

FEB 03 1987

In the Matter of Final and Binding :
 Final Offer Arbitration Between :
 MENOMONEE FALLS POLICE ASSOCIATION, INC. : WISCONSIN EMPLOYMENT
 : RELATIONS COMMISSION
 and :
 : AWARD
 :
 VILLAGE OF MENOMONEE FALLS :
 (POLICE DEPARTMENT) : Decision No. 23964-A
 :
 Case 29 No. 36821 MIA-1128 :

I. HEARING. A hearing in the above entitled matter was held on November 21, 1986, beginning at 9:30 a.m. at the Municipal Building, Menomonee Falls, Wisconsin. Parties were given full opportunity to present evidence, give testimony and make argument. Briefs were subsequently filed.

II. APPEARANCES.

MARK T. BAGANZ, Attorney, KOCH, BAGANZ, KOCH & CLARK,
 appeared for the Association.

LAURENCE E. GOODING, JR., Attorney, QUARLES & BRADY, S.C.,
 appeared for the Village.

III. NATURE OF THE PROCEEDINGS. This is a proceeding in final and binding final offer arbitration under Section 111.77 (4) (b) of the Municipal Employment Relations Act between the Menomonee Falls Police Association and the Village of Menomonee Falls Police Department after an impasse was found to exist between them for a successor agreement which expired December 31, 1985. The Wisconsin Employment Relations Commission after a report by its Investigator, James W. Engmann, on the impasse issued an Order for final and binding arbitration on September 24, 1986. Thereafter the parties having selected Frank P. Zeidler, Milwaukee, Wisconsin, as arbitrator, the Commission appointed him as impartial arbitrator on October 8, 1986.

IV. THE FINAL OFFERS.

The amended final offers of the parties as submitted to the Wisconsin Employment Relations Commission are as follows:

AMENDED INITIAL FINAL OFFER
 OF THE VILLAGE OF MENOMONEE FALLS TO
 THE MENOMONEE FALLS POLICE ASSOCIATION, INC.

1. Amend Article XV to read as follows:

The Employer shall pay six and one-half percent (6 1/2%) of the officer's share of his or her retirement contribution (this is a one percent (1%) increase in employer's contribution).

2. Amend Article XIV Section 14.01 to provide that:

The Village will reimburse such officers for the cost of tuition and books up to a maximum of \$85.00 per credit.

3. To amend Schedule A wages to provide a four (4) percent increase effective January 1, 1986 and a four (4) percent increase effective January 1, 1987.

4. Amend Section 12.04 by adding the following:

For employees who upon retirement have accumulated sick leave days, said employees will be given the option of using up to 110 days of said accumulated sick leave days for the payment of health insurance premiums (not including dental) until the value (as determined under Section 11.02) of the sick leave days accumulated have been exhausted.

5. Amend Article XXI to provide that the agreement shall be effective as of the first day of January 1986 and shall remain in full force and effect until the last day of December, 1987.

6. All remaining clauses of the agreement in effect for 1985 shall continue in the new contract.

Village of Menomonee Falls
(Police Department)
Case 29 No. 36821 MIA-1128

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LABOR RELATIONS COMMISSION

Appendix "B"

INITIAL FINAL OFFER
OF
MENOMONEE FALLS POLICE ASSOCIATION

June 18, 1986

1. Amend Article XV - Retirement Contribution; see attached. ✓
2. Amend Article XII, Hospitalization and Life Insurance; see attached.
3. Amend Schedule A - Wages; see attached. (4% - 1/1/86) ✓
(4% - 1/1/87) ✓
4. Amend Article XXI - Duration; see attached. (2 year contract) ✓
5. Amend Article XVIII - Seniority; see attached.

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1. Amend Article XV - Retirement Contribution to read as follows:

"ARTICLE XV - RETIREMENT CONTRIBUTION

"15.01 The Employer shall pay six and one-half percent (6-1/2%) of the officer's share of his or her retirement contribution."

NOTE: the present 15.01 reads as follows:

(ARTICLE XV - RETIREMENT CONTRIBUTION 15.01 The Employer shall pay five and one-half percent (5-1/2%) of the officer's share of his or her retirement contribution.)

2. Amend Article XII, Hospitalization and Life Insurance to read as follows:

"ARTICLE XII - HOSPITALIZATION AND LIFE INSURANCE

12.01 Remains as is presently in the contract.

12.02 Remains as is presently in the contract.

12.03 Remains as is presently in the contract.

12.04 Any employee upon retirement may continue to participate in the employee Group Insurance Plans, and the retired employee shall pay three-fourths (3/4) of the premium and the Village shall pay one-fourth (1/4) of the premium."

NOTE: the present Article XII reads as follows:

ARTICLE XII - HOSPITALIZATION AND LIFE INSURANCE

12.01 The Employer agrees to pay the entire premium of the Hospital and Surgical Insurance Plan.

Effective April 1, 1981, the Village will provide that the present insurance program will be amended to provide for Blue Cross - Blue Shield Plan VI with the Major Medical H.M.P. included.

12.02 Effective January 1, 1981, the Employer agrees to pay the entire premium of the Life Insurance Plan to provide \$15,000.00 of Life Insurance, for the employees in the bargaining unit.

Effective January 1, 1982, the Employer agrees to provide Life Insurance pursuant to the Wisconsin Retirement Life Insurance Program.

12.03 Effective July 1, 1981, the Village will provide a Blue Cross Dental Insurance Policy, the full premium to be paid by the Village with a \$25 deductible plan with a maximum of three deductibles per family contract year, individual annual maximum of \$500, coverage as follows:

- 100% of Diagnostic and Preventative;
- 80% of Ancillary; Oral Surgery; Regular, Restorative Dentistry; Endodontics; and Periodontics;
- 50% of Prosthodontics and Special Restorative;
- 50% of Orthodontics with \$500 lifetime maximum.

12.04 Any employee upon retirement may continue to participate in the employee Group Insurance Plans provided the retired employee pays his or her own premium.

