STIPULATIONS OF THE PARTIES.** This matter here relates to a contract between the parties for one year. All other matters are agreed to.

VIII. **THE INTERESTS AND WELFARE OF THE PUBLIC AND THE ABILITY OF THE UNIT OF GOVERNMENT TO PAY.** Several issues herein are related to the interests and welfare of the public, and this factor is applied hereafter in the discussion relating to those issues. However, special concern was expressed by the parties on the matter of the ability of the unit of government to meet the costs.

The City advanced the argument that although the offers come close to the same cost for 1981, yet the offers projected into 1982 would cost the City \$70,810 for its offer and \$164,945 for the Association offer. The City stated that its 1981 property taxes would come to \$9,595,168 in 1981, an 8.8% increase over 1980. Its projected increase in 1982 without any wage increases would come to \$10,265,232, a 7% increase, and its 1982 projected legal tax levy limit would be \$10,896,000, a 13.6% tax increase. The amount available for increases for wages in 1982 would be \$630,768. The projected cost of the 1981 Association request would take up \$94,000 of this sum, and to continue the COLA provisions would require \$268,000 more (City Ex. 17 A). The testimony was that the City had \$1,030,000 in its surplus account which had been drawn down from a previous \$1,780,000. The City is also contemplating building a new fire station and has floated an issue, the receipts of which have been reinvested and are bringing in interest above the cost of the issue. The City may also enact an ordinance to tax hotel room use, and may receive funds from cable television franchise.

The City contends that the Association wage offer would have a 1982 impact creating extreme economic problems for the City. The City expects a reduction of \$118,000 in federal revenues, and state funds are in a state of flux; but the sums expected may be only slightly more than those in 1981. A shortfall in 1981 would mean less revenues to meet the 1982 costs. The estimate of the City Comptroller is that since there will be only the \$630,768 for wage increases, the Association's offer would cost 15% of this sum. The City would find it impossible to contend with other employee wage requests.

Discussion. The arbitrator, from the information above, is of the opinion that the City has the ability to meet the costs of either offer. The instant matter deals not so much with the projected wage costs after the contract expires but with what the City can pay now. The City now can meet either offer. If in 1982 it has less funds available, it can in its wage settlements and operations meet that in various ways which are not necessary to explain here. The actual cost for 1981 is the factor to apply in determining ability to pay, and under this standard the City has the ability to pay.

IX. **WAGES - COMPARISON UNITS.**

The Association is making comparison with the Deputy Sheriffs of Kenosha County, with the plant guards at the American Motors Corporation Kenosha plant, and with the cities of Racine, West Allis, Wauwatosa, Waukesha, Janesville and Beloit. The City uses these cities and also adds the cities of Madison, Green Bay, Appleton, Eau Claire, Oshkosh, La Crosse, Sheboygan, and Fond du Lac. These cities plus the Kenosha Association list comprise the 15 largest cities of the state, excluding Milwaukee.

The following is derived from City Exhibit 7:

Table 1

POPULATION AND SIZE OF
POLICE BARGAINING UNITS OF COMPARABLE CITIES

15 Largest Cities Excluding Milwaukee
(1980 Population)

<u>City</u>	<u>1980 Population (1)</u>	<u>No. in Bargaining Unit *</u>
Madison	170,616	269
Green Bay	87,899	134
Racine	85,725	192
Kenosha	77,685	130
West Allis	63,982	117
Appleton	59,032	66
Eau Claire	51,509	63
Wauwatosa	51,308	80
Janesville	51,071	56
Waukesha	50,319	87
Oshkosh	49,678	81
La Crosse	48,347	77
Sheboygan	48,085	92
Fond du Lac	35,863	52
Beloit	35,207	58

(1) Source: 1980 Census of Population and Housing - Advance Reports. Issued March 1981, by the Bureau of the Census, U.S. Department of Commerce

* Includes Sergeants and Detectives even if excluded from bargaining unit

The Association is also referring to comparisons with the Town of Pleasant Prairie and the Village of Paddock Lake as to the rates paid for policing there.

Discussion. In a review of the list of cities, the Kenosha municipalities, Kenosha County, and the plant guards, the arbitrator believes that there are degrees of comparability found within the lists of comparables. The degrees of comparability ranging from most comparable to least comparable include these:

A. Most Comparable: Kenosha, Racine, West Allis, Wauwatosa and Waukesha. All these municipalities are in the southeastern Wisconsin region near to Kenosha. Although West Allis and Wauwatosa are under the substantial economic influence of the City of Milwaukee, they are smaller cities and this tends to reduce wage rates to offset the influence of Milwaukee.

B. The Association list of comparables. Janesville and Beloit are in the Kenosha region, but they are smaller.

C. The City's list of comparables. The conditions prevailing state-wide are of interest, but payments vary widely in state regions.

D. Comparison with Deputy Sheriffs. Even though the police and Sheriffs will be working in the same building, comparisons with other police rate higher.

E. Comparisons with townships and municipalities within Kenosha County. The application of Sheriffs' pay rates to two small units is significant, but has lesser status than city comparisons.

