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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ARBITRATOR

In the Matter of the Petition	:	
of the	:	
	:	
CITY OF KENOSHA (Police Department)	:	
	:	
For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of	:	AWARD AND OPINION
	:	
	:	
KENOSHA PROFESSIONAL POLICEMEN'S ASSOCIATION	:	

Case No. XCII, No. 32551, MIA-828
Decision No. 21380-C

Hearing Date December 5, 1984
January 2, 1985

Appearances:

For the City Lindner, Honzik, Marsack,
Hayman & Walsh, S.C.
Attorneys at Law, by
MR. ROGER E. WALSH

For the Union Joling, Rizzo, Willems,
Oleniewski, Stern &
Burroughs, S. C.,
Attorneys at Law, by
MR. JOHN L. CAVIALE and
MR. WALTER W. STERN

Arbitrator MR. ROBERT J. MUELLER

Date of Award July 1, 1985

BACKGROUND

The Employer's brief concisely and accurately details the background events which led up to the hearing in this case. Such account is as follows:

"This is an interest arbitration proceeding pursuant to Section 111.77, Wisconsin Statutes. The Petition was filed by the City on December 7, 1983. Daniel J. Nielsen, the Investigator appointed by the WERC, met with the parties on December 12, 1983, December 21, 1983, and January 18, 1984, in an effort to mediate the dispute. This effort was unsuccessful and the parties filed their Final Offers on January 18, 1984. On January 31, 1984, Nielsen issued his Notice of Close of Investigation and Advice to the Commission.

"On February 7, 1984, the WERC issued its Findings of Fact, Conclusions of Law, Certification of Result of Investigation and Order Requiring Arbitration, and submitted a panel of five arbitrators from which the parties were to select the arbitrator

to issue the award. The parties selected Robert J. Mueller as the Arbitrator and the WERC issued its Order Appointing Arbitrator on February 27, 1984.

"The parties thereafter scheduled a hearing on the Arbitration Petition before Arbitrator Mueller on May 15, 1984, and the hearing commenced on that date. During the hearing, Arbitrator Mueller attempted to mediate the dispute and during that mediation effort the parties agreed to take a tentative agreement back to their respective principals for ratification. Arbitrator Mueller advised the WERC on May 17, 1984, by a copy of his Report and Fee Statement, that the impasse between the parties had been resolved during the hearing and on May 24, 1984, the WERC issued an Order setting aside the Order Appointing Arbitrator and dismissing the Petition for Final and Binding Interest Arbitration.

"On June 22, 1984, the City of Kenosha wrote the WERC advising it that the City was informed by the Kenosha Professional Policemen's Association that its membership had rejected the tentative settlement reached at the May 15, 1984, hearing and requesting that the WERC's May 24, 1984, Order Dismissing the Petition be rescinded and that the matter be reopened for further proceedings pursuant to Section 111.77, Wisconsin Statutes. The parties, by their attorneys, stipulated:

'that the arbitration proceedings be sent back to Arbitrator Robert Mueller. Apparently, a hearing was commenced prior to the dismissal of this action, and the parties have agreed that nothing that transpired at the prior hearing would be binding on them at the new hearing. That is, both parties will have a fresh start at this hearing, and it will be a trial de novo.

'Please issue the appropriate order reinstating the case and appointing Robert Mueller as arbitrator.' (July 13, 1984 letter to Peter Davis from John Caviale)

and on July 24, 1984, the WERC issued its Order rescinding its May 24, 1984, Order and authorizing Arbitrator Robert J. Mueller to proceed as Arbitrator in this case.

"On July 25, 1984, the hearing was initially scheduled for October 16 and 17, 1984, but at the request of Counsel for the Association, the hearing was rescheduled for December 5 and 6, 1984. The first day of hearing did occur on December 5, 1984, and the second day, at the request of Counsel for the City, was rescheduled for January 2, 1985. The second, and final, day of hearing did occur on January 2, 1985."

FINAL OFFERS

The final offers of the parties raise five issues that must be resolved. They are:

A. WAGES

ASSOCIATION OFFER:

For the year 1984, all classification base rates after addition of the 1983 Cost of Living fold-in to the 1983 base rates shall be increased an additional 1.7%.

For the year 1985, all classification base rates after addition of the 1984 Cost of Living fold-in to the 1984 base rates shall be increased an additional three percent (3%).

NOTE: The wage rates stated herein can be stated in dollar amounts after the fold-in of the Cost of Living for 1983 has been determined.

The COLA payments are to be made as provided in Article XVI.

