In the Matter of the Petiton of the:

MILWAUKEE POLICE SUPERVISORS ORGANIZATION

for final and binding arbitration involving supervisory law enforcement personnel in the employee of the

CITY OF MILWAUKEE

Decision No. 25223-B

Appearances: Gerald P. Boyle, Attorney at Law, for the Union
Thomas C. Goeldner, Assistant City Attorney, and Thomas E. Hayes, Special Deputy City Attorney for the Employer

Milwaukee Police Supervisors Organization, hereinafter referred to as the Union, filed a petition on November 12, 1987 requesting the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting that it initiate compulsory final and binding arbitration pursuant to Sec. 111.70(4)(jm). An informal investigation was conducted on December 16, 1987 to determine whether an impasse existed within the meaning of the Municipal Employment Relations Act. The investigator advised the Commission that the parties were at impasse on the existing issues. The Commission ordered that final and binding interest arbitration be initiated for the purpose of issuing a final and binding award to resolve the impass between the Union and the Employer. The parties selected Zel S. Rice II as the arbitrator and the Commission issued an order on March 18, 1988 appointing him as the arbitrator to issue a final and binding award.

The arbitrator held an initial meeting with the parties at Milwaukee, Wisconsin on March 22, 1988 and an agreement was reached on ground rules and a time table for the hearings. Three days of mediation were held in Milwaukee, Wisconsin on April 20, April 21 and April 22, 1988. Between April 25 and June 22, nine days of hearing were held in Milwaukee, Wisconsin and both parties were given an opportunity to present evidence. A transcript was made of the proceedings and it totaled 1,402 pages. Sixty different exhibits were presented to the arbitrator for his consideration. On July 27, 1988, oral arguments were made by the attorneys for the parties and the Union presented its brief to the arbitrator. The Employer's brief was submitted to the arbitrator on August 16, 1988.

The testimony, exhibits, arguments and briefs of the parties have been considered.

This is the first time that the parties herein have been unable to agree upon a new collective bargaining agreement and have resorted to interest arbitration in order to resolve the dispute. The arbitrator is familiar with the background of these negotiations dating back 25 years. Collective bargaining between the Employer and the various bargaining units representing its employees dates back to 1963. At that time, police supervisors were in the

same bargaining unit that included the rank and file police. The police and firefighters and a number of other unions bargaining with the Employer for the first time on a formal basis reached an impasse. A fact finding panel which was appointed to recommend a resolution to the 1963-64 dispute made a recommendation that broke the police out of the overall city job classification structure. As a result of that recommendation, parity between the police and firefighters was broken in May of 1965. The 1966 negotiations between the Employer and the firefighters also reached an impasse and another fact finder was appointed to make a recommendation. The firefighters sought wage parity with the police in that proceeding but it was rejected by the fact finder and disparity between firefighter and police wages continued up to the date of the negotiation for the 1973 wage reopener for the firefighters. Those negotiations resulted in an impasse and a job action by the firefighters in November 1973. A fact finding proceeding was initiated and the primary issue involved was parity. After some detailed analysis, the fact finder concluded that firefighters in Milwaukee should achieve parity with the police. Both the firefighters and the police were able to negotiate new collective bargaining agreements in 1977 and both agreements resulted in similar increases and the same basic salary for police and firefighters. As a result, parity was maintained. In 1979, the firefighters settled for a two year agreement through August of 1981 and it provided for a 6.6% increase for 1979 and a 6.4% increase in 1980. The settlement was similar to the collective bargaining agreements voluntarily negotiated between the Employer and 17 other bargaining units. The police refused to accept the two year pattern agreed upon by the firefighters and 17 other city unions and exercised their right to proceed to arbitration. As a result of that arbitration, the police received a 10% wage increase effective January 1, 1979 and a 10% wage increase effective January 1, 1980 and parity was broken. The firefighters engaged in two illegal strikes in the spring of 1980 in order to obtain the same wage gains that the police had obtained in arbitration. As a result of those strikes and subsequent negotiations, the Employer entered into a two year supplementary agreement with the firefighters that increased their wages so that by August 30, 1981 and February 31, 1982, they were receiving rates designed to achieve parity with the police. The police refused to accept a settlement that would have continued a parity relationship with the firefighters and they reached an impasse with the Employer. They again resorted to arbitration and an award was issued in September of 1981 that continued the parity wage relationship between the firefighters and the police. A relationship has been developed between certain ranks in the fire department and corresponding ranks in the police department and the wages for the corresponding ranks have been exactly the same in each department. The firefighters, the police and the Union negotiated voluntary collective bargaining agreements for the contract years of 1983-84 and the contract years of 1985-86. Each of those two year agreements continued the base pay parity at the top of the pay ranges between the related classifications in the police department and the fire department.

The Union was certified as the collective bargaining representatives for supervisors in the Milwaukee Police Department in 1973. Since that time it has been the collective bargaining representative for those supervisors in the rank of sergeant or above up to and including the rank of deputy inspector. It has always negotiated agreements with the Employer that followed the pattern of the

collective bargaining agreement between the Employer and the rank and file police. During those years that there was parity between the rank and file police and the firefighters, there was parity between the supervisors represented by the Union and those corresponding ranks in the fire department. The pattern of increases over the years has been to provide percentage increases. The Union always received the same percentage increase for its bargaining unit that was agreed upon by the representative of the rank and file police. Since 1981, the Union has reached voluntary agreement with the Employer on three separate two year agreements. Those agreements always provided the same percentage increase that was received by the firefighters and the rank and file police. There has been base parity at the top of the pay ranges between firefighters and related positions in the police deparment, including those supervisory positions represented by the Union.

The collective bargaining representatives of the firefighters and the rank and file police along with the Union on behalf of the supervisors in the police department began negotiating in 1987 for a new agreement for the contract years 1987 and 1988. The firefighters reached agreement on a new contract covering that period. The bargaining unit representing the rank and file police has not reached agreement and is involved in an arbitration proceeding similar to the one before this arbitrator involving the Employer and the Union. The collective bargaining unit representing the firefighters is a major pattern-setting bargaining unit representing employees of the Employer. It is the Employers third largest bargaining unit, representing 1,050 employees, and the bargaining unit representing the rank and file police is the second largest, representing 1,700 employees.

The firefighter settlement with the Employer provided a three percent across the board increase effective approximately March 1, 1987 and March 1, 1988 and a two percent across the board increase effective approximately November 1, 1987 and November 1, 1988. The two percent increase in 1987 was in recognition of a rearrangement of vacations, holidays and hours of work, and the two percent increase in 1988 was contingent upon employees attaining state certification as an Emergency Medical Technician I. The agreement provided that the Employer would continue the 2.5% per year benefit formula and a conversion to normal retirement from duty disability retirement at age 54 instead of age 57. The firefighters had made proposals for re-picks of pension benefits but none were included in the settlement. The free retiree health insurance provision for duty disabled employees was reduced from age 63 to age 57, and there was no provision for any increases in existing retiree health insurance benefits. The firefighters had made proposals for post age 65 health insurance benefits for retirees that were not granted. The settlement provided for a reduction in the average work week at no cost to the Employer by substituting existing vacation and holidays for work reduction days. The cost of the firefighter settlement was a shade over 6% over its two year duration.

The statutory provisions that the arbitrator must follow in determining what his award will be are set forth in sec. 111.70(4)(jm). They are as follows:

" 4. In determining those terms of the agreement on which there is no mutual agreement and on which the parties have negotiated to impasse, as determined by the commission, the arbitrator, without restriction because of enumeration, shall have the power to:

a. Set all items of compensation, including base wages, longevity pay, health, accident and disability insurance programs, pension programs, including amount of pensions, relative contributions, and all eligibility conditions, the terms and conditions of overtime compensation, vacation pay, and vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance, uniform allowances and any other similar item of compensation.

b. Determine regular hours of work, what activities shall constitute overtime work and all standards and criteria for the assignment and scheduling of work.

c. Determine a seniority system, and how seniority shall affect wages, hours and working conditions.

d. Determine a promotional program.

e. Determine criteria for merit increases in compensation and the procedures for applying such criteria.

f. Determine all work rules affecting the members of the police department, except those work rules created by law.

g. Establish any eduational program for the members of the police deparment deemed appropriate, together with a mechanism for financing the program.

h. Establish a system for resolving all disputes under the agreement, including final and binding 3rd party arbitration.

i. Determine the duration of the agreement and the members of the department to which it shall apply.