None of the comparisons offered will be ignored, but the more comparable groups will be given greater weight than the lesser comparable groups.

X. WAGES - OFFERS AND COSTS. The basic plan of the City offer is to raise wages 6% effective on 1/1/81 and to add COLA. The Association offer sets wages with a 5% increase effective 1/1/81, a 2% increase effective 7/1/81, and a 2% increase effective 12/31/81, and to add COLA. The following are the wage offers at the top step for various classifications and percentage increase.

Table II

TOP STEP MONTHLY WAGES FOR CLASSIFICATIONS UNDER THE FINAL OFFERS, 1981
BASE WAGES ONLY, COLA NOT INCLUDED.

Classification	1980 1/1	1981			City 1/1
		Union 1/1	Union 7/1	Union 12/31	
Detective) (1)					
Police Sergeant) (1)	1,574	1,740	1,773	1,806	1,756
Traffic Officer) (1)					
Police Canine Specialist (2)	1,496	1,658	1,690	1,721	1,674
Police Officer (3)	1,477	1,638	1,669	1,700	1,654

(1) After one year
(2) Hiring rate
(3) After two years

From Jt. Ex. 1 and offers

The following table gives information on top wages including a cost of living adjustment. The COLA is made on the first days of April, July, October and January and is equal to \$1.73 per month for each full 0.3 of a point change in the Consumer Price Index during a previous three month period. The amount is not to exceed \$20.76 per month, and payment is for actual hours of work and paid time off.

Table III

TOP STEP MONTHLY PATROLMAN RATES, 1980 AND ESTIMATED ACTUAL
AND AVERAGE RATES UNDER OFFERS, COLA INCLUDED

	1980	Union	1981	
			% Inc. Above \$1,560	% Inc. Above \$1,560
1/1	\$1,498	\$1,659	6.3	\$1,675
4/1	1,519	1,680	7.6	1,696
7/1	1,539	1,731	10.9	1,716
10/1	1,560	1,752	12.3	1,737
12/31		1,783	14.3	
Aver.	1,529	1,706	11.6	1,706

XI. WAGES - COMPARISONS WITH OTHER POLICE AND KENOSHA SHERIFFS.

A. Other Police

The following table, derived from City Exhibits 9 and 11 and Association Exhibits 12 and 12 A, lists comparative average rates for top patrolmen.

Table IV

COMPARATIVE 1981 AVERAGE AND MAXIMUM MONTHLY WAGE RATES,
TOP PATROLMEN WITH 5 YEARS SERVICE, IN SELECTED CITIES

<u>City</u>	<u>Average</u>	<u>% Inc. over 1980</u>	<u>Maximum</u>	<u>% Inc. over 1980 Average</u>
<u>Group A</u>				
Kenosha				
City	\$1706	11.6	\$1737	13.6
Union	1706	11.6	1783	16.6
Racine	1882	11.1	1962	15.8
West Allis	1794	10.6	1794	10.6
Wauwatosa	1757	11.0	1757	11.0
Waukesha	1657	10.0	1657	10.0
Average without Kenosha	\$1772		\$1792	
<u>Group B</u>				
Janesville	1687	10.2	1687	10.2
Beloit				
City Ex. 9 (5 yr. rate)	1628	10.5	1628	10.5
Assn. Ex. 12 (top rate)	1683		1683	
Average without Kenosha with Group A and City 9	1734		1747	
Average without Kenosha and with Group A and Assn. 12	1743		1757	
<u>Group C</u>				
Madison	1628	11.0	1652	12.6
Green Bay	1649	12.0	1674	13.7
Appleton	1559	9.25	1559	9.25
Oshkosh	1552	10.1	1567	11.2
La Crosse	1394	10.3	1394	10.3
Sheboygan	1500	9.77	1500	9.77
Eau Claire	1509	9.85	1572	14.4
Fond du Lac	1515	11.0	1515	11.0
Average of all of above without Kenosha	1622		1637	

Note: A COLA maximum is assumed for Kenosha. Eau Claire rates are from 7/1 to 6/30.

According to City Exhibit 11, in the 15 municipalities listed by the City as its comparable group, the top step patrolman had a ranking of 9th in wages in 1975. In 1980 the Kenosha rank was 5th and in 1981 under the actual earnings for Kenosha, the rank will be 4th. This exhibit reveals that in the group of municipalities of Kenosha, Racine, West Allis, Wauwatosa and Waukesha, the Kenosha rank went from 5th in 1975 to 4th in 1981, surpassing Waukesha. In the group of these latter cities and Beloit and Janesville, Kenosha went from 7th to 4th between 1975 and 1981.

The City contends it is most appropriate to use a patrolman at the 5th year of employment. The Association is using a top step patrolman at a thirteen year service average which brings the salary to \$20,593 annually, or an average monthly rate of \$1,716 (Assn. Ex. 14). The Sergeant Detective rate of the Association average annual rate under the Association method of calculation is \$21,817 as compared to the City estimate of \$21,696.