CITY OFFER:

"APPENDIX A
CLASSIFICATION AND COMPENSATION PLAN

A. The following monthly rates shall be effective January 1, 1984:

	<u>A</u>	<u>B</u>	<u>C</u>
Detective	2,064	2,100	
Police Sergeant	2,064	2,100	
Traffic Officer	2,064	2,100	
Police Canine Specialist	2,015		
Police Officer	1,880	1,936	1,994

(The above rates are the ones in effect as of December 31, 1983, after inclusion of the 1983 COLA payments pursuant to Article XVI, Section G. The City's Offer does not provide any general wage increase in either 1984 or 1985.)

Added Note: Effective January 1, 1985, all Detective, Sergeant and Traffic Officer rates in effect as of December 31, 1984, pursuant to Article XVI, G., shall be increased by \$15.00 per month."

"MEMORANDUM OF UNDERSTANDING

In the event of the quarterly cost of living adjustments to be granted in 1984 (i.e., effective January 1, 1984, April 1, 1984, July 1, 1984, and October 1, 1984) pursuant to the formula contained in Article XVI of the 1984-1985 Agreement do not equal \$20.76 per month, the City agrees to pay the full \$20.76 per month adjustment for each such quarter in 1984, and such full amount will, pursuant to Article XVI, Paragraph G, be made part of the base wage or salary effective December 31, 1984."

(For 1985, COLA payments are to be made as provided in Article XVI.)

B. HEALTH INSURANCE BENEFITS.

ASSOCIATION OFFER:

Article XIII, Section 2 is to remain as in the prior Contract which read as follows:

"Section 2. The benefits under the comprehensive hospital-surgical-medical policy to be provided to each employee shall not be less than that of the coverage in effect for 1977."

CITY OFFER:

Revise Article XIII, Section 2 to read:

"Section 2. The benefits under the comprehensive hospital-surgical-medical policy to be provided to each employee shall not be less than that of the coverage in effect for 1977, except for those changes listed in Appendix D, attached hereto."

"APPENDIX D

Health Insurance Coverage changes to be effective not earlier than January 1, 1984.

- I. Increase the \$25.00 deductible in Part VI, Section 10.02 of the Benefit booklet to \$100.00. Section 10.02 will then read:

"10.02--Deductible. The first \$100 of the cost of the following services shall be the responsibility of the subscriber. This deductible amount applies to each participant for each illness and must be satisfied within a consecutive 30-day period. The \$100 may include any combination of Major Illness expense items as listed below. Any difference in charges between the contract's room allowance and occupancy of a private room cannot be credited toward the major illness deductible."

(Also revise any reference to this deductible in any other sections, such as 10.03 and 10.04, from \$25.00 to \$100.00).

2. Hospice Care.
3. A pre-existing condition limitation clause of 180 days for all new hires after January 1, 1984.
4. (Note: This inclusion and continuation of the following coverage change is at the option of the City).

Mandatory second opinion on WPS's specified list of elective surgeries (plan pays for second opinion). This list shall include, but not be limited to, the following:

- a) Surgery of the knee;
- b) Surgery of the back;
- c) Tonsillectomy;
- d) D & C's;
- e) Removal of gall bladder;
- f) Coronary bypass;
- g) Hysterectomy;
- h) Bunionectomy;
- i) Gastric bypass.

C. HEALTH INSURANCE PREMIUM PAYMENTS.

ASSOCIATION OFFER:

Revise Article XIII, Section 1 to read:

"Section 1. During 1984 and 1985 the City shall pay to an insurance carrier to be selected by the City all costs for a comprehensive hospital-surgical medical coverage."

CITY OFFER:

Article XIII - Revise Sections 1 and 2 to read:

"Section 1. During 1984, the City shall pay to an insurance carrier to be selected by the City, up to \$134.70 per month for a single contract and up to \$336.76 per month for a family contract for a comprehensive hospital-surgical-medical coverage. (The January rates are \$136.72-single and \$341.81-family.) (These rates represent the City's maximum liability rates plus the administrative costs.) Effective January 1, 1985, the City shall pay to an insurance carrier to be selected by the City, up to that amount per month for a single and family contract which represents the City's maximum liability rates plus the administrative costs for a comprehensive hospital-surgical-medical coverage. As soon as the rates for 1985 are disclosed, the City will send written notification thereof to the Association and this provision will be automatically amended to specifically incorporate those new rates."

D. BENEFICIARY PAY.

ASSOCIATION OFFER:

Article XXI - Beneficiary's Pay, Page 31, Line 17, delete the word "killed," and in its place add the word "died" so that the first sentence reads:

"The designated beneficiary or estate of any employee died in the line of duty shall receive a lump sum equivalent to one (1) year's regular pay of such deceased employee's pay in addition to any and all compensation to which his estate may be otherwise entitled."