3. Amend Schedule A, 6.01, Article VI - Wages, as follows:

Effective January 1, 1986:

"SCHEDULE "A"

	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>	<u>4th Year</u>
Police Officer-1986	\$1,945.51	2,154.40	\$2,220.05	\$2,339.40

Officers assigned to the Detective and Community Service Bureau will, after serving a probationary period of one (1) year, immediately receive the sum of one hundred dollars (\$100.00) per month for succeeding months while so assigned in addition to their respective monthly salary.

Officers assigned to the position of Police Information Specialist shall receive the sum of fifty dollars (\$50.00) per month for months while so assigned in addition to their respective monthly salary.

Effective January 1, 1987:

"SCHEDULE "A"

	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>	<u>4th Year</u>
Police Officer-1987	\$2,023.33	\$2,240.58	\$2,308.85	\$2,432.98

Officers assigned to the Detective and Community Service Bureau will, after serving a probationary period of one (1) year, immediately receive the sum of one hundred dollars (\$100.00) per month for succeeding months while so assigned in addition to their respective monthly salary.

Officers assigned to the position of Police Information Specialist shall receive the sum of fifty dollars (\$50.00) per month for months while so assigned in addition to their respective monthly salary.

4. Amend Article XXI - Duration as follows:

"ARTICLE XXI - DURATION

21.01 The Agreement shall be effective as of the 1st day of January, 1986, and shall remain in full force and effect through the 31st day of December, 1987, and shall continue in full force and effect from year to year thereafter until such time that either party desiring to open, alter, amend or otherwise change this Agreement, shall serve written notice upon the other not later than one hundred eighty (180) days prior to the expiration of such year.

5. Amend Article XVIII, Seniority to read as follows:

NOTE: The proposed changes are underlined; all other language is as the contract, presently reads:

"ARTICLE XVIII - SENIORITY

18.01 Seniority shall be determined by the employee's length of service in the Department. Time spent in the armed forces on military leaves of absence, and other authorized leaves not to exceed one year, and time lost because of duty-connected disabilities shall be included.

18.02 An up-to-date seniority list showing the names, length of service date, and departmental assignments shall be maintained for inspection by members.

18.03 An employee shall forfeit his or her seniority rights only for the following reasons:

1. He or she resigns.
2. He or she is dismissed and is not reinstated.
3. He or she had been on laid-off status in excess of two years.
4. He or she retires on regular service retirement.

18.04 All non-probationary officers shall be assigned to shifts on the basis of seniority preference. This section 18.04 shall not apply to corporals of police.

18.05 The Village agrees to continue its present practice of assigning vacations on the basis of seniority and officer's request in the various units of the department.

18.06 In the event it becomes necessary to reduce the police force, the Village will follow the procedures outlined in Section 62.13(5)(m).

Arbitrator's Comment on the Final Offers: These final offers, after the identical portions of each are eliminated, produce different offers specifically on education credit, policy for health insurance for retirees, and shift preference by seniority.

V. FACTORS TO BE CONSIDERED BY THE ARBITRATOR. The following on factors to be considered by the arbitrator is found in the Wisconsin Statutes, Section 111.77 (6):

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

"(a) The lawful authority of the employer.

"(b) Stipulations of the parties.

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

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

"1. In public employment in comparable communities.

"2. In private employment in comparable communities.

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

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

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

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

VI. THE LAWFUL AUTHORITY OF THE EMPLOYER. There is no question here about the lawful authority of the Village to meet the terms of either of the final offers.

VII. STIPULATIONS. The parties have stipulated to all other matters between them for a two year agreement.

VIII. THE FINANCIAL ABILITY OF THE UNIT OF GOVERNMENT TO MEET THE COSTS. Costs will be considered in the discussion of the specific issues hereafter. However, some information related to Menomonee Falls' tax and financial status was presented in the exhibits. Menomonee Falls Village lies in parts of two school districts and has therefore two full value equalized tax rates, \$24.31 for the Hamilton District, and \$23.95 for the Menomonee Falls District. Four different rates in the City of New Berlin range from \$19.34 to \$24.70, and the one rate in the City of Waukesha is \$22.73. The two rates in nearby Butler are \$25.41 and \$25.61. Most other rates in the County are lower than the two rates in Menomonee Falls. (Ex. 19)

The aggregate full value of the Village of Menomonee Falls in 1985 was \$905,214,500, and the assessment ratio was 16.61. (Ex. 18)

The arbitrator finds no inability of the Village to meet the costs of either offer.

IX. COMPARABLE MUNICIPALITIES AND GOVERNMENTS. The Village presents the following list of comparables:

TABLE I
VILLAGE'S LIST OF PRIMARY AND SECONDARY COMPARABLES

<u>PRIMARY COMPARABLES</u>	<u>COUNTY</u>	<u>POPULATION⁽¹⁾</u> <u>(1980 Census)</u>	<u>BARGAINING⁽²⁾</u> <u>UNIT</u> <u>PERSONNEL</u>
Brookfield	Waukesha	34,035	50
Brown Deer	Milwaukee	12,921	27
Germantown	Washington	10,729	14
Greenfield	Milwaukee	31,353	37
New Berlin	Waukesha	30,529	46
Waukesha, City of	Waukesha	50,365	84
<u>SECONDARY COMPARABLES</u>			
Butler	Waukesha	2,059	6
Cudahy	Milwaukee	19,547	15
Elm Grove	Waukesha	6,735	13
Fox Point	Milwaukee	7,649	12
Franklin	Milwaukee	16,871	22
Glendale	Milwaukee	13,882	27
Hales Corners	Milwaukee	7,110	12
Milwaukee, City of	Milwaukee	636,297	1,775
Milwaukee, County of		964,988	400
Muskego	Waukesha	15,277	20
Port Washington	Ozaukee	8,612	15
River Hills	Milwaukee	1,612	10
Shorewood	Milwaukee	14,327	21
Waukesha, County of		280,203	124
Wauwatosa	Milwaukee	51,308	77
West Allis	Milwaukee	63,982	115
West Bend	Washington	21,484	5
West Milwaukee	Milwaukee	3,535	15
Menomonee Falls	Waukesha	27,845	

(1) Figures taken from Wisconsin Blue Book - 1985-1986

(2) Exhibit 53

The Association list is as follows:

TABLE II
ASSOCIATION'S LIST OF COMPARABLES⁽¹⁾

<u>COMPARABLES</u>	<u>POPULATION 1980</u>	<u>POPULATION DIFFERENCE FROM MENOMONEE FALLS</u>
Brookfield	34,035	+ 6,190
Brown Deer	12,921	-14,924
Germantown	10,729	-17,116
Greenfield	31,353	+ 3,508
New Berlin	30,529	+ 2,684
Cudahy	19,547	- 8,298
Franklin	16,871	-10,974
Glendale	13,882	-13,963
Shorewood	14,327	-13,518
Whitefish Bay	14,930 ⁽²⁾	-12,915
Menomonee Falls	27,845	

(1) Exhibits 50, 52

(2) 16 Bargaining Unit Personnel, Exhibit 53

Summary of Association's Position on Comparables. The Association holds that only nine of the list of primary and secondary comparables are acceptable and valid and adds to these the Village of Whitefish Bay. It holds that West Bend, Port Washington, Muskego and Waukesha lack the suburban characteristics of suburban Menomonee Falls and are independent communities. Milwaukee's urban character precludes it, and also West Bend and Port Washington are not in the Greater Milwaukee area.

The Association objects to the inclusion of the Counties of Milwaukee and Waukesha, the City of Milwaukee and the Municipalities of Butler, River Hills, and West Milwaukee, because of population disparity. Only the nine of the Village's proposed comparables have a population within 20,000, and even this disparity may be too great, for in the other municipalities there is also too great a disparity in bargaining unit members.

The Association emphasizes the suburban character of a municipality, proximity to Menomonee Falls, similar population and bargaining unit members.

The Association has however referred to agreements between the Menomonee Falls Education Association and the School District of Menomonee Falls, and between this school district and Local 2765, Wisconsin Council 40, AFSCME, AFL-CIO (Maintenance and Custodial Employees). (Ex. 54, 55)

Summary of the Village's Position on Comparables. The Village believes its six primary comparables meet the standards of comparability in population, geography, and relevant department personnel. They are suburban communities, similar in size, close to Menomonee Falls. The Village Police Chief said the police departments of Brookfield, New Berlin, Greenfield and Waukesha were similar because of population and area served, community expectations, crime problems, department size, staffing levels, and

Discussion. It should be noted that Menomonee Falls is one of the north-western suburban communities of metropolitan Milwaukee. Also it is one of the larger suburban municipalities with a substantial manufacturing and commercial base. Among such similar suburbs in Waukesha County are New Berlin, Brookfield, and Waukesha. (Ex. 18) A review of the map attached to Exhibit 5 indicates that the municipalities in relatively close proximity to Menomonee Falls are Germantown, Brookfield, Butler, and Wauwatosa. The suburbs most similar in size are Brookfield, Waukesha, and New Berlin. The arbitrator judges that Greenfield in southern Milwaukee County is more appropriately to be considered as a municipality of secondary comparison here. Combining the concepts of geography and comparability to include municipalities in either category, the arbitrator is of the opinion that the primary comparables here are Menomonee Falls, Brookfield, Waukesha, New Berlin, Germantown and Brown Deer, although the latter municipalities are smaller.

For secondary comparisons, the arbitrator would include other Milwaukee area suburbs with a population of around 20,000 or above or above 20 members of the bargaining unit. Such a list includes, Cudahy, Franklin, Glendale, Greenfield, Muskego, Shorewood, and Whitefish Bay.

West Allis, Wauwatosa and Milwaukee are considered too large. Others in the list furnished by the Village are not geographically close enough or too small. The latter can be considered comparables of tertiary value.

The following table shows the dates of collective bargaining agreements used as comparables here by the arbitrator. Each contract has been submitted by the parties as an individual exhibit.

TABLE III
 DATES OF COLLECTIVE BARGAINING AGREEMENTS OF
 MUNICIPALITIES USED AS COMPARABLES

<u>Municipality</u>	<u>CBA Dates</u>	
<u>Primary Comparables</u>	<u>Dates</u>	<u>Actual Length</u>
Brookfield	1986-1987	2 years
Brown Deer	1985-1986	2 years
Germantown	1984-1985	2 years
New Berlin	1985-1986	2 years
Waukesha	1985-1987	3 years
<u>Secondary Comparables</u>		
Cudahy	1985-1986	2 years
Franklin	1986-1987	2 years
Glendale	1985-1986	2 years
Greenfield	1986-1988	3 years
Muskego	1985-1987	3 years
Shorewood	1985-1986	2 years
Whitefish Bay	1986-1987	2 years

X. WAGES, TOTAL COMPENSATION, AND COST OF LIVING. The parties have included in their offers the same proposal for wages: a four percent increase on January 1, 1986, and a four percent increase in 1987. The parties also include the proposal that the Village pay the 6-1/2% of the employee's share of payment toward the retirement system. This is a one percent increase for the Village. The parties did not present any evidence on how these offers compare with percentage increases in comparable municipalities.

The Village Exhibit 17, reporting on the Revised Consumer Price Index, showed that the average increase in the CPI between 1984 and 1985 was 3.86%. The percentage increase from September 1985 to September 1986, the last month reported, was 1.37%.

The Village notes it is giving a generous increase in wages plus paying an increase in the employees' share of the retirement contribution. In the brief the Village contends it will be contributing 19.4% of each police officer's salary to the retirement fund as compared to a 12.2% contribution for other Village employees. (TR. 6).

The Village notes that the cost of living over the last two years has risen about 4.2% while the wage agreement will bring the employees 8%.

Discussion. The statutory factors to be weighed include wages, total compensation, and cost of living changes. Whether these factors are to be attributed in favor of one offer or the other is not readily ascertainable since no formal exhibits on wage comparisons or total cost comparisons were submitted. The arbitrator by abstracting base wage increases from the exhibits of contracts can get some idea of how the Menomonee Falls percentage increases compare, but the information as to total costs is lacking, and one cannot impute any merit to either offer on this issue. The Village brief implies in argument that the merit here is on its side, but this cannot be substantiated.