5. In determining the proper compensation to be received by members of the department under subd. 4, the arbitrator shall utilize:

a. The most recently published U.S. bureau of labor statistics "Standards of Living Budgets for Urban Families, Moderate and Higher Level", as a guideline to determine the compensation necessary for members to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and

b. Increases in the cost of living as measured by the average annual increase in the U.S. bureau of labor statistic "Consumer Price Index" since the last adjustment in compensation for those members.

6. In determining all noncompensatory working conditions and relationships under subd. 4, including methods for resolving disputes under the labor agreement, the arbitrator shall consider the patterns of employe-employer relationships generally prevailing between technical and professional employes and their employers in both the private and public sectors of the economy where those relationships have

been established by a labor agreement between the representative of the employes and their employer."

DISCUSSION OF ARTICLE 9 - BASE SALARY

The salary demand of the Union request a 5% increase for 1987 and a 5% increase for 1988. In addition the Union requests that all persons in the sergeant pay range category receive an additional 3% increase. The Union has another request that lieutenants be recruited at the fourth step of their pay range. The Employer's base salary proposal is a 3% across the board increase effective pay period 1, 1987, a 2% across the board increase effective pay period 19, 1987 a 3% across the board increase effective pay period 1, 1988 and a 2% across the board increase effective pay period 19, 1988.

The Union's position is that a 5% increase for each year is an appropriate demand. The Union argues that there has been a slippage in the real earnings of Milwaukee police sergeants from 1978 to 1986. It takes the position that a further slippage will occur unless members of the bargaining unit receive a 5% increase in 1987 and a 5% increase in 1988.

The Employer agrees with the Union that the CPI for all urban consumers is the appropriate index for the arbitrator to consider. It argues that its proposal exceeds the increases in the CPI for all urban consumers in Milwaukee and the United States. It points out that there were voluntarily negotiated settlements between the Employer and Union for the 1981-82, 1983-84 and 1985-86 contract years. The Employer takes the position that to match 1981 real pay, 1987 pay would have to fall .4 percent from its 1986 level. It asserts that through voluntary collective bargaining, it has maintained stable base salaries for its police supervisors. The Employer contends that its police supervisors are highly paid in comparison with comparable officers in the largest Wisconsin departments. It points out that when its proposal is factored into the base salary rate, the wage rate for its sergeants would rank second among the 16 largest police departments in Wisconsin and its lieutenants would rank first. The Employer asserts that its proposal would place its sergeants pay rate second among the 15 suburbs and sheriffs department in Milwaukee County, and its lieutenants would rank second in 1987 and first in 1988. The Employer points out that it has the seventh largest population in the eight metropolitan statistical areas located in the Midwest. It argues that after equalization for pension contribution disparities, Milwaukee sergeants would rank fifth in that comparable group in 1987 in total cash compensation and its lieutenants would rank fourth. The Employer takes the position that its police supervisors fare very well in compensation comparisons, whether on a county, state or Midwest basis. It contends that the 1987-89 firefighter contract proposing identically stagered 3%/2%/3%/2% base salary increases establishes a voluntarily settled internal comparison and creates the pattern that the arbitrator should follow in resolving the wage issue before him. It argues that through three contract periods there has been maximum step base pay parity between the following police department/fire department ranks: police officer/firefighter; sergeant/fire lieutenant; lieutenant/fire captain; captain/battalion chief; and deputy inspector/deputy chief. The Employer contends this internal base salary

and total package relationship between fire department and police department employees is the most significant factor for the arbitrator to consider.

The concept of parity between police and firefighters is an old one in the Employer's collective bargaining history. Prior to 1964, the concept was a basic part of the salary structure in the police and fire departments. The only times there have been departures from the concept of parity have been those occasions when a third party fact finder or arbitrator has recommended or imposed salary adjustments that broke the employees of the police department out of parity with the employees in the fire department. On one occasion, parity was restored by a fact finder who recommended that fire department employees be given wage parity with those comparable employees in the police department. On every other occasion that an agreement has been reached through voluntary collective bargaining parity has resulted. The contract between the rank and file police and the Employer for the 1981-82 contract years that was the result of an arbitration award continued the concept of parity between police and firefighters. The rank and file police employees bargaining unit, the firefighters bargaining unit and the Union have each entered into voluntary agreements for the 1983-84 contract years and the 1985-86 contract years that continued the concept of wage parity. The concept of wage parity between comparable ranks in the police department and the fire department is firmly imbedded in the bargaining relationships between the Employer and its employees in those departments. It is not the proper role of an arbitrator to disturb such a firmly imbedded concept in the absence of some unusual circumstance or inequity that is clearly established by the evidence presented to him. No such evidence was presented in this proceedings that would justify disrupting the entrenched concept of wage parity that has existed between the Employer's employees in the police department and the fire department.

The Employer's proposal of a 3%/2%/3%/2% across the board increase is a fair one. It provides an increase that more than matches the increase in the cost of living as measured by the Consumer Price Index since the last adjustment in compensation for members of the bargaining unit. That is a statutory criteria that the arbitrator must consider and it supports the position of the Employer. The Union's proposal would provide an increase even further above the increase in cost of living. It should be noted that the actual lift in salary over the two years of the agreement is greater under the Employer's proposal than that of the Union because of the compounding that takes place as a result of the split increases each year.

Forgetting the concept of parity, the mainstream of arbitral opinion is that internal comparables of voluntary settlements should carry heavy weight in arbitration proceedings. The Employer's attempt to offer the same wage increase to all of its bargaining units in the protective services is a significant fact to be considered by an arbitrator in the absence of a factual situation that would distinguish one bargaining unit from another. The goal of collective bargaining is to have agreements reached by the parties through voluntary settlements as opposed to arbitral awards. Arbitrators should not issue awards that encourage the Employer's various collective bargaining units to seek to resolve their labor disputes through arbitration rather than at the bargaining

table. If the Employer is to maintain labor peace with the many bargaining units with which it negotiates, changes in wages and benefits must have a consistent pattern. The worst thing that could happen to the Employer and the various collective bargaining units with which it negotiates would be to make the concept of arbitration so attractive that collective bargaining would be reduced to a series of multiple interest arbitration proceedings with different arbitrators issuing awards with no consistency between them. The Employer and the bargaining units representing employees in the protective services have been through that experience on more than one occasion and the result was turmoil. That turmoil only ended when consistency was reestablished in the wage patterns for the various collective bargaining units. An internal pattern has been established for the 1987-88 contract years by the Employer's voluntary settlement with the firefighters. The Employer's wage proposal of 3%/2%/3%/2% increases over the two year period for this bargaining unit fits in the internal pattern established by the voluntary agreement between the Employer and the firefighters and maintains the concept of wage parity that has become a bench mark of collective bargaining between the Employer and the bargaining units in the protective services. Accordingly, the arbitrator finds that the Employer's proposal that effective pay 1 in 1987 and 1988 a 3% across the board increase be given to the Union and effective pay period 19 in 1987 and 1988 a 2% acros the board increase be given to the Union is appropriate and it will be part of the award.

The Union argues that sergeants should receive an additional 3% increase because they have lost ground over the years because of the percentage increases given by the Employer. It contends that sergeants at one time had the proper wage with respect to the other ranks within the department. It takes the position that because of the methodology of giving percentage increases, the dollar difference between lieutenant and sergeants has increased and the dollar difference between sergeants and patrol officers has decreased. The Union contends that unless there is some correction, the rank of sergeant will not be attractive and qualified patrolmen will pass up promotion because they lose seniority rights, have difficult shift hours, have to change their life styles and face the fact that those they are supervising are just a shade behind them in terms of economic advantage. The Union asserts that Milwaukee sergeants rate of pay ranks 16th among the top 31 cities in the nation while having the 12th or 13th highest population. It points out that there are cities in Wisconsin that pay their sergeants more than the Employer does and it regards that as unfair. It takes the position that sergeants working in smaller cities in Wisconsin and suburbs around Milwaukee have a less difficult task and should not be paid more than the Employer's sergeants. The Employer argues that the Union illogically concludes that sergeants have lost ground to lieutenants in terms of real dollars. It points out that in determining whether salary increases are keeping pace with inflation or CPI increases, one looks to the percentage increase of salaries. The Employer asserts that equal across the board percentage increases maintain the relative standing. It points out that since 1977 the salary differential between sergeants and lieutenants has been 16.98% and the differential between captain and lieutenant has been 12.48%. The Employer points out that this time frame includes numerous voluntarily settled contracts that included equal across the board percentage pay increases. It asserts that by applying

equal across the board percentage increases the Employer has maintained the relative pay differential between the ranks. The Employer also points out that the differential between a top paid police officer and a top paid sergeant is 13.96% and if the sergeant/lieutenant differential was reduced from the historic 16.98% to the Union's requested 13.98%, the police officer/sergeant differential would increase to 16.96%. The Employer argues that it has maintained a long standing settlement equality approach between the bargaining units that include the rank and file police officers and the one represented by the Union. It asserts that when both units received identical percentage base salary increases, the differential betwen sergeants and police officers was not reduced and their relative standing was maintained at 13.96%. The Employer takes the position that to grant the Union's proposal for a 3% increase for sergeants would break the sergeant/fire lieutenant parity as well as the historic differential between rank and file police officers and sergeants.