B. Comparing the Parties' Data.

The arbitrator in reviewing the exhibits of the parties as to wage rates paid in other municipalities had difficulty in reconciling the claims as to what was paid to the top patrol officers. The difficulty arose out of the parties not comparing police officers with the same length of service. The length of time it takes a police officer to reach the top step of a series of increments varies as to the municipalities. Thus in one case a police officer gets to the top step in two years and thereafter gets longevity (Kenosha). In another case the police officer must reach the 5th year before reaching the top of the schedule and thereafter attain longevity payments (West Allis). In other cases the salaries rise with length of service after a certain number of years, say 15 (Janesville).

With respect to the data on salaries, the Association tended to present the top rate after a number of years, plus COLA where it existed, whereas the City tended to take salaries at a five year service level. The following table shows the disparate character of the claims of the parties as to what is being paid:

Table V

ASSOCIATION AND CITY CONTENTIONS AS TO WAGES BEING PAID PER MONTH
TO TOP STEP POLICE OFFICERS IN SELECTED CITIES

<u>City</u>	<u>Association Claim</u>	<u>City Claim</u>
Racine (1)	\$1937	\$1882
West Allis (2)	1892	1794
Wauwatosa	1750	1757
Waukesha	1657	1657
Janesville (3)	1872	1687 (4)
Beloit (5)	1683	1628
Kenosha	1716 (6)	1706 (4)

- (1) Projecting full COLA at 1/12 of \$1770.
- (2) Includes 6 holidays at time and one half, 5 holidays at straight time.
- (3) 15 years service
- (4) 5 years service
- (5) 18 years service
- (6) 10 years service

The arbitrator reviewed exhibits furnished by the parties and derived this table as to costs for 10 year officers:

Table VI

ANNUAL SALARIES FOR POLICE OFFICERS OF 10 YEARS'
SERVICE IN SELECTED CITIES

Kenosha		<u>Annual</u>
+ \$10 longevity after 10 years		\$20,591
Waukesha		
+ \$20 longevity		20,124
Janesville		
Salaries		18,719
Salaries (5-2 schedule)		19,842
Beloit		19,756
West Allis		
Base	\$21,524	
Holiday pay	1,191	
Total		22,715

C. Total Costs of Compensation.

The City calculates the 1981 cost under its offer to be at \$3,739,233, an increase of 11.6%. The cost for the Association is set at \$3,739,694, or \$471 more, also a rise of 11.6%. However the City then goes on to assert that the 1981 offer contains a built in set of roll-up costs for 1982 for COLA, FICA, Employee and Employer Share of the Retirement Fund contribution, and health insurance amounting to \$70,810, and the Association offer has a roll-up cost of \$164,945. Thus the total costs must be considered as the amount of \$3,810,033 for the City's offer or an increase of 13.7%, and a cost of \$3,904,639 for the Association's offer, an increase of 16.5% (City Ex. 17).

D. Comparison with Kenosha Deputies.

According to Association Exhibit 4, Kenosha County Deputy Sheriffs made \$1,481.95 per month in 1980, and their COLA per month was \$267 which resulted in an annual amount of \$20,987.40. Sergeants' salaries similarly calculated received \$24,400 per year. The County is in arbitration with the Deputies on the 1981 contract and is offering a monthly base rate for top Deputies in 1981 of \$19,954 annually as compared to a rate of \$17,783 in 1980, or a 12.2% increase in base rate without COLA added.

The Chief of the Police of the Town of Pleasant Prairie states that the three officers on his staff are paid on the scale of the Deputy Sheriffs, but none are at the top of the scale. The Village of Twin Lakes in Kenosha County has contract with the County for two Deputy Sheriffs to patrol the Village for 16 hours.

The City states that the 1981 county salary assuming maximum COLA for Deputy Sheriffs will be \$22,541 or 10.1% higher than the City offer for Patrolmen in 1981, and the Association offer comes to \$22,669 or a difference of 10.7%. The City states that the percentage differences between the Deputies and the Kenosha Police was 9.4% in 1977, 10.1% in 1979, 10.9% in 1980. The Police and Sheriffs will be working in a new public safety building and will share some of the facilities such as communications, records, and fleet maintenance. The joint service area will be staffed by some civilians.

E. Comparison between Kenosha Police and Firefighters.

The following table is derived from City Exhibit 13:

Table VII

COMPARISON OF 1981 END OF YEAR DIFFERENCES BETWEEN SALARIES OF
FIREFIGHTERS AND POLICE IN SELECTED CITIES
"+" FAVORS POLICE

<u>Group A</u>		<u>Group C</u>	
Kenosha		Madison	+ 5
City	+30	Green Bay	+21
Assn.	+76	Appleton	+ 1
Racine	+65	Oshkosh	+47
West Allis	-	La Crosse	-
Wauwatosa (1)		Sheboygan (1)	
City	+53	City	+51
Union FF	-31	Union	+16
Waukesha (2)	-33	Eau Claire	+45
		Fond du Lac	+34
 <u>Group B</u>			
Janesville	+65		
Beloit	+38		

- (1) Offers
- (2) 1980 wages

F. Comparison with Private Sector Guards.

The Association has made a comparison between Kenosha Police and guards at the American Motors Corporation plant. Guards at this plant work around the clock for seven days. The 1981 rate to November 2, 1981, was \$9.24. On November 2, 1981, the guards will have received an "Improvement Factor" increase of 28 cents. In addition they receive a 27 cents per hour bonus for the seven day shift. This adds to \$9.79 per hour, or \$20,363 for 2080 hours, or \$1,697 per month average.