As to cost of living changes, the percentage increase of both offers on wages is the same, of course, and this percentage increase exceeds the change in the consumer price index. In this case, it must be accepted that the offer of the Village is adequate and satisfactory, and does not require the Village to engage in catch-up with some other kind of benefit. Further the Village offer to pay another one percent toward the employee's share of retirement also is a positive factor in the Village's offer.

XI. HEALTH INSURANCE PAYOUT. The preceding contract stated at Section 12.04:

"Any employee upon retirement may continue to participate in the employee Group Insurance Plans provided the retired employee pays his or her own premium."

The Association proposes to amend this section as follows:

"Any employee upon retirement may continue to participate in the employee Group Insurance Plans and the retired employee shall pay three-fourths (3/4) of the premium and the Village shall pay one-fourth (1/4) of the premium."

The Village would add instead:

"For employees who upon retirement have accumulated sick leave days, said employees will be given the option of using up to 110 days of said accumulated sick leave days for the payment of health insurance premiums (not including dental) until the value (as determined under Section 11.02) of the sick leave days accumulated have been exhausted."

The previous contract called for payment upon retirement of up to 110 days at the hourly rate then being paid for all unused sick leave.

Exhibit 21 was a health insurance cost analysis. It was estimated that under the monthly 1986 rate of \$2,339.40 for a police officer, the hourly rate would be \$13.50 per hour, and the day rate would be \$108.00 per day. Thus a payout of 110 accumulated sick days would come to \$11,880. It was estimated that the monthly Blue Cross premium would come to \$261.99. Thus the length of the payout under the employer's option would be the results of \$11,880.00 divided by \$261.99 which would come to 45.35, the number of months the \$11,880 would pay a premium for health insurance. This would come to 3.78 years. The Association holds that its offer amounts to the Village to pay 25% of the retired employees' premium over the life expectancy of 15.12 years. The Village says that this would require it to pay (at present rates) the sum of \$786 per year per retiree. The following table is of sick leave payouts among the comparables.

TABLE IV

SICK LEAVE PAYOUT PLANS OF COMPARABLE MUNICIPALITIES

<u>Primary Municipalities</u>	<u>Plan</u>
Brookfield	50% of accumulation after 1/1/86 and 25% prior to 1/1/86, combination not to exceed 120 days.
Brown Deer	After ten years employment, up to 40 days.
Germantown	No provision.
New Berlin	No provision.
Waukesha	No provision.
Menomonee Falls	100% of accumulation up to 110 days.
<u>Secondary Municipalities</u>	
Cudahy	No provision.
Franklin	Retirees get 30 days minimum severance pay. Can accumulate up to 30 more at rate of 2 days for each year of service if matched by accumulated sick leave up to 60 days.
Glendale	Upon retirement and after 15 years of service, up to 102 days sick leave.
Greenfield	After five years of service, termination pay equal to 50% of accumulated sick leave up to 50 days.
Muskego	100% of accumulation up to 120 days.
Shorewood	One half of accumulation, but not more than 30 days. Retirement benefit can be used for insurance premiums.
Whitefish Bay	One half of accumulation prior to last three years, up to 20 days. One half of sick leave allowance for last three years, but any absence for sickness not to be charged against previous 20 years accumulation.

The following table summarizes health insurance plans for retirees among the comparable municipalities.

TABLE V

RETIREE HEALTH PROVISIONS IN COMPARABLE MUNICIPALITIES

<u>Primary Comparables</u>	<u>Plan</u>
Brookfield	Pay health insurance at own expense.
Brown Deer	Pay health insurance at own expense.
Germantown	No provision.
New Berlin	No provision for voluntary retirees. For involuntary retirees, pay by city until employee is 65 or eligible for Medicare.
Waukesha	After 55 and 15 years service, city will pay 50% of health insurance for retiree.

TABLE V - continued

<u>Primary Comparables</u>	<u>Plan</u>
Menomonee Falls - Village Offer	Pay health insurance at own expense or option of using accumulated sick leave up to 110 days to pay premiums.
Union Offer	Board to pay one fourth of premium.
<u>Secondary Comparables</u>	
Cudahy	50% of insurance up to Medicare age, if retiree not employed elsewhere with insurance.
Franklin	After 10 years of service, retiree assumes financial responsibility for remaining in plan.
Glendale	Retiree 55 to 59 pays full cost at frozen rate. Retiree 60 to 64 assumes 50% of premium. Retiree 65 or older eligible for Medicare Extended - 365 days. City assumes cost.
Greenfield	Normal retirement age and 10 years of service, city pays premium at a frozen rate. Limiting conditions if other employment taken.
Muskego	Retiree with 10 years of service pays for coverage.
Shorewood	Retiree to pay premium until eligible for Medicare, or gets other covered employment.
Whitefish Bay	Retirees between 1/1/76 and 12/31/80 pay premium. After 1/1/81, pay 50%.

Summary of the Association's Position. The Association contends that the Village's offer amounts to a take-away in that an officer may only plan for retirement by giving up accumulated sick leave. The Association says that under the option provided by the Village, the Village will hold onto the officer's money while the value of the accumulated sick leave is being exhausted. The Village will receive the interest earned on the officer's money.

The Association, however, proposes that the retired employee continue in the plan with the Village paying one fourth of the premium. It cites the data in Exhibit 21 (summarized earlier) to show that the differences would be that the Village offer would only pay for 3.78 years of premium whereas under the Association offer and based on life expectancy, the Village would pay 25% of the cost of the insurance for 15.12 years.

The Association notes that five out of the Association's ten proposed comparables provide for some employer paid insurance premiums though with restrictions and limitations. These include Greenfield, New Berlin, Cudahy, Glendale and Whitefish Bay. There is an emerging pattern here, and the Association wants to avoid a situation of having to play "catch-up" in the future.

The Association objects to the Village offer as taking away an already bargained right of the retiree to receive payment for accumulated sick days. The Village offer is in essence no offer at all.