There is no evidence in the record of any change in the sergeant's job responsibilities that would justify a special increment for them. The percentage wage differential between the sergeants and lieutenants and the sergeants and police officers has existed since 1977, and the parity relationship between the sergeant and fire lieutenant has existed at least since 1981. Since those relationships have been established, there have been a number of voluntary agreements between the Employer and the Union and the Employer and the other bargaining units representing the protective services, and the percentage differentials in wages have remained the same. No evidence was presented that would justify a change in the wage relationship between that position and lieutenants or police officers in the police rank and file bargaining unit or the fire lieutenants in the firefighters bargaining unit. The arbitrator recognizes that the dollar difference between the sergeants and lieutenants has increased as a result of the across the board percentage increases that have been negotiated between the Employer and Union. However, the relative relationships between the lieutenants and sergeants and every other rank in the bargaining unit or in the two other bargaining units of employees in the protective services have remained the same. The Union contends that there has been a lessening of the span between the sergeants and the patrol officers. That is not correct. The percentage differential between the sergeants and patrol officers has remained the same and the dollar differential between the sergeants and the patrol officers has actually increased since 1977 as a result of the across the board wage increases given to the Union and the bargaining unit representing the rank and file police officers. The Union points out that there are at least two police departments in the metropolitan Milwaukee area in which the sergeants receive higher wages than the Employer pays its sergeants. It contends that the work of the Employer's police sergeants has to be greater, has to carry with it more stress and has to be more complicated than work being performed by sergeants in metropolitan suburban communities. There is no evidence that indicates the duties and the responsibilities of the sergeants in those communities that pay their sergeants more than the Employer pays its sergeants have duties and responsibilities similar to that of the Employer's sergeants. No such evidence was presented and the arbitrator has no basis for making a determination that the Employer's sergeants should be paid more than those few sergeants in the metropolitan Milwaukee area who receive a higher rate of pay. The existing

relationships between the wages of the Employer's sergeants and the other officers in the Employer's protective services have remained the same for a number of years, and the Union has agreed to collective bargaining agreements that maintained those relationships. That history establishes that the Employer and the Union have agreed that the wage relationships between its sergeants and the other employees in the protective services are proper when compared to each other and when compared to the wages received by sergeants in other communities in the metropolitan Milwaukee area. The fact that there has been no change in the duties or responsibilities of the Employer's sergeants convinces the arbitrator that there is no basis for giving the Employer's sergeants an increase over and above that received by the other employees in the bargaining unit. Accordingly, the arbitrator's award will reject the demand of the Union that sergeants receive an increase over and above that awarded to other employees in the bargaining unit.

The Union proposes that lieutenants be recruited at the fourth step of their pay range. Currently, lieutenants are recruited at the third step of their pay range. Since 1981 through three contract periods there has existed maximum step base pay parity between the following police department and fire department ranks: police officer/firefighter; sergeant/fire lieutenant; lieutenant/fire captain; captain/battalion chief; and deputy inspector/deputy chief. This internal base salary relationship between fire and police employees is a significant factor for the arbitrator to consider in connection with the base salary positions of the parties. At least since 1981, the concept of maximum step base pay parity has been part of the rationale behind the wage relationships in all of the collective bargaining agreements between the Employer and the bargaining units of employees in the protective services. The lieutenant of police and the fire captain are in the same pay range. However, the lieutenant of police has been recruited at the third step of the pay range while the fire captain has been recruited at the fourth step of the same pay range. As a result, it has taken a lieutenant of police one year longer to achieve the maximum rate of pay for his rank than it has taken a fire captain. If the concept of wage parity between the police and fire rank is to be maintained, the lieutenants of police should be recruited at the fourth step of their pay range. An inequity exists between the lieutenants of police and the fire captains and to put them on equal footing, the arbitrator's award will provide that lieutenants of police be recruited at the fourth step of their pay range.

An examination of the proposals of the Employer and the Union and the review of the evidence and agruments presented by the parties has convinced the arbitrator to make the following

AWARD ON ARTICLE 9 - BASE PAY

The Employer's proposal of across the board increases of 3% effective pay period 1 in 1987, 2% effective pay period 19 in 1987, 3% effective pay period 1 in 1988 and 2% effective pay period 19 in 1988 is granted and should be incorporated into the 1987-88 agreement between the parties. The Union's proposed across the board increase in base salary of 5% in 1987 and 5% in 1988 is rejected.

The Union's proposal of an additional 1.5% increase for sergeant from the December 27, 1986 base salary commencing December 28, 1986 and another 1.5% increase from the December 24, 1987 base salary commencing December 25, 1987 is rejected.

The Union's proposal that lieutenants be recruited at the fourth step of their pay range is granted and language providing for it should be incorporated into the 1987-88 collective bargaining agreement.

DISCUSSION OF ARTICLE 10 - SPECIAL DUTY PAY

The Union has proposed that uniformed lieutenants of police and detective lieutenants should be compensated at the rate of $1.00 per hour for underfilling a captain's position for periods of 1/10th of an hour or more. The Union points out that it is not asking for the $1.00 per hour except in situations where lieutenants find themselves having to do the daily work of a captain other than when a captain is in some scheduled meeting or having lunch. It argues that if the Employer puts a lieutenant into a job that is different from the job he or she is supposed to be doing, the Employer should pay the lieutenant something extra for doing two jobs. The Union takes the position that the lieutenant's job does not diminish at all when he or she is functioning as an acting captain. It asserts that police officers get paid for underfilling sergeants and sergeants are paid for underfilling lieutenants, but a magical line is drawn and lieutenants do not get paid for underfilling captains. The Employer argues that the existing job descriptions of the detective lieutenant and the lieutenant of police provide that in the absence of the captain, the lieutenant takes command of the shift and exercises the authority and performs the duties of the captain. It goes on to provide that during night shifts, the lieutenants function as shift commanders. The Employer asserts that taking command of a shift is an integral part of the lieutenant's regular duties and not an additional duty. It points out that lieutenants are shift commanders on weekends and both night shifts every night of the week but the Union is seeking extra compensation only for day shift lieutenants on those occasions when they act as shift commanders.

There is some dispute about the cost of the Union's proposal. The Union contends that the absolute total cost would range somewhere between $13,000.00 and $16,000.00 while the Employer costed the proposal at $45,928.00. The Employer concedes that it erroneously included the cost for underfilling at lunch and that cost should be eliminated. It points out that the Union's proposal does not recognize the fact that if a lieutenant moves up to underfill a captain, a sergeant would move up to underfill a lieutenant, thereby doubling the cost of the lieutenant underfilling the captain. The Employer asserts that there is also the potential cost of a police officer having to underfill a desk sergeant who is underfilling a lieutenant who is underfilling a captain. It contends that the domino effect raises the cost of the proposal well above the Union's estimate. The Employer takes the position that granting the benefit would open the door to piecemeal compensation for basic elements of an employee's job.

The arbitrator finds the rationale behind the Union's proposal to be

flawed. It proposes extra compensation for some lieutenants who perform the very duties that they are required to perform by their job description while not compensating other lieutenants who perform those same duties as part of their regular duties. Lieutenants who act as shift commanders on weekends and during night shifts would not receive the extra pay nor would lieutenants who are in charge of a shift while a captain is in some scheduled meeting or having lunch. Keeping track of the times when a lieutenant would be compensated for underfilling a captain and when he or she would not be compensated for underfilling a captain as well as the domino effect of underfilling would be an administrative nightmare. The parties have negotiated a wage for the positions of detective lieutenant and lieutenant of police. The duties of those positions include taking command of a shift and exercising the authority and performing the duties of the captain in the absence of the captain. Its proposal is unfair to those lieutenants who function as shift commanders as part of their regular duties and there is no valid rationale that would support it. Lieutenants of police and detective lieutenants are expected to perform as shift commanders in the absence of the captain and to exercise their authority and perform their duties. That is a duty and responsibility given to the position of lieutenant and is reflected in the rate of pay that has been negotiated for lieutenants of police and detective lieutenants by the Employer and the Union in several collective bargaining agreements.