G. The Mayor of the City in a campaign for office before he became Mayor stated on November 7, 1978, to the Kenosha Professional Policemen's Association in answer to a question as to what is a fair base wage for a city police officer for 1980 the following among other things: "A fair wage base for the KPD is one comparable to the average of local wages and that of other police departments in the surrounding area." (Assn. 5). The Association is advancing this statement as an argument for its offer.

H. Settlements with other employee groups.

The following table shows, in summary, settlements effected by the City with other employees:

Table VIII

SUMMARY OF CITY SETTLEMENTS FOR 1981

Unit	Base	COLA
AFSCME Local 71	1/1/81 - 4.5%	Yes
Amalgamated Transit Local 998	1/1/81 - approx. 4.4%	Yes
	7/1/81 - " 0.5%	
Crossing guards	1/1/81 - 11%	No
Non-represented employees	1/1/81 - 11%	No
Fire	1/1/81 - 5%	Yes
	7/1/81 - 1%	
Police		
City	1/1/81 - 6%	Yes
Assn.	1/1/81 - 5%	Yes
	7/1/81 - 2%	
	12/31/81 - 2%	

I. Summary of Association position on Wages.

The Association in support of the offer lays stress on the fact that Kenosha Police Officers will be sharing the same facilities and enforcing the same laws as Deputy Sheriffs. Therefore the Police should be paid the same or a similar wage. The Association contends that its offer is a gradual movement toward equality. The Association notes that the Deputies' salary is in arbitration and that there is the prospect of Deputies getting at a minimum the sum of \$23,010 a year. There are only minor disparities in fringes between Police Officers and Deputies and thus the great disparity is not justified.

The Association also notes that Police Officers in the Town of Pleasant Prairie and the Village of Paddock Lake are either getting Deputies' pay or are actually Deputies.

The Association holds that the six municipalities in its lists are the only ones that it makes sense to compare, and the Association points out that the Kenosha offers are lowest.

As to comparison with other cities, the Association argues that since it is admitted that the CPI has risen to a 15.1% increase, it is illogical to compare the offer of the City to any other offer. However, taking the cities in southeastern Wisconsin, the Association contends that Kenosha ranks last, as shown in Association Exhibits 12, 14, and 15. All the other cities have longevity pay as good as in Kenosha. The cost of living allowances in Janesville and Racine are better than those in Kenosha with its cap of \$523; and in Beloit there is a step increase which would allow the top scale officer to go to an annual salary of \$22,218.94. The Association holds that comparisons with out-state cities are not valid.

The Association interprets the City's exhibits on relationship to Firefighters' salaries as an effort of the City to argue that there should be parity, but the City itself broke this parity. The Association is arguing that the parity should be between Police Officers and Deputies.

The Association also holds that its offer is within the range of other settlements offered by the City. While non-represented employees may have obtained a 10% increase, yet this group includes persons who have higher base salaries.

The Association, commenting on the comparison made by the City to the relationship between Police Officers and Deputy Sheriffs, says that it is significant that the City left out the 1978 comparison, because it was in this year that the Kenosha Deputies secured an uncapped COLA which put them ahead of the Kenosha Police Officers.

The Association notes that the Mayor in his campaign for Mayor supported the idea of a wage base comparable to that of the average of local wages in other police departments in the surrounding area. The Association also holds that the evidence in the hearing shows that plant guards at American Motors get a rate of \$10.90 an hour or \$22,672 a year.

J. Summary of the City's position on Wages.

The City asserts that its list of 15 cities in the state is the more appropriate one. The City's list shows what is happening in the state. The Association list is influenced by the City of Milwaukee experience. In a 1980 proceeding involving the City and its Firefighters, Arbitrator Stern favored the City list. The purpose of comparables is to show trends rather than identical wages. The City maintains that its list of comparables shows that its offer fits the patterns throughout the state. Further to use a smaller list allows distortions to enter, arising from unusual situations. However, using either the City or Association comparables, the City's offer is the more reasonable one.

The City holds that the Association offer amounts to a dispute over what should be paid after the contract expires, and this is inappropriate for this dispute. As far as the Association offer, the problem is what should be paid in 1982. The City offer relates to what should be paid in 1981. The City offer produces a wage rate 11.3% higher on December 31, 1981, higher than the rate of December 31, 1980. The increase in annual earnings between 1980 and 1981 would be 11.6%. The December 31, 1981, wage proposed by the Association in 1981 is 14.3% higher than the year before and would produce a future liability for the City of 2.7% over the average annual earnings.

The City holds that the method used to formulate the Association offer is totally inappropriate, and under this method an absurd offer could be made. The City holds also that the trend in arbitration is to make comparisons on annual earnings.