CITY OFFER:

No change from the prior Contract. Retain "killed" instead of "died."

E. ILLNESS IN THE FAMILY.

ASSOCIATION OFFER:

Retain the provision of Article V, Section 5 of the prior Contract, which reads:

"Section 5. Illness in the Family. Illness in the immediate family shall constitute a valid reason for immediate leave of up to three (3) days per illness. The employee shall notify his immediate supervisor of the situation and the approximate time of return to work."

CITY OFFER:

Revise Article V, Section 5 to read:

"Section 5. Illness in the Family. Illness in the immediate family shall constitute a valid reason for immediate leave of up to three (3) days per illness, under the following conditions:

- a) A member of the immediate family is ill and it is required that the employee be present to care for the member.
- b) A member of the immediate family is ill and it is required that the employee be present to care for another member of the immediate family who lives in the same household as the ill member, e.g.,:
 - a. Spouse is ill and the employee's presence is required to care for the welfare and safety of the children.

(Note: This paragraph will also apply if an employee's ex-spouse is ill and it is required for the employee to be present to care for the employee's child who lives in the same household as the ex-spouse.)

- c) A member of the immediate family is undergoing major surgery or high risk examinations or treatments.
- d) A member of the immediate family is seriously ill and the attending physician has notified the immediate family to be in attendance.

As used in this section, the term 'immediate family' shall mean husband, wife, child, step-child, parent, mother-in-law, father-in-law, brother or sister of the employee. A member of the immediate family does not have to reside in the same household except as indicated in paragraph (b) above. The employee shall notify his immediate supervisor of the situation and the approximate time of return to work."

ASSOCIATION POSITION

In its brief the Union stated,

"There are two basic issues in dispute between the parties:

1. Wages and cost of living allowance.
2. Health insurance costs."

The Union argued that U. S. Department of Labor Statistics showing employment earnings shows that the City of Kenosha has the highest average hourly earnings per capita household in the State. Despite such fact, when one compares the salary levels of the top police officer of the City of Kenosha with those other most comparable cities consisting of Racine, Wauwatosa, West Allis and Waukesha, one finds that the City of Kenosha has consistently been well below the salary levels in each of the other comparable cities. Such four cities were found by Arbitrators Ziedler and Michelstetter in prior arbitrations to be the four most comparable cities to which comparison should be made with the City of Kenosha police officers.

In addressing the final offers of the City and Association on wages, the Association states in its brief,

"Under either proposal Kenosha is still behind all the comparable cities and is in last place. However, the Association's proposal simply allows the City Police Officers to catch-up somewhat. Under the Association's proposal, top patrol officers, are still \$1,117.00 behind the average of \$25,805.00 a year (average being for the five comparable cities). West Allis for 1984 is first at \$26,564.00; Wauwatosa is second at \$25,941.00; Racine is third \$25,688.00; Waukesha is fourth at \$25,025.00; and Kenosha is last at \$24,688.00 (page 7 of Association's exhibit no. 1). Under the City's proposal, for 1984, the difference between the City of Kenosha Police Officers and the other cities which have been deemed comparable is even more appalling. Police Officers are \$1,250.00 behind the average. The difference between the two offers is essentially only \$138.00 per year...."

"Let's compare the City of Racine with the City of Kenosha since 1981 since we have the statistics for average hourly earnings in both cities as compared to the police departments. Based on the Association's exhibits Nos. 2, 3, and 4, it is shown that the average hourly earnings for Kenosha and Racine are as follows:

	<u>Kenosha</u>	<u>Racine</u>
1981	\$ 9.81	\$ 9.44
1982	\$11.79	\$ 9.65
1983	\$11.75	\$10.13
1984	\$11.85	\$10.52

Kenosha wages have increased approximately 21% from 1981 to 1984 while Racine wages have increased only 11%. Kenosha's average wage in 1984 was \$11.85 per hour while Racine's was only \$10.52, \$1.33 per hour less. Yet, at the same time, a Racine Police Officer earns \$15.65 per hour (\$5.13 more than the average in Racine) as compared to a Kenosha Police Officer earning \$14.12 (Association's offer) \$14.03 (City's offer) which is only

\$2.27 more than the average in Kenosha.

"These facts are appalling. There is no reason for the Kenosha Police Officers to have fallen so far behind other police officers. By these other comparisons the Kenosha Police Officer should be absolutely the highest paid officer in the State of Wisconsin. The union's final offer is only a small step towards bringing the Kenosha Police Officers a little bit closer to the next most comparable city police officers. Under either final offer, the Kenosha Police Officer is still in last place."