An examination of the Union's proposal for special duty pay and the evidence and arguments presented by the parties convinces the arbitrator that he should make the following

AWARD ON ARTICLE 10 - SPECIAL DUTY PAY

The Union's proposal that lieutenants of police and detective lieutenants should be compensated at the rate of $1.00 per hour for underfilling a captain's position for periods of 1/10th of an hour or more is rejected and should not be included in the 1987-88 collective bargaining agreement.

DISCUSSION OF ARTICLE 15 - PENSION

The Employer proposes to reduce the age of duty disability retirement conversion to normal service retirement from 57 years of age to 52 years of age. It also proposes a 100 percent final salary cap on retirement allowance. The Union proposes that employees who had turned 52 and were not able to repick their pension option based on the unisex table be allowed to do so. It also proposed that all members of the bargaining unit be allowed to reselect their protective survivorship option at age 52 or if their marital status changes.

The current agreement provides that employees who are on duty disability retirement receive 90 percent of their normal pay if they lost a limb and 75 percent of the normal pay if their disability prevents them from continuing to perform their duties as a member of the bargaining unit. The Employer proposes to require officers on duty disability retirement to convert to the normal pension at age 52. The conversion to normal pension would result in a reduction of the amount of income the individual who had been on duty disability retirement

would receive. The Union argues that most officers would probably not retire until age 58 and the Employer should not force them to go on regular pension at an earlier age just because they were disabled as a result of performing their duty. It contends that the only justification the Employer could have would be to save money at the expense of an employee who had been disabled while performing his duty. It takes the position that the Employer's demand is absolutely unfair. The Employer argues that its proposal that duty disability retirement be converted to normal service retirement at the age of 52 is logical. It contends that the pension plan design defines 52 as the usual unreduced retirement age. The Employer takes the position that age 52 is a target retirement age and the fact that some employees might chose to retire later does not affect the design issue. It points out that the pension plan has determined that a reasonable retirement income would occur at age 52 with 25 years of service. The Employer takes the position that the plan has determined that a reasonable retirement income would occur at 52 with 25 years of service. It argues that a very common break point in terms of changing from duty disability to normal retirement is the point at which unreduced normal retirement benefits are available. The Employer points out that its proposal would not affect those employees currently on duty disability. It asserts that its proposed change would reduce its pension costs by $77,235.00 in 1987 and $81,340.00 in 1988.

The collective bargaining agreement between the Employer and the firefighters provides for a conversion from duty disability retirement to regular retirement at age 54. Arbitrators are generally reluctant to change existing benefits that have been agreed upon by the parties through collective bargaining. The Employer asserts that it has given a quid pro quo to the Union with its wage proposal of 3%/2%/3%/2% increases over the two year period. By obtaining an earlier conversion age, the Employer will affect savings to offset the base salary increases. The firefighters had to agree to give up benefits that they had achieved in the past through collective bargaining in order to justify the wage increases they received and which have been awarded to the Union. The Employer is seeking not just wage parity between the Union and the firefighters, but total package parity as well. The only way that can be achieved is to reduce some benefits that were formerly agreed upon between the Employer and the Union. Changing the conversion date to an earlier age would provide the Employer with some savings that would justify the salary increase given to the Union and help to achieve total package parity between the firefighters and the bargaining unit represented by the Union. There is much to be said for uniformity of fringe benefits for all of the employees in the protective services. The Employer and the firefighters have agreed that those employees on duty disability retirement will convert to ordinary retirement at age 54. The Employer seeks to have the arbitrator impose a conversion age of 52 on the Union. It would result in greater savings to the Employer and help it to achieve total package parity between the firefighters and employees represented by the Union but it would not achieve the uniformity of fringe benefits that is part of the concept of parity for employees in the protective services. The arbitrator is satisfied that there must be some take backs in the way of benefits as a quid pro quo for the wage increases in order to maintain parity between the employees in the protective services and maintain some total package parity. Because the concept of parity between the employees is so strong and

so entrenched in the collective bargaining relationships between the Employer and its employees in the protective services, the arbitrator will reduce the age for conversion from duty disability retirement to normal retirement to age 54. The plan may have been designed to make age 52 the normal retirement date but the concepts of parity and uniformity of fringe benefits require that the age for conversion from duty disability retirement to normal retirement be age 54. The change is prospective and does not apply to employees who were on duty disability retirement before January 1, 1988.

The Employer proposes a 100 percent final salary cap on retirement allowance. The Union argues that no such cap should be put on an employee's pension who has given his entire life to the Employer. It contends that present pension benefits should not be diminished by an arbitrator. The Employer argues that the 100 percent cap on pensions is very generous because it replicates the preretirement income. It asserts that of the retirees from the bargaining unit who are 65 years of age or older, 85 percent are eligible for Social Security in addition to their pension benefits. The Employer points out that its agreement with the firefighters contains a 100 percent cap on pensions and its general city employees have an 85 percent cap including Social Security. It asserts that the 100 percent cap on pensions would save $53,454.00 in 1987 and $56,296.00 in 1988 and is necessary to assist it in achieving total package parity with the agreement between the Employer and the firefighters.

The arbitrator again must point out his reluctance to eliminate a benefit that has been agreed upon by the parties. However, it is difficult to justify paying an employee more for not working than he would receive if he would continue to work. Few employees would ever qualify for more than 100 percent of their final wage even if it were permitted so the issue is not a significant one. Those savings that the Employer will achieve by eliminating it will help to achieve total package parity. The Firefighter agreement has a 100 percent cap on pensions and imposing it on the bargaining unit represented by the Union will be another step in establishing uniformity of pension benefits between all employees in the protective service and thus adhere to the concept of parity that is imbedded in the relationship between the Employer and employees in the protective services.

The Union proposes that employees who were not given the opportunity to consider the unisex table when picking their protective survivorship option be given an opportunity to repick. The background of this issue is that several years ago the U.S. Supreme Court ruled that there could be no distinction made between male and female on benfits. Those officers in the collective bargaining unit represented by the Union who had not reached age 52 were able to give consideration to the impact of the unisex table when picking their protective survivorship option. Those officers who had already turned 52 were not able to repick their protective survivorship option. The Union argues that there is no logic for someone within the bargaining unit being able to pick on a basis of the unisex table while others in that same group were not able to repick because they had reached a certain age. It contends that this provision of the collective bargaining agreement is unfair to those individuals who were 52 years of

age and had already selected their protective survivorship option when the Supreme Court decision was issued. The Union takes the position that since the decision recognized that the earlier pension tables were discriminatory, all people affected by that discriminatory table should be able to repick their benefits. It asserts that all officers who did chose their protective survivorship option using the unisex table should be allowed to reevaluate that choice and if they choose to do so, repick their option. The Union points out that its proposal would allow 74 members of the bargaining unit to reselect their option. The Employer argues that permitting those 74 employees to reselect their pension option would subject the plan to adverse selection and would give those employees an opportunity to maximize their rate of return based on changed circumstances. It contends that allowing those employees to repick would increase the expense of the pension system and result in an increase in cost to the Employer. The Employer asserts that allowing the repick of the protective survivorship option to those 74 employees would increase its annual contribution to the pension fund by $14,175.00. It points out that police and firefighter benefits under the pension system have traditionally been the same and the firefighter agreement does not permit the reselection of a survivorship option proposed by the Union. The concept of uniformity in the pension system for members of the protective services is one that most employers seek to maintain. It eliminates leapfrogging and bootstrapping in negotiations and results in ease of administration because the benefits are similar. Arbitrators are reluctant to provide new and different fringe benefits of any kind that impose a substantial cost on the Employer and depart from the uniform benefits provided to other employees. If there is to be a departure from the uniformity of pension benefits, it should come as a result of the give and take of bargaining between the parties and not the unilateral determination of an arbitrator. The arbitrator is persuaded that those officers who had chosen their protective survivorship option before the unisex table was available for consideration should not be given the opportunity to repick their protective survivorship option and subject the plan to adverse selection.