Summary of the Village's Position. The Village holds that its position on using accumulated sick leave payments to pay for health insurance in retirement is the more reasonable of the offers. It says that its offer takes nothing away, but instead gives a choice. The Village notes that it has a generous sick leave payout for which there are almost no comparables, whereas under other plans where there may be a provision for payment toward insurance, there is no such equivalent payout. Also in the case of the primary comparables named by the city, where a portion of the premium is paid there are other qualifications required of the retiree before the

retiree is eligible for a benefit of municipality payment toward retirement. Here the Village presents no qualifications. It also notes that among the other 18 municipalities listed, only 6 of the 18 pay some portion of the premium.

The Village notes that the Village health insurance retiree provision is identical with the policy the Village has for all of its employees. All others can participate in the group health insurance plan after retirement, but at their own expense.

The Village objects to Exhibit 21 which was supplied by the Association on the grounds that it is in error in some calculations and in stating what the comparison is between the offers. What the retiree is being offered is an option. What the Association is asking is not that the Village pay 25% of the retiree's premium for 15.12 years, but for the lifetime of the retiree, whatever that is. If life expectancy is 17.9 years, then if the retiree wanted to do so under the Village offer, he could select to pay only 25% of his premium, and this would last for 15.12 years. The Village therefore rejects Exhibit 21 as inconsistent.

Discussion. A review of Exhibit 21 reveals that the average person, male or female, white or Black if retiring at age 55 would have a 24.2 expectancy of further life. At age 65 such person would have an expectancy of 16.8 years. The 1986 rate of pay would produce payment of \$108 per day for the retiring officer. If the officer had the full 110 days accumulation, this then would be \$11,880. As noted in Exhibit 21, if the monthly premium stays as it is, then the \$11,880 would produce 45.35 months of coverage or 3.78 years.

If the employee elected under the option by the Employer to pay 25% of this payout of \$11,880 toward his monthly premium, and if this latter rate stayed the same, this would last 15.12 years.

This information which was found in the exhibit however assumes many conditions of today which may not be in the future, as for example, how long will the individual live, and how much will the premium be. It is conceivable therefore that for some retirees, the option offered by the Village may have some validity, though for most retirees it may not be the more desirable of the options. The Village offer should therefore not be barred on the ground that the offer may never have validity.

The main question is whether the offer of the Association is more comparable on this matter. The Village implies the argument that in view of its exceedingly generous payout for retirees on accumulated sick leave, it should not have to be required to now make a contribution to the retiree's health insurance expense. Indeed, the exhibits reveal in Table IV that the Village does have a favorable payout to retirees for sick leave, both among the primary and secondary comparables.

As to payment of health insurance costs of retirees by municipalities, in only two of the five municipalities compared with Menomonee Falls is there some payment by the municipality. Among the secondary comparables, however, four of the seven municipalities pay something toward the retiree's health insurance. The arbitrator is of the opinion that while there appears to be some movement toward employers picking up some of the health insurance costs of retirees, in view of the fact that the primary comparables do not exhibit a majority of municipalities offering such a feature in their labor agreements, that the test of comparability has not been met by the Association offer at this time.

It must also be said that the option of the Village is not found elsewhere except in one or two instances, but since it is an add-on and not a take-away, it does not militate against the Village offer.

On the whole then, the Village offer on the retirement provision is the more comparable.

XII. EDUCATION EXPENSE. The Village is proposing to amend Article XIV, Section 14.01 to read,

"The Village will reimburse such officers for the cost of tuition and books up to a maximum of \$85.00 per credit."

The full present language of the first paragraph of Section 14.01 in the previous contract is,

"In the event any officer elects to advance his or her formal education by pursuing a course or courses of study at an accredited educational institution, the Employer agrees to reimburse such officer for the actual cost of tuition and the books upon the following conditions: (a) Such course or courses are related to the work of such employe and are approved in writing, in advance, by the Chief of Police. The Chief of Police shall not approve any course not specifically related to police work except for courses which may be required for an Associate Degree in Police Science, and (b) such officer successfully completes the course or courses with a grade 'C' or better."

Exhibit 13 showed the following current costs for tuition per credit:

- Milwaukee Area Technical College - \$24.60 and \$36.50.
- Waukesha County Technical Institute - \$24.60.
- University of Wisconsin-Milwaukee - \$96.10, 1 credit; \$233.12, 3 credits; \$438.64, 6 credits; \$813.15, 12 credits.
- Marquette University - \$190, day school; \$138, night school.

The following table lists provisions for this feature of educational expense among the primary and secondary comparables:

TABLE VI

TUITION AND TEXTBOOK REIMBURSEMENT IN COMPARABLE MUNICIPALITIES

Primary Comparables

Brookfield	Reimbursement for tuition and textbooks upon completion, if no other governmental unit has paid for courses. Textbooks belong to City. Five institutions in area named as locus of education.
Brown Deer	No provision.
Germantown	\$25.00 a month premium pay after 60 approved credits. \$40.00 a month after 120 approved credits. No provision for payment per credit.
New Berlin	No provision for tuition or textbook payment per credit. \$5.50 a month for each six credits obtained at an accredited institution, up to \$660.00 per year.
Waukesha	No provision for payment per credit.

Secondary Comparables

Cudahy	Officer hired before 1/1/75 receives 1/2 of 1% per month for each approved course; 10% maximum. Officers hired after 1/1/75 receive \$10/credit per year for each approved course. Maximum \$600. Other eligibility limitations.
Franklin	After certificate from accredited school and 64 credits, officer receives 75¢ per month per credit. Books, supplies, materials and other expenses paid by officer.
Glendale	No provision.
Greenfield	No provision.

TABLE VI - continued

Secondary Comparables

Muskego	Educational incentive bonus article eliminated for 1987 in an amended 1985-86 contract where Associate Degree in Police Science incentive bonus was \$640. Schools approved were WCTI, MATC, UW-Milwaukee and Marquette.
Shorewood	Officers compensated at 1/2 hourly rate for every hour spent in college level class for job related courses.
Whitefish Bay	Graduate payment for credits in courses leading up to a degree of Associate in Arts in Law Enforcement or Police Science Technology. Maximum payment \$604. Approved schools: Marquette, UW Milwaukee, MATC. Village pays full cost of tuition after passing approved subjects.