The Association contends that either the Association or City offer is consistent with the increase in the cost of living. They point out that the Association's proposal for 1984 will result in a 3.07% raise while the City's proposal will result in a 3.01% raise. Either of such increases are close enough to the cost of living increase to be considered reasonable.

Addressing the major point stressed in the City's position and argument of internal comparability, the Association acknowledges that there is no dispute about the fact that the other City Union employees have been offered and have accepted a comparable offer for 1984 and 1985. They argue that police officers are unique from other municipal employees, such as firefighters, waste department employees, transit department employees and other City employees because of the fact that police officers are subjected to a much greater level of stress, strict guidelines prohibiting outside or secondary employment are applied to police officers and not similarly applied to other employees and the general type of police officer work is dangerous and risky on a continuous basis. They argue that simply because all other City employees for some unknown reason "swallowed an unfair and unreasonable wage package" (Union brief page 8), police officers should not be required to accept the same unfair and unreasonable wage offer because of the comparables and because of their difference from other employees.

The Association presented documentary evidence showing the level of police activity over a several year period and argued that such statistics revealed that there has been an increase in law enforcement arrests in major areas from 1982 to 1983 and 1983 to 1984 and yet there has been no increase in the number of officers required to do the greater volume of work. Such fact alone supports good reason for the Association's proposed wage increase.

Comparing the two wage offers to statistics on a state-wide basis, they state at page 17 of their brief that,

"The 5.1% Association's proposal for 1984 is particularly reasonable in light of the fact that, in looking at 32 cities in the State of Wisconsin, the average increase was 4.92%, much closer to reality and reasonableness than the City's 4.5% increase (Association exhibit 1, p. 19). This is particularly true since the City is not arguing lack of ability to pay, but is only arguing internal consistency."

On the issue of insurance, the Association argues that the City has used the red flag of increasing costs of insurance

in negotiations with all employees in the City and has been successful in persuading the other employees in other bargaining units that the increased cost of insurance to the City is such that the employees should accept the City's wage freeze proposal for 1984 and 1985. The Union contends the City's argument is a "slippery pole." They point out that when asked to explain the claimed outrageous increased costs for insurance, they simply responded that they did not know. When asked to explain why the increase in cost was 107% from 1983 to 1984, the City responded, "Claims history." The Association claims that the City's argument is a straw-man that is not realistic.

The Association points out that while the City refers continuously to the increased cost of premiums payable for insurance, there in fact are no premiums to be paid because the City is self-insured. Additionally, the City has reduced the coverage under the existing plan by implementing a 180 day preexisting condition clause for new employees and raising the deductible for each major illness from \$25.00 to \$100.00.

Along with such reduction in benefits, the City argued as support for its wage offer to the Association, that the cost of single coverage insurance would be \$136.72 per month per employee and the cost of family coverage would be \$341.81 per month on the premise that such rates constituted the City's maximum liability rates including the administrative costs for furnishing insurance to cover employees. The Association contends the City's projected estimates were much higher than they reasonably should have been projected as being based upon the information available to the City at that time and clearly were much too high in view of the actual insurance costs that have become known for the year 1984. As a result, the City's projections as to the estimated cost of insurance for 1985 are also unreasonably high.

Referring to testimony of Chuck Grapentine, Supervisor of Personnel for the City of Kenosha, the Union stated at page 20-21 of their brief as follows:

"The proof of the pudding is finally, after a lengthy cross-examination, Mr. Grapentine admits that for 1985 a family plan costs \$272.34 per month. However, the City has attempted to conceal from this arbitrator the fact that the new rates indicate a better claims experience. Officer Hamm testified that the single premium has gone down to \$108.93 a month (transcript p. 43). The City cannot justify its increases, and cannot justify therefore offsetting those increases against its paltry wage package. The City is fond of saying that wages and other benefits should be viewed together, yet when the City cannot explain the wage disparities and insurance mysteries, the entire package is unreasonable."

And, at page 22, the Union states:

"In 1984, the City artificially set its deposit rates at \$336.00 per month per family and \$134.00 per month for single coverage. The City did this and argued to the Union during negotiations and during this arbitration that its cost of health insurance had increased so greatly which necessitated a lower wage package. The Union has shattered the foundation of this argument by showing that the deposit rate was artificial and was way in excess of its actual claims experience for 1984, and that the City would have a

large sum of money in excess of their claims in the future. Thus, its argument that the increased cost of health care necessitates a lower wage package to the City police officers is shattered."

The Association argues that because the actual cost of insurance paid by the City in 1984 on behalf of the employees was less than the amount they had projected, that the City had saved approximately \$426,000.