The Union proposes that all members of the bargaining unit be allowed to reselect their protective survivorship option at age 52 or if their marital status changes. Currently the Employer requires an officer to select the protective survivorship option for himself and his family within six months of attaining 25 years of service. If the officer fails to select a protective survivorship option after 25 years, the officer receives 100 percent of the pension benefit himself. If the officer does not choose a protective survivorship option within six months of attaining 25 years of service, the option may be selected at actual retirement. If an option is selected at 25 years of service, the officer may not reselect at retirement unless the beneficiary has died or there has been a divorce. A change in marital status will automatically revoke a protective survivorship option to the spouse and vest it in the officer. The Union argues that it makes no sense to prohibit an officer from making a reselection when the reason for the original selection that was made has been altered. It seeks the opportunity to reselect a protective survivorship option when the officer's marital status changes after the initital selection requirement at 25 years of service or on his 52nd birthday. The Union argues that the officer should have one final chance to provide himself and his spouse with the

best possible future protection when he does retire. It contends that the only time there would be a reselection would be when there has been such a drastic change in circumstances that the officer must make a change because of matters that he could not have anticipated when he made his original selection. The Union takes a position that when an officer's spouse dies or the marriage collapses after he has made a selection and he remarries he should be able to reselect to provide for his new spouse. It takes the position that an officer should be able at age 52 to reconsider where he is in life and to make a new selection based upon the factors that then exist. The Union asserts that granting this demand of the Union would not prejudice the Employer in any way. It argues that if there is a divorce or a spouse dies the Employer ends up being the beneficiary of the pension if the employee dies before age 52.

The Employer argues that a pension plan is designed to provide retirement income for the life of a former employee with options that provide post-retirement protection for a spouse. It contends that before an employee retires considerations are quite different. The Employer points out that where pension benefits are not available because of the death of a spouse or a divorce, the Employer provides an ordinary death benefit of life insurance, six months salary and return of all pension contributions that were made by the Employer on behalf of the employee. It takes the position that the benefits it provides in the event of an untimely death of an employee prior to retirement are more generous than is provided by most employers.

Allowing an employee to repick his protective survivorship option at age 52 or when his marital status changes is much more than just a repick. The pre 52 selection provides free insurance for the spouse of the officer in the event of a premature death but allowing a repick at age 52 permits the officer to reselect a more beneficial option for the final plan. The cost of the protective survivorship option reselection for any officer, either because of the death of a spouse or a divorce or because the employee has reached age 52, would be substantial. The 1987 annual installment cost of the Union's proposal would be $27,400.00 and the 1988 annual installment cost would be $28,868.00. Allowing reselection when there is a divorce or death of a spouse or when the employee reaches 52 years of age would subject the plan to adverse selection and employees could then maximize their rate of return based on changed circumstances. It would increase the cost of the pension fund and raise the Employer's contributions. Police and firefighter benefits under the Employer's retirement system have traditionally been the same. The current agreement between the firefighters and the Union does not permit protective survivorship option reselections as proposed by the Union. The firefighters did make demands for such changes for the 1987-88 contract years but those demands were rejected by the Employer and the agreement reached did not provide for any repicks of the protective survivorship option in the event of a divorce or death of a spouse or when the employee reaches the age of 52.

The arbitrator is persuaded that the Union's proposal should be denied because the Employer's existing survivorship benefits and pension plan are generous and are provided at great expense. The record does not justify requiring the Employer to incur additional expense to provide pension benefits

to this bargaining unit that are not consistent with those provide to other protective service employees and he makes the following

AWARD ON ARTICLE 15 - PENSIONS

The age of duty disability retirement conversion to normal service retirement should be reduced from 57 years of age to 54 years of age effective January 1, 1988 and a provision to that effect should be included in the 1987-88 collective bargaining agreement.

The Employer's proposal that there should be a cap on an employees retirement allowance of 100 percent of his or her final salary is granted and the 1987-88 collective bargaining agreement should include a provision placing that cap in effect.

The Union's proposal that those employees who had turned 52 at the time the unisex table became available for consideration and were not able to repick their protective survivors option be permitted to repick their protective survivorship option is rejected and should not be included in 1987-88 collective bargaining agreement.

The Union's proposal that all members of the bargaining unit be allowed to reselect their protective survivorship option at age 52 or if their marital status changes because of the death of a spouse or a divorce is rejected and should not be included in the 1987-88 collective bargaining agreement.

DISCUSSION OF ARTICLE 17 - HEALTH INSURANCE

The Union has proposed that the current health insurance provisions be changed to provide that the unused sick leave formula be applied to post age 65 coverage and a retiree's surviving spouse receive health insurance until death or remarriage. The Union also seeks optional dental insurance coverage after age 65 at the retiree's expense.

The Union argues that most of the members of the bargaining unit will not have Social Security and be eligible for Medicare unless their spouses have been employed. It contends that the members of the bargaining unit have an absolute right to have the unused sick leave formula applied to their post age 65 insurance coverage because they have foregone sick leave over the years which was a benefit to which they were entitled. The Union points out that the nonuse of sick leave by the members of this bargaining unit is a benefit to the Employer that it has recognized by paying for part of the cost of retiree health insurance up to the age of 65. It takes the position that there is no reason to cut off this benefit of reduced health insurance cost to the retiree at the age of 65 and asserts that it should be continued until the death of the officer and his spouse. The Union contends that the average officer in the bargaining unit retires at age 58 with 355 days of unused sick leave and that saves the Employer $43,466.00. It argues that the cost of the benefit would decrease because after April 1, 1986 all members of the bargaining unit have had to pay Social Security taxes and will qualify for Medicare. The Union contends that the same benefits

should be available for the surviving spouses of retired officers. The Employer argues that sick pay accrual is a benefit designed to provide full pay protection for employees who are unfit for service due to illness or injury. It contends that an employee who retires with a sick leave bank is rewarded with terminal leave pay and the Employer paying 65 percent of the health insurance cost until the employee achieves the age of 65. The Employer points out that traditionally health insurance benefits have been the same for the protective services and there were no changes in the health insurance provision of the firefighters 1987-89 agreement with the Employer. It points out that the firefighters health insurance formula is similar to the plan for this bargaining unit and the rank and file police bargaining unit and asserts that the benefit should remain uniform for all members of the protective services. The Employer points out that 85 percent of current post 65 retirees from this bargaining unit are covered by Medicare and eventually all of them will be. The Employer argues that the current premium rates for retirees are not self-supporting and the Employer pays approximately 50 percent of the actual cost of the insurance. It points out that its health insurance cost for retirees has increased substantially since 1982 and it needs time to digest the major increases that it has taken on. The Employer asserts that the additional cost is unreasonable and excessive and should be rejected.

The rationale behind the Union's demand has validity. There is no question that the fact that the Employer did not have to pay the sick leave that the employees earned has been a savings to it. Equally valid is the Employer's position that sick pay accrual is a benefit designed to provide full pay protection for employees who are unfit for service due to illness of injury. Sick pay accrual was not designed to provide all earned sick leave pay or the cost of it to every employee. It was designed to provide sick leave pay for those employees who were ill. If the average officer accrues 355 days of unused sick leave pay by the time he retires, it may be that the amount of sick leave pay that an officer can earn each year is excessive. In any event, the cost of providing every employee with all of the sick leave he or she earns or providing him or her with reduced health insurance costs after age 65 for the employee and spouse is excessive. The benefit that the Union seeks is a good benefit to have and the arbitrator can understand why it would seek it. However, consideration must be given to the Employer's costs. If the already subsidized cost for retirees of post age 65 health insurance is further reduced it would increase the Employer's cost substantially. The firefighters agreement with the Employer for the 1987-88 contract years does not have the benefits sought by the Union. In the interest of maintaining uniformity of fringe benefits for employees in the protective services and in recognition of the long established parity concept between the bargaining units in the protective services, the arbitrator is not inclined to impose this additional financial burden on the Employer.

The Union argues that there is no reason why the Employer's dental insurance coverage should not be made available to the retirees at the expense of the retirees. The Employer points out that the Union's dental insurance proposal is an optional plan for those retirees over 65. It argues that six of the seven other major midwestern cities to which the Employer is compared do not provide dental insurance coverage to retirees and there is no such coverage for

firefighters in their agreement covering the 1987-88 contract years. The Employer asserts that the primary problem associated with an optional dental insurance program is adverse selection. It asserts that adverse selection results in those who are most likely to receive a financial gain elect the plan. The Employer argues that experience shows that there is a large degree of adverse selection with an optional program. It asserts that dental premiums will increase for all employees because the cost of the program will increase if there is an optional plan for retirees.

The arbitrator finds it hard to reject an optional plan for dental insurance where the employees pay the cost of the program. However, the evidence presented by the Employer indicates that adverse selection would occur and that would result in an increase in the cost of the insurance for the retirees and those employees in the bargaining unit who have not retired. Thus the Employer's costs for dental insurance would increase. The Employer projects that its additional costs that would result from granting the Union request for dental benefits for retirees would be $15,595.00 for 1988. That is a substantial amount of expense for this bargaining unit. The benefit has not been included in the collective bargaining agreement with the firefighters. In the interest of maintaining uniformity of fringe benefits for employees in the protective services and in recognition of the concept of parity between the bargaining units in the protective service, the arbitrator cannot endorse the concept of a dental insurance program for those retirees of the Employer who are 65 years of age or older.