The City holds that its offer raises the level of wages of Kenosha patrolmen in comparison with its list of comparable communities. The City points to City Exhibit 11 as proof of this contention and holds that under its offer for 1981, Kenosha police would rank 4th among 15 communities when they had ranked 9th in 1975. Further their earnings would be \$1,007 above the average earnings. The annual earnings since 1975 for Kenosha police rose by 72.2%. No other community was close. The City says that using the Association's own list, Kenosha moved up in its relative position.

The City also argues that its offer retains the historical relationship with other employee groups. The City says that its offer to the Police equals its offer to Firefighters, exceeds its offer to other City employees, and retains the relative position with respect to Deputies. Although the Deputies receive a higher wage, the Police fringe benefits are better. To grant the Association its offer would be to destroy the historical relationship, and this would be especially true in relation to the Firefighters.

K. Discussion. On the basis of the foregoing evidence and positions of the parties, the arbitrator reaches the following conclusions:

1. The primary relationship to consider here is the relationship between police services in the most comparable municipalities. While the evidence in relation to what is happening statewide, especially as to trends, must be given weight, the major weight goes to the conditions in the most comparable municipalities. As noted before, in the opinion of the arbitrator the most comparable group of communities are Racine, West Allis, Waukesha, Wauwatosa and Kenosha. The next most comparable group would include these cities plus those of Janesville and Beloit.

2. The most important weight in comparing salaries should be that of what annual payment the unit of government is expected to make. Comparing rates, especially where COLA is a factor, means less to the taxpayer than what the taxpayer is finally expected to pay for services rendered. Thus this arbitrator is using average annual salary as a principal factor in comparison.

3. Owing to the disparate methods of determining base salary as described earlier, the arbitrator is using both the average base wages plus longevity of a top step Police Officer with 5 years service and a top step Police Officer with 10 years service. On the basis of Table IV and the paragraph following it, the arbitrator finds that Kenosha improved its relationship with both the most comparable group of cities and the secondary group between 1975 and 1981 for a top step 5-year Police Officer. On the basis of Table VI, the arbitrator concludes that the same situation exists for a top step 10-year officer.

4. The arbitrator therefore does not find a need for the City to meet a situation of "catch-up", ~~as when~~ its salaries have lagged and it has dropped its rank in relationship to other comparable cities.

5. The arbitrator continues to regard comparison between municipal Police and Sheriff's Deputies as having a usefulness for comparison, but this standard must be secondary to the relationship between Police and Police as to what constitutes like services.

6. The arbitrator finds that the City offer to the Police does not put them at a disadvantage to other groups of City employees; however the arbitrator does not find the City argument weighty that the relationship of something like parity between the Police and Firefighters should not be further disturbed, since the break in parity has already been made.

7. The payment of wages to Police in the Town of Pleasant Prairie on the scale of Sheriff's Deputies is a factor in favor of the Association offer, but it is not common enough in similar small Kenosha County units to use as a standard of comparison.

8. The presence of the City Police in the same building as the County's Deputy Sheriffs with a sharing of facilities for work involving the public safety has been considered by the arbitrator. It is a factor favoring the Association offer; but this factor is held not to be determining here. Rather the factor of like pay for like work for like positions among comparable municipalities is determining. Similarly the Mayor's comments when he was a candidate about the level of Police salaries is also subordinate to the statutory criterion of comparability.

9. The arbitrator is of the opinion that the third step increase in the Association offer is so unusual as to be a factor in itself against the acceptance of the Association offer. It could be considered only if a serious case of catch-up were shown. Such a case not being demonstrated. The character of a raise proposed on the last day of an agreement does not meet the standard of comparability as to other offers or compensation systems.

10. With respect to the payment of plant guards, their wages and Kenosha Police Officers' salaries are very close in monthly sums as the arbitrator calculates them. The arbitrator does not concur in the calculation made by the Association as to what the annual amount is; however, the fact that the plant guards with limited activities approach the pay of City Police is a factor in favor of the Association offer.

11. Weighing all of the above together, the arbitrator holds that the greater weight lies with the City offer on base wages, because it compares more nearly to statutory criterion for comparability than does the Association offer, especially with respect to the salaries of Police Officers in comparable cities.

XII. COST OF LIVING. The Association presented as an exhibit a letter from the Mayor to the taxpayers of Kenosha on the tax situation in the City. The letter is undated. It reports that the annual cost of living at the time is 15.1%. City Exhibit 11 reported that the June index for the CPI-W was 271.4, which was a 9.5% rise above June 1980 and a 69% increase over the period from June 1975. The change in the index from January 1980 to January 1981 was reported as 11.7%. City Exhibit 28 shows that the average change in the CPI-W for the year 1980 over 1979 was 13.5%. The City in its Exhibit 29 argues that the Implicit Price Deflator standard should be used to determine changes in the cost of living. This comes to a change of 10.2% for 1980. City Exhibit 11 indicates that between 1978 and 1981 wages of Police have gone up 72% between June 1975 and June 1981. The City notes that between June 1980 and June 1981 the CPI went up 9.5%.