The Association argues at pages 11-13 of its reply brief as follows:

"The Association apparently understands the City quite well. In the Association's original brief, it predicted that the City would use the increased insurance costs of 107.4% to justify wage freezes and COLA freezes in 1985. In fact on pages 29 and 30 of its brief, it ties the two issues directly together. Even though the City cannot explain the increases, except by its inefficiency or ineffectiveness of management and/or leadership, it wants the Association to swallow dollar for dollar the cost of insurance. It will use the argument for years to come! When will it end? Repeatedly, the City can not explain the increases compared to other cities. Unfortunately, other units in the City of Kenosha did not have any degree of skepticism or questioning of the City's position. Apparently the City has convinced other units, with respect to insurance at least, to follow a blind man's bluff routine. The internal comparability argument makes absolutely no sense, in light of the unexplained increases. If there was a reasonable increase and a reasonable request to absorb some of the costs, perhaps the Association should be charged with that increase. But, the internal comparability breaks down, as the Association stated in its original brief, by a review of The City of River Falls, Case No. NIA-808, as decided recently on November 5, 1984. The arbitrator in that case questioned conventional wisdom concerning internal comparability argument when police associations are compared to other non-police organizations. There is no question, as the City points out, that comparability is a factor. But, in this case, it is an insignificant factor. The City of River Falls case governs in terms of police officers. Police officers are deemed to be unique and different in terms of insurance needs as well as other needs. Because other unions in the bargaining within the City of Kenosha did not question an obviously unexplained and strange increase in insurance costs, does not mean that this Arbitrator should blindly and mechanically accept the City's ludicrous position of dollar for dollar sharing. Why should the Association suffer because of unexplained increases? There is no question, as was pointed out in the City's brief, that there should be, in some cases, a sharing of costs. This Arbitration indicated that in Rhinelander Schools, Decision No. 19838, 1/83. But the City stretches this point like taffy. To say that a unit should share costs, and then to indicate that these costs are increased 107.4% does not follow. It is a non-sequitur position without factual or evidentiary foundation. As was thoroughly explained in the Association's original brief, the expert witness proved that the City has set up a 'straw-man' in this

case on the insurance issue in an effort to freeze wages in a prosperous (or quickly becoming prosperous) economy."

CITY POSITION

The City argued that their wage offer is more consistent with the wage increases granted police officers in comparable communities. The City also argues that such wage offer maintains its relationship with those other communities.

The City utilized comparative wage data involving the 15 largest cities in the State, excluding Milwaukee, and offered the following data at page 13 of their brief with respective to the relative ranking.

"Group A: Racine, West Allis, Wauwatosa and Waukesha. Considered by Zeidler to be the most comparable (p. 7), and also the ones utilized by Arbitrator Michelstetter (City Ex. 30).

"Group B: Group B cities plus Janesville and Beloit.

"Group C: All 15 cities.

"The City will summarize data from all three groupings (City Exs. 15, 16, 19 and 20):

	<u>Annual Earnings Increase - 1984 Over 1983</u>		<u>Kenosha's annual Earnings Ranking</u>	
	\$	%	1983	1984
Group A	\$1,092	4.5%	5th of 5 cities	5th of 5 cities
Group B	\$1,020	4.3%	5th of 7 cities	5th of 7 cities
Group C	\$ 931	4.1%	6th of 15 cities	6th of 15 cities
Kenosha (City's Offer)	\$1,068	4.5%	(No change in ranking)	
Kenosha (Assocaition's Offer)	\$1,205	5.1%	(No change in ranking)"	

The City argued that the City's offer of 4.5% is equal to or better than the average increase granted other police officers in the State regardless of which comparability groupings are utilized. As such, Kenosha police officers maintain their relative position with other cities under either offer.

The City argued that their wage offer takes on a much higher significance when one adds it to the substantial increase in health insurance premiums which the City agreed to pay. They pointed out that in the 1982-83 contract the City paid insurance premiums of \$60.00 and \$165.00 per month in 1982 and \$65.00 and \$185.00 per month in 1983 for single and family coverage respectively. In early 1982 the City Supervisor of Personnel at that time issued a memorandum warning all employees covered by health insurance of the expected skyrocketing costs of insurance if the utilization experience of insurance

by employees of the City of Kenosha did not improve. In August of 1983 the City's insurance carrier submitted its renewal proposal which called for an increase in the maximum liability of the City for 1984 to a monthly cost of \$136.72 per month for a single plan and \$341.81 per month for a family plan. Such renewal proposal amounted to an increase of \$71.72 per month for single covered employees and \$146.81 per month for family covered employees over the 1983 contract rates. Because of such large increase, the City retained an insurance consultant to review the proposal and to advise the City as to its best course of action. Such consultant confirmed the proposed bid of the carrier as being reflective of the prior experience upon which the proposal had been based. The City then scheduled and held a meeting with representatives from all bargaining units. A representative from the Association did not attend. The City offered the following comments concerning the cost and effect of the insurance picture on the City's final offer.