An examination of the Union's proposal that the unused sick leave formula be applied to health insurance for those retirees who are 65 years old or older and that a retiree's surviving spouse should receive health insurance until death or remarriage and that retirees be permitted to have optional dental insurance coverage at their own expense after reaching the age of 65 convinces the arbitrator that he should make the following

AWARD ON ARTICLE 17 - HEALTH INSURANCE

The Union's proposal that the unused sick leave formula be applied toward health insurance coverage for those retirees who are 65 years of age or older and that a retiree's surviving spouse receive the Employer's health insurance program until death or remarriage is rejected and should not be included in the 1987-88 collective bargaining agreement.

The Union's proposal that the Employer provide optional dental insurance coverage for those retirees who are 65 years of age or more at their own expense is rejected and should not be included in the 1987-88 collective bargaining agreement.

DISCUSSION OF ARTICLE 27 - WORK DAYS OFF IN LIEU OF HOLIDAYS

The Union proposes that effective in calendar year 1988 the number of work days off in lieu of holidays be increased from the current twelve days off per calendar year to thirteen days off per calendar year and the additional day com-

memorate Dr. Martin Luther King. It also proposes that employees in the rank of captain or above shall receive an additional two days off per calendar year effective in 1988. The impact of that proposal is that employees in the rank of captain or above would have an increase in the current holiday benefits of three days off per calendar year. The Employer is proposing no change in holiday benefits but asks that one of the current twelve days off in lieu of holidays be designated to commemorate the birthday of Dr. Martin Luther King.

The Union argues that captains and deputy inspectors lose the advantage of their freedom from work on Saturdays and Sundays once every six weeks and on certain holidays. It points out that during that period of time they are prohibited from leaving the City and must carry a beeper with them so that they can be reached on a moment's notice to handle emergencies. The Union contends that the Employer should compensate those officers for the restriction of their freedom by giving them two additional personal days off a year. The Employer argues that the evidence establishes that officers in the rank of captain or above are required to use a beeper six or seven weekends a year. Few of the captains have ever been beeped on those weekends when they were required to carry a beeper. The Employer asserts that even though they must carry a beeper on six or seven weekends a year, those officers can go golfing, attend baseball games, picnic with the family and do almost anything that he or she would normally do on a weekend as long as they remained within the thirty mile beeper range. The Employer points out that even when officers are beeped the police business usually can be handled by telephone. The Employer takes the position that weekend schedules are set up so that officers know in advance when they are going to be on call and carry a beeper they and are permitted to trade with other officers if they need the weekend off for a special event. The testimony indicated that officers in the rank of captain and above received special compensation for time worked beyond their regular hours in the form of compensatory time off.

The arbitrator is satisfied that the incidents of activity associated with weekend beeper duty are miniscule and the employees subject to the beeper requirement are not unduly restricted from their usual off duty activity. The testimony reveals that captains are on a 37 1/2 hour average work week while other members of the bargaining unit are on a 40 hour work week. The shorter work week translates into four or five additional days off per year when compared to the other members of the bargaining unit. The evidence indicates that the beeper requirement on certain weekends imposes no substantial burden on those officers with the rank of captain or above. They are able to carry on their ordinary activities with little or no interference other than that they are required to stay in the immediate area. On those special occasions when they need to be gone for a weekend when they are on beeper duty, they can arrange trades with other officers. The 37 1/2 hour work week of captains and above provides them with all of the additional time off that would be necessary to compensate them for any hardship that might be caused by the requirement that they carry a beeper on certain weekends. The evidence establishes that captains and above are seldom required to call in on weekends and the restrictions imposed on them are minor. There is no justification for additional time off in view of the fact that those officers already have a much shorter work week than the rest

of the bargaining unit. The arbitrator finds no justification for giving officers with the rank of captain or above any additional time off.

The Union made no argument and presented no evidence in support of its demand for an additional day off in lieu of holidays. The Employer points out that the average holiday/personal days off per year of the seven large cities to which the Employer is compared is approximately 11.6 days per year which is less than the 12 days off per year received by members of this bargaining unit. That evidence alone would support the Employer's position of maintaining the status quo in respect to work days off in lieu of holidays. There is no justification for the additional cost that would result if the Union's demand for an additional holiday was granted. The Employer's proposal that one of the existing twelve days off in lieu of holidays be designated to commemorate the birthday of Martin Luther King is reasonable. It has been a practice throughout the country to designate Martin Luther King day as a day off in recognition of the birthday of Martin Luther King. The arbitrator is satisfied that it would be good public policy for the City of Milwaukee to recognize one of its existing days off in lieu of holidays as a date to commemorate the birthday of Dr. Martin Luther King.

An examination of the Union's proposal that the number of work days off in lieu of holidays be increased from the current 12 days off per calendar year to 13 days off per calendar year and that employees with the rank of captain or above receive an additional two days off per calendar year effective in 1988 and the Employer's proposal that one of the current 12 days off in lieu of holidays be designated by the Employer to commemorate the birthday of Dr. Martin Luther King and the evidence and arguments presented by the parties convinces the arbitrator that he should make the following

AWARD ON ARTICLE 27 - WORK DAYS OFF IN LIEU OF HOLIDAYS

The Union's proposal that the number of work days off in lieu of holidays be increased from the current 12 days off per calendar year to 13 days off per calendar year and that employees in the rank of Captain or above receive an additional two days off per calendar year effective with the calendar year 1988 is rejected and should not be included in the 1987-88 collective bargaining agreement.

The Employer's proposal that there be no change in holiday benefits but that one of the current 12 days off in lieu of holidays be designated to commemorate the birthday of Dr. Martin Luther King is granted and such a provision should be included in the 1987-88 collective bargaining agreement.

DISCUSSION OF ARTICLE 43 - BANK OF HOURS

The Union proposes that the bank of hours be 1,000 hours per year with 350 hours paid by the Employer and it requests that the Employer pay for all negotiating time. The Union seeks to have a fully paid liaison position and it requests that it be forgiven its debt to the Employer for its contractual obligation to reimburse the Employer for the salary paid members of the Union's

Board of Directors while they were on Union business and for the overtime premium paid employees required to work overtime as a result of members of the Board of Directors utilitizing paid time off for Union business. The Employer proposes a bank of 3,000 hours during the 1987-88 contract with 1,000 hours over the contract to be paid by the Employer.

The Union's proposal that the bank of hours be 1,000 hours a year with 350 hours per year paid by the Employer cannot be considered by itself. It is made in the context of its other demand that it be given a full-time liaison position and that the Employer pay for all negotiating time. The Union argues that giving it a full-time liaison position would insure labor peace. It contends that such a position would allow it to come to full grips with all the work that has to be done and relieve its Board of Directors from the burden of having to spend so much of their free time on labor business. The Employer concedes that the firefighter bargaining unit that includes 1,045 employees has a full-time liaison position and 90 percent of his wages are paid by the Employer. It also recognizes that the bargaining unit representing the 1,650 rank and file police officers has three liaison positions and one-half of their wages are paid by the Employer. The Employer argues that it is clear that the bargaining units with liaison positions have far more employees to represent and many more grievances. During the life of the preceding contract, the Union only had three grievances to process for the 286 employees that it represents. The arbitrator is satisfied that there is no justification for giving the Union a full-time liaison position paid by the Employer at the rate of the maximum salary of a Lieutenant of Police plus 7 per cent in lieu of benefits. The three grievances processed by the Union during the life of the last collective bargaining agreement indicate that the 286 members of the bargaining unit do not generate enough grievances or other union activity to justify a full-time liaison position paid by the Employer.

The Union proposes that the Employer pay for all negotiating time. It argues that the Employer is primarily responsible for prolonging negotiations and caused the Union to create a large debt to the Employer. The Employer argues that there are two parties in negotiations and it is not solely responsible for the delay. It contends that an unlimited bank of hours would encourage the Union to pursue unreasonable demands and discourage a reasonable settlement.

The arbitrator is satisfied that an unlimited bank of hours for negotiations should not be granted. There is reason to believe that the Employer has not done much to move these negotiations along at a more rapid pace. It is also clear that the Employer made a real effort to resolve the issues between the parties at the bargaining table but agreement could not be reached. The arbitrator is satisfied that the lengthy negotiations were the responsibility of the Union as well as that of the Employer. Granting the Union an unlimited bank of hours in which to negotiate would not have the effect of speeding up negotiations or bringing about an agreement. The arbitrator is satisfied that the bank of 3,000 hours during the term of the contract proposed by the Employer with 1,000 of those hours paid by the Employer is sufficient for the Union to perform its obligations to its members and negotiate a new contract. The 1,000

paid hours proposed by the Employer is the equivalent of a half-time position for one employee and can be apportioned among the various Union Board Members to use in representing members of the bargaining unit. Any additional time over and above 1,000 hours paid by the Employer should be the responsibility of the Union rather than subsidized by the Employer.