The City argues from these data that its offer exceeds the price index changes both in the 1980-81 and the 1975-81 periods, and that its offer appears much better in light of the Implicit Price Deflator. The Association argues that the City offer does not keep pace with the cost of living changes.

Discussion. The arbitrator believes that the cost of living standard to be used here is the average change of 1981 over 1980. The reason for this is that the agreement is one which will have commenced in effect on January 1, 1981. The average change for the year of 1981 over 1980 was 13.5%. Currently during the pendency of this matter the rate shows a 10% increase between October 1980 and October 1981 for the CPI-W and is rising at a rate of 11% annually. The percentage cost of the annual increases in base wages has been given earlier. The overall cost of compensation offered by the City is 13.7% as in the Association offer also. The question then is whether the CPI applied to base wages only is to be applied. The arbitrator is of the opinion that where the comparisons can be made meaningfully, the overall compensation cost of the unit of government is the standard to apply against the change in the CPI since this marks the actual effort of the unit of government in costs. Under this concept, the arbitrator finds that the City offer meets the change in the CPI.

XIII. OVERALL COMPENSATION - BENEFITS. The City presented certain exhibits dealing with benefits to be found among its list of comparables for employees with 12.5 years of service. For reasons advanced earlier, the arbitrator abstracted from this information the benefits found in what he regards as the most comparable units, Groups A and B. The following are summaries of the arbitrator's findings.

Retirement (WRF). Kenosha pays 6% as do six other southeastern Wisconsin units.

Longevity. Kenosha and West Allis with a \$10 a month longevity are the lowest among the seven units.

Health Insurance. Kenosha pays the second highest premium, Racine being first.

Annual Uniform Replacement. Kenosha provides "full replacement". Beloit provides the largest cash allowance, \$300. Janesville provides full cleaning allowance, West Allis provides a \$280 allowance, and Kenosha a \$180 allowance. The others are less or provide no allowance.

Shift Differential. Kenosha provides \$15 a month for second shift and \$25 a month for third shift work. No other of the six other municipalities provides any shift differential.

Vacations. Kenosha lists 21 days, more than any of the comparable municipalities.

Holidays. Kenosha provides 11 of which six are included in the 5-2/4-2 work schedule and five are given time off. The number of days afforded is high, along with West Allis and Wauwatosa. The other municipalities pay in varying ways, either all in lieu of time off or all days given in time off, or some paid only if the day is worked.

Education Incentive Pay. Kenosha is one of three municipalities offering education incentive pay.

Sick Leave. Kenosha offers sick leaves as needed, similar to Waukesha. Other municipalities offer 12 days per year with varying maximum accumulations up to 156 days.

The Association in its brief notes that the City's representation that it provides 11 holidays should also include emphasis on the fact that six of those are in the 5-2/4-2 workweek, and further, the County employees are paid for five casual days if they are not used during the year. The City holds that the overall benefits it offers its Police Officers are extremely comparable to that received by Police Officers elsewhere.

Discussion. With respect to overall compensation including wages and the value of benefits, the parties did not furnish evidence in this regard, except for the City's comparison of costs last year and this year within Kenosha alone. Thus a comparison of the dollar value of benefits paid cannot be made by the arbitrator. However, on the basis of evidence for fringe benefits alone, independent of allowance for plain clothes officers, the City meets the standard of comparability with the most comparable municipalities.

XIV. CLOTHING ALLOWANCE. City Exhibit 30 shows that the City currently offers \$115 for annual clothing allowance for plain clothes personnel. On the basis both of the Association list of comparables, this is among the lower rates. This exhibit also shows that the City has a \$180 annual cleaning allowance as compared to \$280 for West Allis. There is no cleaning allowance for others on the Association list of municipalities and none for all of the rest on the City list except for Appleton.

The Association notes that the clothing allowance has not increased since 1975 although the CPI is up 78%. It also notes that the City is not giving a comparable offer, using the City list of comparables.

The City combines the item of clothing allowance and cleaning allowance and notes that this total of \$295 is exceeded only by a combined total in West Allis or Beloit. Taking the City's list of comparables, the present combination in Kenosha exceeds that of 10 of 14 communities. It is the contention of the City that while the CPI increase from 1975 to 1981 may have been greater, the increase in apparel prices and upkeep during that time was only 30%. The cleaning allowance was started in 1978 and raised from \$10 to \$15 a month in 1980. Taken together with the clothing allowance, this produces a 257% increase in clothing related allowances for the officers.

Discussion. A review of the contract for 1980 between the parties distinctly differentiates between clothing replacement (Section 1) and cleaning allowance (Section 3). The City will pay in full clothing replacement for all uniformed personnel. The judgment can be made that this replacement cost also has gone up in recent years, and therefore the plain clothes officers whose provision is also found in Section 1 would be entitled to the like treatment of a larger allowance. Also both types of officers are covered in the \$15 per month dry cleaning allowance. Lacking information to the contrary that uniformed officers' clothing replacement costs have not gone up, it becomes a matter of equity to them to make some provision for increasing the clothing allowance of the plain clothes officers. On the basis of comparability within the department, the Association offer is more reasonable.