"The size of the increase in premiums was substantial. For the police officers, costs were projected to increase from \$274,860 to \$509,433. (The Association's Offer is utilized here since it maintained the same benefit level as in 1983.) This amounts to an increase of \$234,573, which would have been equal to a 7.6% wage increase over the combination of 1983 wage and COLA costs of \$3,080,136 and \$24,289 (City Ex. 5).

"All of the other City of Kenosha bargaining units recognized the problem created by the increase in health insurance costs. None of the City of Kenosha bargaining units, including the KPPA, wanted to have any employee contribution to the premium costs, but all of the other bargaining units agreed to accept the same wage offer made by the City to the KPPA here in return for the City picking up the full health insurance cost increase. (A more detailed discussion of the settlements of other City of Kenosha bargaining units will be handled in the next section.)

"Thus, the 1983 economic settlement offered by the City cannot be viewed only in terms of the increase in annual earnings (base salary and COLA payments). A true picture can only be made by combining the increases in annual earnings with the exceptionally high increased cost paid by the City for health insurance. When these two costs are combined, the comparison with similar increases granted police officers in comparable municipalities makes the City's offer even more reasonable (City Exs: 16, 18 and 20).

The City argues that the City's offer must be considered as a combination of increases in both wages and health insurance. If one then compares the City of Kenosha employees with the other groups to which comparison was made in the prior comparison schedule of wages only, one finds the following comparisons and changes in the comparative ranking of Kenosha to the other comparables.

	<u>1984 Ranking With Wages Only</u>	<u>1984 Ranking With Wages And Health Insurance Combined</u>
GROUP A	5th of 5 cities	2nd of 5 cities
GROUP B	5th of 7 cities	2nd of 7 cities
GROUP C	5th of 15 cities	2nd of 15 cities

Note: The above rankings were derived after obtaining the combination of annual earnings and health insurance costs for the top five municipalities in City Exhibit 16 as follows:

	<u>Earnings</u>	<u>Health Insurance</u>	<u>Total</u>
WEST ALLIS	\$26,568	\$2,486	\$29,054
WAUWATOSA	25,944	1,831	27,775
RACINE	25,692	2,618	28,310
WAUKESHA	25,032	2,389	27,421
GREEN BAY	24,984	2,113	27,097
KENOSHA	24,552	3,900	28,452

The City also argued that the City's wage offer to the police employees is equivalent to that settlement that all other major collective bargaining units in the City of Kenosha have agreed upon. They argue that internal comparisons are entitled to substantial weight and that the two prior arbitrators have afforded substantial weight to internal comparisons. Absent persuasive reasons to deviate from affording substantial weight to internal comparisons, this arbitrator should follow and assign appropriate weight consistent with that done by prior arbitrators.

The City also contends that their wage offer would serve to maintain the existing wage relationship to the City's other protective occupation employees and particularly its firefighters. They point out that from at least 1954 through 1979 the wage rates for police officers and firefighters were the same. In 1980 the police officers were granted a slightly larger wage increase and a \$28.00 per month differential was created. The monthly differential was \$30.00 in 1981 and 1982 and \$32.00 in 1983. The City's offer would maintain the \$32.00 differential for 1984 and 1985 whereas the Association's offer would increase it to \$43.51 per month in 1984 and to approximately \$99.00 per month in 1985. They contend that such change in differential is not supported by the evidence and would be consistent to the average differential that prevails in the other 15 major cities comprising the Class C group.

With respect to the changes in the health care coverage, the City argued that all other bargaining units have accepted such changes as desirable cost containment measures that are intended to bring the use experience of insurance down to a reasonable level that is more comparable to that found in other comparable municipalities.

The City argues that the arbitrator must evaluate whether or not the City's final offer was reasonable on the basis of the facts available to the parties at the time the final offers were submitted. Hindsight may prove one wrong, and undoubtedly the claims experience has been better in 1984 than was projected. The question of whether or not the City's projections of insurance costs was reasonable at the time they framed their final offer must be considered and determined on the basis of the facts that the City possessed at the time the final offer was made. Even though the final cost to the City for

insurance for 1984 may be less than projected, the City's offer for wages and the actual 1984 health insurance cost will still result in the total package offer of the City's final offer to be in excess of the wage and health insurance increases granted by any other comparable city.