The Union points out that it has incurred a debt to the Employer in the amount of $23,000.00 because of the negotiations that have taken place between the parties in 1987 and 1988. It does not take the position that the lengthy bargaining was the fault of the Employer alone but it does contend that the Employer was not of a mind to settle and caused this bargaining to drag on over a long period of time. The Union asserts that because of the Employer's position, the prolonged negotiations caused the Union to creat a large debt to the Employer. The Union points out that the Employer agreed to forgive 1,000 hours of the time owed by the firefighters bargaining unit. The Employer argues that the Union has been irresponsible in fulfilling its contractual obligation to reimburse it for Union time and now wants its debt forgiven. It recognizes that the firefighter debt was forgiven but contends that the forgiveness was part of a voluntary agreement and the cost was included within the cost of the contract. The Employer takes the position that to forgive the Union's debt would simply add an additional cost that it incurred because of the Union's irresponsibility.

The arbitrator is satisfied that the Union had a role in prolonging these negotiations as well as the Employer. There is evidence that the Employer had some difficulty in determining just which of the bargaining units with which it negotiates should set the pattern in its 1987-88 negotiations. The arbitrator is convinced that these negotiations could have proceeded more rapidly toward either agreement or impasse and reduced the number of hours that the Union was required to spend in negotiations. With those facts in mind and mindful of the fact that the Employer forgave the firefighters debt, the arbitrator is satisfied that it would be fair to both the Union and the Employer to forgive 1,000 hours of the Union's debt to the Employer.

An examination of the Union's proposal that the bank of hours be 1,000 hours per year with 350 hours per year paid by the Employer and that the Employer pay for all negotiating time and that the Union be given a fully paid liaison position and that the Union be forgiven its debt to the Employer and the Employer's proposal that the bank of hours be 3,000 hours during the contract with 1,000 hours over the contract period paid by the Employer convinces the arbitrator that he should make the following

AWARD ON ARTICLE 43 - BANK OF HOURS

The Union's proposal that the bank of hours be 1,000 hours per year with 350 hours per year paid by the Employer is rejected and should not be included in the 1987-88 collective bargaining agreement. The Employer's proposal that the bank of hours be 3,000 hours during the contract with 1,000 hours over the contract paid by the Employer is granted and should be included in the 1987-88 collective bargaining agreement.

The Union's proposal that the Employer pay for all negotiating time is rejected and should not be included in the 1987-88 collective bargaining agreement.

The Union's proposal that it have a fully paid liaison position paid for by the Employer is rejected and should not be included in the 1987-88 collective bargaining agreement.

The Union's proposal that its contractual obligation to reimburse the Employer for Union time be forgiven is rejected and the 1987-88 collective bargaining agreement should include a provision forgiving 1,000 hours of the Union's contractual obligation to reimburse the Employer for Union time.

DISCUSSION OF ARTICLE 55 - ASSIGNMENTS MADE CONSISTENT WITH EMPLOYEE'S MEDICAL CAPABILITIES

The Union proposal for temporary limited duty assignments provides that an officer can grieve the temporary assignment to a tripartite medical panel prior to working the assignment and the assignment must take into account the rank and seniority of the employee and be an historical supervisor type assignment and that the Union and the employee can agree to a temporary assignment lasting longer than a year and the Employer shall not create new concepts for supervisors to perform. The Union argues that its proposal does not affect the Employer in performing its task of providing police protection. It contends that an officer should be given an opportunity to prove to the satisfaction of a medical panel that he is not able to perform a task before he is assigned that task. The Union takes the position that directing an officer not to become involved when an emergency arises is not realistic because the officers are trained to respond to situations requiring police action or requiring them to come to the aid of a fellow officer.

The Employer's proposal on limited duty applies to both temporary and limited duty assignments. It permits the officer to grieve the assignment to a tripartite medical panel while working the assignment and the assignment must be one historically performed by members of the bargaining unit. The Employer argues that its proposal is almost the same as the temporary and permanent limited duty assignment provision in the collective bargaining agreement between the Employer and its rank and file police. It points out that the rank and file police have stipulated that the 1987-88 collective bargaining agreement will include a provision on assignments made consistent with employee's medical capabilities similar to the Employer's proposal to the Union. The Employer contends that there are currently 68 officers on its permanent limited duty roster including four members represented by the Union. Only 20 employees have temporary limited duty assignments and none of them are represented by the Union. It asserts that its practice is to assign officers to temporary limited duty positions whose duties have been historically or traditionally performed by police officers and to make structural changes in the job or reassign employees to make the job compatible with their physical capability. The Employer's evidence revealed that when officers are returned to active service in permanent

limited duty jobs from duty disability retirement by the annuity and pension board a doctor in occupational medicine at the Medical College of Wisconsin thoroughly evaluates the officer's capabilities and restrictions. After the evaluation a vocational expert reviews the medical records and discusses the officer's background with the department, meets with the officer and the assignment is matched to the individual officer. For temporary limited duty assignments, the restrictions are supplied by the individual's personal treating physician. The Employer points out that it does not jeopardize its limited duty officers in their assignment and modifications to jobs have been made to accomodate officers and there is no basis for rewriting the grievance procedure to a "grieve now, work later" scenario. It asserts that limited duty officers would then be able to avoid working by filing a grievance when they do not like the assignment or do not want to perform the assignment. The Employer points out that its system has worked well for the 1,700 employees in the rank and file police bargaining unit whose members have comprised the vast majority of the department's temporary and permanent limited duty assignments since 1983 and there has never been a grievance.

The evidence presented on this issue establishes that no member of the bargaining unit has ever been placed in jeopardy or even felt that he or she was in jeopardy as a result of being returned to limited duty. In the absence of such a showing, there is no basis for reversing the normal grievance procedure and establishing a new one that permitted the employee to grieve now and then work later. Such a procedure would permit limited duty officers to avoid working in assignments they did not like by filing a grievance even though there was no basis for refusing to work. The system proposed by the Employer has worked since 1983 for the bargaining unit consisting of the rank and file police officers for both permanent and limited duty assignments and there has never been a grievance filed. That history indicates that the Employer's proposal works well and meets the needs of its police. It is certainly desirable for the Employer to have a uniform procedure for both this bargaining unit and the rank and file police with respect to temporary and permanent limited duty assignments. Individuals returned to active service in limited duty jobs are subjected to an elaborate procedure of evaluation before the limited duty assignment is made. A doctor in occupational medicine of the Medical College of Wisconsin thoroughly evaluates the officer's capabilities and restrictions. Then a vocational expert reviews the medical records, discusses the officer's background, meets with the officer and then an assignment is matched to the individual officer. The restrictions placed on the duties that can be performed by an officer given temporary limited duty assignment are supplied by the officer's personal treating physician. It appears to be a careful and thorough evaluation of the officer and the limitations that should be placed upon him and no officer has ever been put in jeopardy when given an assignment after going through the procedure.

The absence of any evidence that any officer has ever been placed in jeopardy or even felt that he was placed in jeopardy convinces the arbitrator that he should make the following

AWARD ON ARTICLE 55 - ASSIGNMENTS MADE CONSISTENT WITH EMPLOYEE'S MEDICAL CAPABILITIES

The Union's proposal that officers given temporary limited duty assignments should be permitted to grieve the assignment to a tripartite medical panel prior to working the assignment and that the assignment take into account rank and seniority and be a historical supervisor type assignment and that the Union and the employee must agree to a temporary assignment lasting longer than a year and that the Employer should not create new concepts for supervisors coming off an injury or duty disability to perform is rejected and should not be included in the 1987-88 collective bargaining agreement.

The Employer's proposal relating to both temporary and permanent limited duty assignments providing that the officer can grieve the assignment to a tripartite medical panel while working the assignment and the assignment must be one historically performed by members of the bargaining unit is granted and should be included in the 1987-88 collective bargaining agreement.