XV. GRIEVANCE PROCEDURE. The City is proposing to change Article IV of the agreement which now provides that grievances which are appealable to the Mayor instead of the Fire and Police Commission may be heard by the Mayor or his designee. The Association desires to retain the old language. Currently the City agreements with AFSCME Local 71, Transit Local 998, and the Building Inspectors provide for hearings by the Mayor or his "designate". However the Firefighters contract provides that the Mayor is to hear appeals (City Exs. 31-34 incl.). Taking the Association list of comparables, the following is the pattern: Racine, Chief of Police or his designee; West Allis, Chief of Police; Wauwatosa, City Administrator; Janesville, City Manager or his representative; Waukesha, Personnel Committee of Common Council; and Beloit, City Manager.

The Association holds that the provision should not be changed. Under Section 62.09 (12), Wis. Stats., the control of the police force is in the hands of the Mayor. No justifiable reason has been shown to make the change, and the Mayor is not burdened with additional work. The City is seeking to alleviate an elected officer of duties for which he is responsible to the electorate.

The City says its proposal is made primarily in the interests of expediency and efficiency. The Personnel Supervisor testified that the Mayor is a very busy person with a heavy workload as Mayor of the fifth

largest city of the state. He has difficulty in scheduling grievance meetings within the time limits prescribed in the contract, and the Association has objected to this publicly. The Mayor has designated in other grievances that the City Administrator or Personnel Director handle the grievances.

Discussion. The arbitrator applies here the criterion of the interests and welfare of the public. The expediting of grievance handling is a good feature in labor disputes. The testimony is that the Mayor has been having difficulty in hearing grievances at the fourth step in a timely fashion. Thus it would be in the interest of grievance resolution to have the Mayor have the option of having a designee hear a grievance. Also on the basis of comparability within the City and in comparable municipalities, the evidence is that persons other than mayors handle the grievances at the last step before arbitration. A factor in the Association's favor is that Firefighters can have their grievances heard by the Mayor without his option to appoint a designee. However, weighing the public interest against parity of practice between the public safety services, the arbitrator gives greater weight to the matter of public interest, and therefore holds that the City offer more nearly meets the statutory criterion of public interest.

XVI. ISSUE ON REGULATIONS. The Association is proposing the following:

"Article I - Management Rights. Revise Subsection 4 to read:

"4. This Agreement shall be subject and subordinate in all respects, wherever the same may be applicable herein, to the general rules and regulations of the Department of Police, Kenosha, Wisconsin, all of which are in effect on the effective date of this Agreement and as contained in Appendix B of the 1980 contract and attached hereto."

The City proposes to revise Subsection 4 to read:

"4. This Agreement shall be subject and subordinate in all respects, wherever the same may be applicable herein, to the general rules and regulations of the Department of Police, Kenosha, Wisconsin, all of which are in effect on the effective date of this Agreement and contained in Appendix B, attached hereto.

"It is further agreed that effective on the execution date of the 1981 Agreement, the general rules and regulations in effect on the effective date of this Agreement will be amended as provided in Appendix 'C' attached hereto, provided however, that the effective date of those rules and regulations included in Appendix 'C', attached hereto, will be stayed pending the resolution of their reasonableness through the grievance procedure contained in this Agreement. The parties agree to subject this matter directly to arbitration as provided in Article IV 'B' of this Agreement as soon as possible."

The rules of conduct referred to are these:

RULES OF CONDUCT

II. ALL SWORN AND CIVILIAN MEMBERS OF THE DEPARTMENT, WHILE ON DUTY, AT ALL TIMES, SHALL:

- s. Not engage in conduct which would be demeaning to the Department or unbecoming of an officer thereof.

III. ALL SWORN MEMBERS OF THE DEPARTMENT, AT ALL TIMES, WHILE ON DUTY, SHALL:

f. Not publicly speak or divulge information to persons outside the Department, except the Mayor, on matters in which the Department is or may be involved in an investigatory capacity, trial, administrative hearing or disciplinary action, outside of the scope of labor negotiations, where such expression does not involve a matter of public concern or where such expression involves bickering or running disputes with superiors, or where expression is extremely disrespectful or grossly offensive. Further, such public speaking and divulging of information is prohibited where such public speaking and divulging of information:

1. Will disrupt discipline and harmony in the Department;
2. Will breach a great need for confidentiality;
3. Might be difficult to confer due to a presumed greater access of facts by the speaker;
4. Will interfere with the proper performance of the duties of the speaker;
5. Relies on statements which are so unfounded that the speaker's basic capability to perform his duties is called into question; and
6. Will jeopardize a close, personal working relationship requiring personal loyalty and confidence.