It was the testimony of Chief of Police David Steingraber that the educational fund is woefully underfunded, and a substantial drain has occurred on the fund by inordinately high payments to a very small number of officers for credits which could be attained at lower cost from other institutions. The Village and Department feel there is a higher cost than necessary for assisting officers to obtain an education. The same benefits for education are paid to managerial and supervisory employees. The Chief himself was paid \$1,094.26 in 1986 for education work over a period of more than one year. Two officers were paid for claims in 1986. One was paid \$1,168 for six credits at Marquette and one was paid \$397 for six credits at UW-Milwaukee.

Summary of the Association's Position on Tuition and Textbook Reimbursement. The Association notes that under the present contract language not just any officer can receive tuition and book reimbursement, but the Chief must first approve the courses. The cap that the Village seeks to place on the tuition and textbook reimbursement is a change from the present condition, and arbitral authority holds that where such a change is proposed, the proposer of the change has the burden to justify it. The Association says that the overwhelming majority of comparables recognize the value of educational benefits, and the contracts have some type of them. It notes that Brookfield and Whitefish Bay offer reimbursement for tuition and books. The present benefit permits the Association to remain in the top range of comparables, but it should not be automatically brought down, for other municipalities will follow the present Menomonee Falls pattern.

Under the Village offer an officer taking a course at Marquette University would have to pay a substantial sum above the Village payment. The Association rejects the Village argument that the officers are draining the fund. Rather the drain comes from the supervisory and managerial personnel who are not covered by the bargaining agreement. Further there is no proof of a drain other than the Chief's statement. Only a single officer attended Marquette University. Further, the Chief cannot determine what an officer will receive from a private university as compared to a public institution. The Village offer penalizes officers attending a private institution. This will result in discord in the department when one officer is fully funded and another not. This is not in the public interest. An educated, qualified, competent police force is in the public interest, and the Village offer jeopardizes this.

Summary of the Village's Position. The Village holds that its offer to put a cap on tuition and textbook costs is the more reasonable one. \$85 per credit will comfortably cover all tuition costs for an officer at MATC, WCTI and for any course valued at more than one credit at UW-Milwaukee. The Village cites the testimony of Chief Steingraber and the costs of courses at Marquette University and at UW-Milwaukee. In its brief the Village adds the information that between 1983 and 1986 Village police officers took courses totaling 155 credits at area schools and 54 of these were from Marquette, producing a substantial drain.

The Village contends that its proposal is supported by comparables, both primary and secondary. The Village is not proposing to prevent officers from taking courses at Marquette University, but it is concerned about rising costs, and \$85 per credit is a reasonable cap.

Discussion. Reviewing this matter from the standard of comparables, it is to be noted that only two of the primary and secondary comparables have payment provisions for tuition and/or textbooks, Brookfield and Whitefish Bay. However three of the primary comparables and five of the secondary comparables have some educational incentive, most of them being permanent payment for credits obtained, a substantial benefit. To the arbitrator the factor of comparability of municipalities having nearly identical types of educational benefit is merely a part of the larger concept of there being an educational benefit of whatever type. Thus the implied argument that the Menomonee Falls benefit of tuition payment can be justifiably reduced, because few other municipalities have that exact type of educational benefit is not persuasive.

The Village is arguing that the present benefit causes a hardship. This argument is also not persuasive since the Village fund for the benefit is also available to supervisory officers. Further the argument of inability to pay on the matter of the whole contract has not been advanced by the Village.

One last factor must be applied here: the public interest. The arbitrator does not believe it is in the public interest to have a contract provision for educational benefits be so worded as to nearly exclude a private institution of higher learning, particularly when that institution is named in other contracts where educational benefits are offered as an approved institution at which credits can be obtained. The language of the Menomonee Falls benefit, though not so intended, becomes discriminatory.

For reasons therefore of the public interest, the Association offer here is the more reasonable one.

XIII. SHIFT PREFERENCE BY SENIORITY. The Association in its offer is proposing to change Section 18.04 of the previous agreement to read:

"All non-probationary officers shall be assigned to shifts on the basis of seniority preference. This section 18.04 shall not apply to corporals of police."

The previous agreement read,

"In the assignment of officers to shifts, the parties agree to continue the practice of assigning officers to the day shift according to seniority. Assignments to other shifts shall be made by the Chief of Police in his discretion giving consideration to the individual officer's request. The above paragraph shall not apply to the assignment of officers assigned to work units not required to work shifts 24 hours a day."

The department currently has four shifts, a Day Shift from 7 a.m. to 3 p.m., an Early Shift from 3 p.m. to 11 p.m., an Overlap Shift from 7 p.m. to 3 a.m., and a Late Shift from 11 p.m. to 7 a.m. 8 police officers are on the day shift, 10 on the early shift, 3 on the overlap shift, and 8 on the late shift. These shifts are in the Patrol Bureau.

The department also has a Bureau of Support Services and a Bureau of Investigative Services which is a detective bureau. In the first named bureau there are no shifts, but in the detective bureau there are three detectives and two shifts, one starting at 8 a.m. to 4 p.m., and one starting at 9 a.m. to 5 p.m. Another shift will be starting from 1 p.m. to 9 p.m. Currently the three detectives rotate in the two shifts. A fourth detective is a juvenile officer.

Chief Steingraber issued General Order 83-9 of the department on September 20, 1983, in which he said the following among other things,

"III. ASSIGNMENT OF PERSONNEL

"A. Regular assignment of personnel to the various bureaus and other work units will be made by order of the Chief of Police. In making such assignments, consideration will be given to training, experience, past performance, special skills and demonstrated aptitude for a particular assignment. Such regular assignments will remain in effect until such time as there is a reason for reassignment.

"B. Shift assignments in those bureaus which are required to schedule personnel in three or more shifts each work day, shall be made by the responsible Division Commander subject to the following guidelines:

"1) Day shift assignments will be given to those individuals assigned to that bureau who request day shift assignments based on seniority.

"2) Assignments to 50% of the positions on shifts other than the day shift will be made based on seniority.

"3) To the maximum extent possible, individuals will be assigned to shifts consistent with their stated preference.

"4) No individual will be assigned to the late night shift for longer than one year if such assignment is not their stated preference.