The City contends that their final offer is the more reasonable when the statutory factors are applied thereto and should be accepted by the arbitrator.

DISCUSSION

Both parties have engaged in the presentation of a large amount of evidence and have entered considerable argument on the issue of insurance. The Association claims the City has distorted and misrepresented the costs and impact of the insurance and its relationship to the final offers of the parties. It alleges that the City has failed to explain the reasons for the increase except by the response of claims experience. The Association argues that the City over valued the anticipated cost of insurance to the City on behalf of employees and did so without support in the facts and information that existed at the time. The Association points to the much improved claims experience that has occurred during the pendency of this arbitration proceedings and particularly during the year of 1984 and contends the City has, as a result, saved a substantial sum of money that they had initially represented as being a cost for insurance for 1984 and a cost that should be offset against the total package increase offered or paid to employees over the period of the two-year contract.

The arbitrator is of the view that it is first necessary to determine the extent, if any, to which consideration should be given to facts that became known to the parties subsequent to the time that they formulated their final offer proposals on January 18, 1984. Hindsight is always more accurate than future predictions. Neither party had the benefit of hindsight on January 18, 1984, when their respective final offers were formulated. It does not seem to the arbitrator that the mediator/arbitrator should be allowed to utilize hindsight to evaluate the respective offers of the parties for reasonableness. The parties did not have the benefit of hindsight at the time they formulated their offers and a reviewer of such offers should not utilize any greater advantage than the parties themselves had.

That brings into question whether or not the Union's contention that the City falsely or unreasonably escalated and used artificially high insurance cost projections in attempting to sell the Union on accepting a wage freeze and COLA increase only or whether or not the City's projections was based upon facts that then existed and their projections were reasonably fair or accurate based on the known facts at that time.

The Union called as a witness a Mr. Gaarsoe, who was experienced as an actuarial consultant employed by a firm whose principal activity is that of evaluating and analyzing health benefit plans as to the appropriateness of the benefits, delivery of the services of those benefits from the insurance companies or administrator, the insuring mechanisms of the insuring company, the cost, the various forms of purchase that are possible, and the relative comparative costs in bid situations for clients. The evidence revealed that the City of Kenosha had utilized him as an insurance advisor to review their insurance coverage and cost on or about January of 1982.

He testified under cross-examination, that insurance companies are required to present a renewal bid or notice to an insured at least 31 days in advance of the renewal date. The evidence shows that the insurance company in this case had presented a renewal proposal to the City on or about August 1983. At page 18 of the record transcript of the January 2, 1985 hearing, on cross-examination, such witness testified that in 1983, the health insurance industry was projecting an approximate 25% increase in health insurance costs for 1984. At page 19 of the transcript counsel for the City asked the witness the following questions and received the indicated answers directed at whether or not in his expert opinion the City's projection of a maximum liability rate for family coverage for insurance for 1984 in the amount of \$336.00 was a reasonable projection based upon the claims experience and all other facts attendant to arriving at an estimated projection.

"Q Okay. Now, did you attempt to make any determination of whether the premium of \$336 would have been an appropriate premium based on information that you may have had back in --

A Late 1983?

Q --late 1983?

A It looked as if it were a not unreasonable figure based on prior history. But again, the history of the experience of the city had been exceptionally poor. There had been very high level of claims for a number of years."

In addition to the above testimony of the expert witness, the City presented into evidence what was identified and admitted as City Exhibit No. 40 which was a report by a Maurice P. Nielsen of the Fred S. James & Company of Wisconsin, Inc. consulting firm. The evidence reveals that after receiving the renewal proposal from WPS in late 1983, the City obtained the services of such company to review the matter of health insurance coverage for the City of Kenosha and its employees and particularly the renewal proposal received from WPS. The consultants reviewed the proposal and also analyzed and detailed possible alternatives available to the City along with identifying possible cost containment measures and changes available to the City. They stated with respect to a review of the WPS proposal in their report as follows:

"We have thoroughly reviewed the Wisconsin Physicians Service 1984 renewal quotation. We have concluded that in addition to realizing benefits of several hundred thousand dollars over the past two years which were over and above what you have actually paid your current provider, that the 1984 projections by WPS are indeed very reasonable."

Based upon a review of the record evidence in this case, the arbitrator finds that the cost projections and anticipated costs of insurance utilized by the City in framing its final offer in early 1984, were based on facts that were reasonably calculated to lead to the conclusions upon which the City relied. The arbitrator finds that the Association's allegations that the City's utilization of the high cost insurance figures were misleading and unsupported by the evidence, as being unsupported by the evidence.