The City presented documents relating to the recent history of efforts of the parties to negotiate rules. In the 1975-76 Agreement, the Agreement was subject and subordinate in all respects where applicable to the general rules and regulations of the Department of Police which were in effect at the time of the execution of the contract. On January 26, 1978, the then Chief of Police submitted some rules of conduct to replace rules in existence since 1967. This was grieved by a Police Officer on March 6, 1978, as containing hundreds of violations. The Chief wrote to the grievant on June 16, 1978, asking the Board of the Association to review the rules. The attorney for the Association replied that the Association would meet with the Common Council negotiating committee to commence negotiations modifying previous agreements and held that the Chief was unilaterally attempting to make changes after the contract had been concluded.

There was subsequent communication between the parties. On October 3, 1978, the Association wrote the Chief and said it understood that under the terms of the 1978-79 Agreement there would be no changes in the rules as they stood on January 1, 1978, and this was accepted by the Association. The Association wanted to know whether the proposed changes were a formal bid to reopen the negotiations or an abdication of them. This was the situation between the parties until 1980 when the parties agreed to a set of rules that included the above rules in dispute here, except that the rules in dispute here were to be subject to arbitration before they could be implemented. The parties met during 1980 in an effort to work out an agreement before arbitration but failed to conclude the matter. The City therefore is including the same rules and the same terms as in the 1980 Agreement, namely that the proposed rules would not go into effect without arbitration.

The Association position is that the proposed Rule II, s, alone is unconstitutionally vague, and cites Bence V. Breier, 501 F. 2nd 1185 (1974), as the basis for this argument. It also contends that the Rule III, f, is unintelligible on its face. The City protests the citing of Bence on the ground that this decision occurred in 1974, and yet the Association agreed to submit the rule to arbitration in 1980. The City further says that it has a difficult time in getting rules changed when in comparable cities the large majority have the right to make rules without contractual restriction, or to make rules subject only to reasonableness or advance notice. (City 48).

Discussion. The essence of the issue here is whether a matter should be included in the agreement between the parties to be submitted to arbitration which the parties included in the last agreement for submission to arbitration. The Association has other thoughts now, and says the matter should not be submitted to arbitration, because the proposal for the change in rules is patently unconstitutionally vague. The City notes that the arbitrator is not being asked to judge the merits of the difference but merely to judge whether the matter should go to arbitration. The City also says that the Association has no valid reason now to change its mind since it was aware of the Bence decision on which the Association relied before 1980 when the Association agreed to submit the rules to arbitration.

The arbitrator in making a judgment here believes he cannot avoid looking at the merits of the matter as presented to him in this arbitration. The Association is saying that on the face of the matter the rule changes are unconstitutionally vague, and that one section is not intelligible on its face. The arbitrator believes that these arguments have merit, and the proposed rule as written would have difficulty of enforcement. In the interests of the public, the effort spent by the parties to further arbitrate the rule would not be justified in the opinion of this arbitrator. The weight of the issue here goes to the Association.

XVII. SUMMARY. The following summarizes the opinions and conclusions of the arbitrator:

1. There is no issue of the lawful authority of the Employer to meet either offer.

2. All other matters in the one year agreement between the parties are stipulated to.

3. The City has the ability to meet either offer.

4. On the matter of comparable units of government, the arbitrator finds that the most comparable units of government in this matter are Racine, Kenosha, Wauwatosa, West Allis, and Waukesha, as being in relatively close geographical proximity and of relatively similar size; then this list with Janesville and Beloit added; then the City list; then comparisons with Sheriff's Deputies in Kenosha, then comparisons with the police conditions in smaller Kenosha units of government.

5. Though the task of comparison has been made difficult by the parties using different data basis with respect to years of service and as to what is included in the base such as longevity and holiday pay, the finding is that the greater weight lies with the City offer on base wages. This offer compares more nearly to the statutory criterion for comparability than does the Association offer. This is especially true with respect to the salaries of Police Officers in comparable cities, since the Kenosha position has improved in relationship to these cities.

6. The City offer in total compensation meets the change in the CPI-W for the period 1980 to 1981 which is the proper standard to use since the agreement was supposed to have started in January 1981.

7. The City's overall system of benefits meets the standard of comparability with other comparable units of government.

8. The Association offer on clothing allowance for plain clothes Police Officers meets the test of comparability with respect to uniformed Police Officers within the Kenosha Department.

9. Using the criterion of public interest, it is held that the public interest is served best and the interests of the parties met if the Mayor can have a designee handle fourth step grievances. The weight of this issue falls to the City.

10. On the issue of including a change of regulations in the agreement for subsequent arbitration, the weight of the issue falls to the Association on the grounds that the City proposal has serious defects on its face, and the interests of the public would not be served by submitting the issue to arbitration.

11. The most significant factors here in the opinion of the arbitrator are comparability of salaries and benefits, cost of living changes, and proposed change in rules. On the first three issues the City offer more nearly conforms to the statutory guidelines, while the Association offer more nearly conforms on the last item. The arbitrator holds that the first three issues when weighed against the latter issue are determinative and that therefore the award should go to the City offer.

XVIII. AWARD. The 1981 Agreement between the Kenosha Professional Police-men's Association and the City of Kenosha should contain the City offer.

Frank P. Zeidler

FRANK P. ZEIDLER
ARBITRATOR

DATE November 5, 1981