"5) Consistent with the above guidelines, shift assignments will remain in effect unless proper justification exists for reassignment. Shift assignments will not be arbitrarily rotated."

An order by a previous Chief, Charles L. Kuhn, No. 411, dated October 13, 1977, said that all officers were to complete a "Duty Shift Assignment" questionnaire. Information from them were to be used for shift assignments, and whenever practicable, an officer's preference would be granted. However, the need of the department and service requirements would come first and be the most important factor.

Chief Steingraber states that the Village does not want any more application of seniority than is presently applied. There is an annual review of assignments during which officers are asked to express their preference, after which assignments are made according to the current policy. Among the reasons for the current policy is that officers assigned to the third shift may experience what is known as "burnout", where the efficiency and productivity of the officers decline. Work on this shift does have an adverse effect on officers, so it is essential to have an officer relieved, if the officer wants it after a year.

The Chief states that he introduced his policy to supersede that of Chief Kuhn as an administrative decision. He states he had not received complaints about shift assignment or morale problems, but had talked to individual officers informally. The Chief also stated that he was aware of the costs incurred in getting a replacement officer if an experienced officer resigned because of not getting a satisfactory shift. However for some officers who leave, it is probably best for them that they do, but the matter varies from officer to officer who does resign.

The Chief also testified that there could be burnout on the second shift and that officers as individuals adjust to different shifts in different ways.

Burnout includes lost motivation and perspective and a noticeable difference in the officer's attitude and approach to the job. An involuntary assignment can also produce this result.

The Chief's directive applies only to those bureaus of the department which have different shifts.

Lt. Jack Pitrof, Commander of the Patrol Bureau states that in making assignments the day shifts are assigned on the basis of seniority. Then the 50 percent of each of the remaining shifts is filled by preference and by seniority of the persons requesting these shifts. Then the remaining assignments are made reflecting the judgment of the Chief as to departmental needs. For 1987 five persons did not get their shift preference, excluding people that requested the day shift but were not eligible. Of the five who did not get their shift preference, four sought the overlap shift. Before the assignments were made, two officers and their commanders discussed the assignment, the officers having expressed dissatisfaction.

The Lieutenant states that there are no formal arrangements for dealing with officers in the top 50 percent of shifts other than the day shift who experienced burnout, but they may be informally spoken to by the shift commander. The Lieutenant states that an involuntary shift assignment can adversely affect morale, but the morale could also be affected if the officer did not get a preferred shift assignment because of low seniority.

The Lieutenant stated that in his assignment of officers to shifts, preference is considered, as well as the number of experienced and inexperienced officers on a shift, and whether an individual officer is suffering from some type of adverse effects which might be attributed to the shift. Also how an officer would fit with other individuals on the shift and what type of supervision he would get is considered. Observations by other police supervisory personnel could also affect the assignment of an officer to a shift. Complaints against officers also might be taken into consideration. There is also the need to develop strengths of officers.

An Association witness, Police Officer Arthur E. Lunde, stated that the Association has raised its proposal, because an experienced officer who was on another assignment was told he would go on the late shift, because seniority did not apply any more, and he would be assigned where the Chief wanted to assign him. Officer Lunde says that he was assigned to the early shift for ten years and then was told he would have to go on the late shift. The reason given was that an officer of his experience was needed on it. His testimony was that the officers wanted to know where they were going to be from year to year and on what particular shift. Testimony was given of an officer who wanted the late shift but was assigned to the early shift and then resigned.

The proposal for the use of seniority to determine shift assignment would also apply to the Bureau of Investigative Services if it has shifts.

Exhibits showing the terms applying to shift assignments in the various comparables used by the parties were given. From these exhibits the information in the following table has been abstracted.

TABLE VII

PROVISIONS RELATING TO SHIFT ASSIGNMENT IN COMPARABLE MUNICIPALITIES

Primary Comparables

Brookfield	Shifts assignments selected on seniority, but consistent with needs of the department.
Brown Deer	Officers indicate shift preferences. Director of Public Safety makes assignments considering needs of department and public, capability and qualifications of the employee, length of service and expressed shift preference. Assignments to be made in equitable and objective manner.
Germantown	Officers assigned shifts by seniority preference.

TABLE VII - continued

Primary Comparables

New Berlin Chief assigns to fixed shift assignments on basis of rank and length of service in rank. Chief can assign officers on fixed shift assignments to another shift for 4 months once in a four year period. Officers with less than three years service are assigned to non-fixed shift assignments.

Waukesha Officers may bid in for a vacancy on a shift. Officer with most seniority shall be given first consideration providing officer is qualified and providing remaining employees on shift are also capable and qualified to perform available work.

Secondary Comparables

Cudahy Employees request Chief for filling transfer or vacancy. Chief to consider department needs, employee's overall record, past performance qualifications, evaluations, family life and seniority. Chief must confer with employee. Vacancies the result of promotion, resignation or retirement filled by seniority. If no applicants, the position filled by inverse seniority. Chief reserves the right to make shift assignments. Officers transferred shall be notified in writing and reasons given. Vacancy created by transfer filled by most senior applicant.

Franklin Patrolmen assignments to fill vacancies on a shift by seniority. Officers with less than one year can be temporarily assigned.

Glendale Shift assignments made on basis of seniority. Chief can utilize probationary employees on any shift.

Greenfield Shift assignment by seniority except when Chief deems it not in best departmental interest.

Muskego Policy of Employer to recognize seniority within rank and classification as to shift assignment.

Shorewood Shifts assigned on seniority, but senior employees may reject transfer to another shift.

Whitefish Bay New officers assigned to third shift. All shift assignments made solely on basis of seniority preference.

Summary of the Association's Position. The Association holds that the comparables show an emerging and leading pattern of shift assignment, namely shift assignment based solely on seniority, as in Germantown, Glendale and Whitefish Bay. By adopting the position of seniority as sole basis for shift selection, the Village will avoid a catch-up situation in the future. The Association notes the testimony of Officer Lunde that many officers do not know from year to year as to what shift they will be working on. This severely limits an officer's ability to plan for his personal life, and this produces a morale problem for the officer. The Association notes that Lt. Pitrof acknowledged there was a morale problem over the assignments with one officer resigning. Also the Association notes that the statement of Lt. Pitrof that an officer may need supervision which the Lieutenant interprets as "positive discipline". Thus it appears that shift assignments are being made as a subtle form of discipline, which is contrary to a provision in the agreement that shift assignments should not be made for reason of discipline. If the Association position is not accepted, there is nothing to prevent the Village from further abusing the shift assignment policy, and this reason alone justifies the Association position.