The record shows that all other represented employees in the City attended a meeting at which time the City explained their projected anticipated costs with respect to insurance for 1984 and 1985. The police officers representative did not attend. All those who attended apparently accepted the City's projected cost information as being as accurate as reasonably possible under the known facts at that time. Such other units reached settlements with the City on the basis of giving consideration to such projected insurance costs. Only the police officers union did not. The arbitrator is of the judgment that hindsight should not be available to judge the reasonableness of the parties' offers in this case. Having found that the City's insurance cost projections were reasonably based on the facts known to the parties at the time the final offers were made, one must then move to an evaluation and consideration of the impact and effect that the insurance issue has upon the total final offer and the comparative reasonableness of each by application of the statutory factors to each of the final offers.

There is no real issue concerning the consideration of internal comparisons. Clearly, where all other employees paid by the same employer have reached a settlement at a comparable level to that offered the police officers, application of the statutory factors would clearly cause one to favor the City's final offer in this case as opposed to that of the Association.

A comparison that is likewise internal and one that is utilized very frequently in other employer/employee situations is that of comparing the pay level of police officers to that of firefighters. Such comparison in this case likewise results in a conclusion that the City's offer is more appropriate in maintaining the existing and historical relationship of police officers' salaries to that of firefighters. It likewise more consistently maintains the type of relationship that exists between that rate of police officers and that of firefighters in the vast majority of other comparable cities.

The sole evaluative approach that favors the Association offer in this case is one which shows that the wage level of police officers in the City of Kenosha has been and still is below the level of pay afforded police officers in the other four most comparable cities to which comparison has historically been made. In view of the statistics presented by the Association showing that the average wage per household paid to Kenosha families is the highest in the State, one can properly ask why then should not police officers' salaries be the highest, or at least very close to the highest, in that respect also? It would seem to this arbitrator that some degree of catch up would be appropriate. Over a long range view, it appears that Kenosha police officers have historically been paid at a lower rate than have officers at the other most comparable cities. The arbitrator has not been presented with any persuasive evidence that would support a difference that is as substantial as the comparisons show to exist. The undersigned finds that the record evidence and comparative data supports a finding that Kenosha police officers should be afforded catch up so as to more closely compare to the average of the other most comparable cities. A differential of the amount shown is simply too much and does not appear to be justified.

Such finding and conclusion, however, must be balanced against those considerations above expressed which tend to favor the City's final offer and also must be considered from a comparative basis as to the level of settlement reached in other comparable districts to the level of increase and settlement involved in implementing either the City's or Association's

final offer in this case. If one compares the impact of the wage offers of the City and Association final offers to those wage increases afforded employees in other comparable districts, one would conclude that both final offers are reasonably comparative to other levels of settlement but that the Association offer would tend to be favored because it would afford the start of warranted catch up. It would not be favored from the standpoint of widening the differential between that of police officers and that of firefighters, however.

When one compares the total package cost which includes the huge increase in insurance costs which the City will absorb as an additional increase cost item, one finds that the total package cost of both the City and Association final offers is significantly greater than the total package costs of the settlements reached with all other cities to which comparison was made. The presence of the significant cost increase to the City for insurance significantly impacts on one's overall evaluation of the total package increase involved. Absent such huge increase in cost of insurance, it would appear that despite widening the gap between salaries paid firefighters and police officers and despite the fact that other internal comparisons would favor the City offer, the need for some degree of catch up might very well weigh heavily in favor of preference for the Association offer.

Where, however, the insurance costs projected by the facts present at the time the final offers were made, result in the amount of huge increases in insurance costs payable by the City, the total package costs, as a result, substantially exceed the same total package costs of comparable cities. The arbitrator is of the opinion that placing the additional burden of accomplishing partial catch up on top of the huge insurance cost increases simply would be excessive and unreasonable.


The other issues raised by the final offers of the two parties have received minimal attention by the parties in two ways. Neither has presented any significant amount of documentary testimony or evidence addressed at such issues and neither has presented any significant amount of argument on any of the other issues.

The arbitrator, however, has considered and evaluated each of the other issues on their respective individual merits and on the basis of the evidence and arguments submitted by each and has evaluated such other issues on the basis of contributing to the total final offer of each party and finds that such other issues are not of sufficient significance to alter the determination and preferences that arise from the wage and insurance issue and detailed discussion of such other issues are thereby omitted in the interest of brevity.

It therefore follows on the basis of the above facts and discussion thereon, that the undersigned renders the following decision and

AWARD

That the final offer of the City herein shall be incorporated into the parties' 1984-1985 Collective Bargaining Agreement.


Robert J. Mueller

Dated at Madison, Wisconsin
this 1st day of July, 1985.