Summary of the Village's Position. The Village notes that the past contract had authorized the day shift to be filled on the basis of seniority and the other shifts to be filled at the Chief's discretion giving consideration to the individual officer's request. The Village would continue this position, because it allows the department to staff the shifts as effectively as possible. Because of the dangerous character of the work and the need for effective protection, the Chief must have flexibility. To staff all shifts on seniority would leave the possibility that too many inexperienced or incompatible officers would end up on the same shift.

The Village does not assign shifts in a purely arbitrary manner, as evidenced by the General Order relating to shifts. The Order, although not part of the contract, carries out the contractual terms of giving consideration to the request, and also provides that no officer will be assigned to the late shift for more than one year, so as not to be susceptible to burnout. If officers cannot transfer out of this shift, burnout will appear.

The Village notes the factors which Lt. Pitrof says are taken into consideration of shift assignments. These factors of experience, supervision needs, strengths and weaknesses of officers could not be given any weight under the Association proposal. The Village also holds that the shifts may be staffed by officers who do not get along with each other or a supervisor.

The Village notes that three of its six primary comparables allow seniority preference, but this does not mandate that the Village should follow suit. The Village's current position contains a strong element of public interest. The Village currently staffs to reflect anticipated work load, safety of officers, operational goals, objectives and priorities and equitable distribution of assigned days off. Under the Association offer this policy could not be met.

Discussion. A review of the comparables listed as primary by the arbitrator indicates that only one of them allows shift selection on the basis of seniority without restrictions. The others give consideration to shift preference but have some modifications of it or limitations allowing departmental discretion. There is always some opportunity for the Chief to make some adjustments. In the secondary list there is evidence of a more pronounced trend toward exclusive use of seniority for shift assignment. Whitefish Bay has a fairly tight system of assignment by seniority. Muskego's statement is somewhat ambiguous but would appear to recognize seniority solely for shift assignment. Glendale and Franklin leave some small options for assignments other than on seniority. One can conclude that there is a trend toward recognizing seniority as the sole basis for shift selection; but taking both primary and secondary comparables as a group, or the primary comparables alone, there is still a larger number of contracts which allow some discretion to the department.

The question then in the instant matter is whether the department under the retention of the past provision in the new agreement has too much latitude in ignoring seniority in shift selection. Under the present terms, 8 of the positions are guaranteed to be filled by seniority under the contract, and thereafter the Chief must give consideration to seniority, but can use his discretion. This is still a substantial latitude, but the Chief has modified it by an order which allows another 11 positions out of 29 under consideration to be filled on the basis of seniority. Of course, it should be recognized that the Chief could substantially modify this order and, while giving consideration to seniority, give it less weight.

Without then relying on whether the Village will continue the fairly broad consideration given to seniority under the General Order, the question fundamentally comes to whether a department and Chief should have some latitude and flexibility in making shift assignments. Is the interest of the public best served by allowing such latitude or by having a system relying strictly on seniority? The arbitrator on the basis of the testimony believes that the public interest is best served by not barring the department head from all latitude and flexibility on making assignments.

The problems of personnel conflicts, of recognizing special aptitudes, of attempting to broaden training and experience, and of adjusting to personal needs of officers, might be less under a system, fairly administered, which allows some flexibility to a Chief of Police than under a system in which all positions are filled by seniority. Under either the system of strict seniority or some flexibility, some of the personnel will be getting shifts they do not like. In a fairly administered department where consideration is given to shift preference, but other factors such as those mentioned above are given consideration, adjustments to satisfaction of more officers might be achieved.

On the basis of comparability and the public interest, the offer of the Village here is held more reasonable.

XIV. OTHER FACTORS. No changes in the circumstances between the parties were brought to the fore during the pendency of the proceedings.

The arbitrator does not find other factors normally taken into consideration to have been raised here. The Association presented two exhibits of contracts relating to the school districts within Menomonee Falls, but while these offer some comparisons, the main comparisons must be made between police departments with their special role of public safety.

XV. SUMMARY OF FINDINGS.

1. There is no question about the lawful authority of the Village to meet the terms of either of the final offers.

2. The parties have stipulated to all other matters between them for a two year agreement.

3. There is no inability of the Village to meet the costs of either offer.

4. The arbitrator finds that the primary comparables of municipalities are Brookfield, Brown Deer, Germantown, New Berlin, Waukesha, and the secondary comparables are Cudahy, Franklin, Greenfield, Muskego, Shorewood, and Whitefish Bay. Other comparables named by the parties are too remote geographically, or too large or too small in population and police personnel.

5. The information supplied on basic wages, benefits and total compensation by the parties is too meager to determine that these factors should be given predominant weight for one side or the other, because comparisons cannot be made. However, as to cost of living changes, the fact that the Village offer exceeds in percentage these changes indicates that it need not necessarily make other offers to effect a catch-up whether in base wages or benefits.

6. The Village offer on an insurance benefit for retirees is more comparable to other municipal agreements.

7. On tuition and textbook payments, the Association offer is the more reasonable one from the viewpoint of the public interest.

8. As to shift preference by seniority, the Village offer is more reasonable on the basis of comparability and of the public interest.

9. No changes in circumstances between the parties were brought to the fore during the pendency of the proceedings, and no other factors normally considered have been raised.

10. On the basis of the foregoing, the matters of the shift selection position and of insurance benefit for retirees are more weighty in favor of the Village offer than the position of the Association on the tuition and textbook payments. Therefore the following award is made:

XVI. AWARD. The Agreement between the Menomonee Falls Police Association, Inc., and the Village of Menomonee Falls should contain the provisions in the final offer of the Village.

Frank P. Zeidler
FRANK P. ZEIDLER
ARBITRATOR

DATE February 1, 1987