DISCUSSION OF ARTICLE 31 - AUTOMOBILE ALLOWANCE ARTICLE 33 - OFF DUTY ALLOWANCE ARTICLE 36 - METROPOLITAN DIVISION PAY

In their briefs, both the Employer and the Union have lumped together Automobile Allowance, Off Duty Allowance and Metropolitan Division Pay for purposes of discussion. The Union has chosen to discuss the issues in the same section of its brief because all three of the items involve payments that the Employer made to the employees as part of the expired agreement and which the Employer seeks to eliminate. The auto allowance involves a payment of $100.00 a year that the Employer made to each supervisor for the use or the possibility of the use of the employee's private automobile in carrying out the Employer's business. This payment is made to all officers even if none of the employees ever use their automobile. The off duty allowance originally was a payment made to police officers for carrying their guns off duty. Because of changes in the rules of the chief of police, police officers were no longer required to carry their guns off duty and it became optional for them to either carry or not carry guns. Police officers were still required to take police action in the event that a situation requiring police action arose and the so called "gun pay" was changed to the concept of unanticipated duty allowance. In effect, it was a payment to those police officers because they were required under certain conditions to place themselves back on duty immediately. The Employer has paid all police officers $550.00 a year because of the requirement that they must place themselves on duty when a situation requiring police action arises. The metro pay is a provision in the expired collective bargaining agreement providing that those officers assigned to the Metropolitan Division receive $240.00 per year in addition to all other benefits because officers assigned to the Metropolitan Division of the Employer's Police Department must submit themselves to a more frequent change of shifts, vacation days and other inconveniences than those employees working in other bureaus and districts.

The Union argues that there is no reason why the automobile allowance that

came into existence as recently as two years ago should now be eliminated without some reason for doing it. It contends that the Employer has presented no evidence that would support elimination of it. The Union takes the position that police officers will be using their automobiles in the line of duty when asked to do so or when the nature of the police work indicates that the use of their private automobiles would be of value in properly performing their assigned task. It asserts that granting the Employer's proposal would mean that an officer would not use his own automobile and the Employer would have to provide transportation if a private type of automobile is required rather than a police department vehicle. With respect to the off duty allowance, the Union argues that no other employees of the Employer are required to place themselves on duty automatically when a situation involving their type of work arises. It contends that there can never be a time when a policeman sees a crime being committed or about to be committed and he can turn his back on that scene. The Union takes the position that there is no time that a member of this bargaining unit is free of the thought of having to place himself or herself back on duty. It asserts that no evidence has been produced that would justify eliminating the benefit based on the requirement that an officer must place himself or herself back on duty when a situtation requiring police action arises. It points out that the Employer has not eliminated the requirement that an officer automatically place himself or herself on duty when the need for police action arises. The Union contends that the rationale for giving off duty allowance initially is still germane and the unanticipated duty allowance should continue. The Union argues that metro pay exists because officers assigned to the Metropolitan Division of the department must submit themselves to a more frequent change of shifts than those working in other bureaus and districts. It contends that the reorganization of the department and the creation of the metro division caused a serious disruption in the unanticipated service time and free time of those police officers who were assigned to the Metropolitan Division. The Union asserts that this great inconvenience justified the payment of an additional $240.00 per year in addition to all other benefits to those officers assigned to the Metropolitan Division. It points out that the facts that gave rise to the creation of the benefit are as relevant now as they were when it was first given and it should not be taken away in the absence of some valid reason.

The Employer argues that the consumer price index will increase 8.3 percent from January 1, 1986, the date of the last compensation increment until the end of December, 1988. It contends that base salary increased 3.9 percent in 1986 and the 3%/2%/3%/2% increases it proposes for 1987 and 1988 results in a total increase of 13.9 percent, or 5.6 percent more than the consumer price index increase. The Employer takes the position that its proposed wage increase to the Union for the 1987-88 contract years would exceed the total package parity parameters of the firefighters' settlement. The Employer argues that it was necessary for it to have some "take backs" in order to provide the firefighters with the 3%/2%/3%/2% base salary increases. It takes the position that the deletion of the automobile allowance, off duty allowance and metro pay are necessary for it to give the 3%/2%/3%/2% increases over the two years of the 1987-1988 contract to the Union and still achieve some sort of total package parity with the firefighters' settlement. The Employer points out that the elimination of the auto allowance would save it $29,000.00 and the elimination of

the off duty allowance would save it $159,500.00 and elimination of the metro pay would save it $6,240.00. The Employer asserts that elimination of those three benefits along with the reduction of the age for conversion of duty disability retirement to regular retirement and the 100 percent cap on the pension would bring its total package cost very close to total package parity with the firefighter agreement. It points out that the deletions it proposes would achieve savings of 1.56 percent and contends that such a saving is not out of line when the Employer proposes to increase the base salary 5.6 percent more than the consumer price index has risen since January 1, 1986. The Employer argues that rather than taking back these three allowances it would in fact be converting them into base salary and make them pensionable and computable for other salary driven fringe benefits. Currently the three allowances are not pensionable. The Employer concedes that at times during their career officers may be required to take police action while off duty but it points out that when an off duty officer places himself on duty and takes police action that officer is paid for the time that he places himself on duty. It contends that the rank and file police bargaining unit originally received the auto allowance of $100.00 a month in the 1985-86 collective bargaining agreement for parking at the Police Administration Building. After the rank and file bargaining unit received the auto allowance for parking purposes, the Union was given the $100.00 auto allowance although their members already had free parking at the Police Administration Building and district stations. Parking is not provided to the police officers at the Police Administration Building. All other employees of the Employer received mileage if the use of their personal auto is a required part of the job. The Employer points out that there is no requirement in its collective bargaining agreement with the Union that members of the bargaining unit use their personal vehicles.

The arbitrator is satisfied that the off duty allowance and the automobile allowance are just like any other compensation that the officers receive in the form of salary. The fact is that those payments are actually salary and should be included in the regular compensation of the police officers. In order to maintain total package parity with the Firefighters and still justify giving the members of the bargaining unit represented by the Union a 3%/2%/3%/2% increase over the 1987 and 1988 contract years, it is necessary to convert the automobile allowance and off duty allowance into salary and make then part of the wage increase. Converting those payments into salary justifies giving the Union the 3%/2%/3%/2% increases that the firefighters received. In order to justify the similar salary increase for the firefighters, the Employer insisted that they agree to a rearrangement of vacation, holidays and hours of work. The substitution of those holiday and vacation benefits for work reduction days by the firefighters justified the 3%/2%/3%/2% increase negotiated with the firefighters and established a pattern for settlement with the other bargaining units in the protective services.

The arbitrator has granted a 3%/2%/3%/2% increase to the Union in order to maintain parity with comparable positions in the Fire Department. Total package parity requires that conversion of the automobile allowance and off duty allowance into salary as part of the increase given to members of the Union. It maintains the settlement pattern achieved in voluntary negotiations with the

firefighters and eliminates variations in the collective bargaining agreements between the Employer and the other bargaining units in the protective services that ought to be minimized. The automobile allowance and the off duty allowance were given to all employees in the bargaining unit in the past and it is proper to incorporate those payments into the wage structure as part of the 3%/2%/3%/2% increases given to the members of the bargaining unit for the 1987 and 1988 contract years. Incorporating those allowances paid to all members of the bargaining unit into the wage structure provides additional benefits to the Union because these amounts become pensionable and impact on other salary driven benefits.

Metropolitan Division pay is somewhat different from the automobile allowance and the off duty allowance. It is not given to all employees in the bargaining unit and if it is eliminated and incorporated into the wage structure the money would only be taken away from those employees in the Metropolitan Division. Metropolitan Division pay was agreed upon in voluntary collective bargaining between the Employer and the Union because those officers in the Metropolitan Division must submit themselves to more frequent changes of shifts, vacation days and other inconveniences than those employees working in other bureaus and districts. The reorganization of the Employer's Police Department and the creation of the Metropolitan Division caused a serious disruption in the anticipated service time and free time of those officers who were assigned to it. The Employer and the Union recognized the inconvenience endured by those officers assigned to the Metropolitan Division and agreed upon a benefit in the amount of $240.00 per year for those officers. The facts that gave rise to the agreement on the benefit are as relevant now as they were when the agreement was reached. There is no evidence that would justify taking away the metro pay benefit from those officers who are assigned to the Metropolitan Division and distributing it as part of the overall wage increase to all of the members of the bargaining unit in order to achieve total package parity. The Employer and the Union agreed that officers in the Metropolitan Division should be paid $240.00 a year more than the other officers in the Employer's Police Department. Nothing has changed since the benefit was agreed upon and there is no evidence or rationale that would justify eliminating it.

An examination of the Employer's proposals to eliminate the automobile allowance, the off duty allowance and the Metropolitan Division pay convinces the arbitrator that he should make the following

AWARD ON ARTICLE 31 - AUTOMOBILE ALLOWANCE

The Employer's proposal that the automobile allowance for all officers in the collective bargaining unit should be eliminated is granted and the 1987-88 collective bargaining agreement should not include a provision for the payment of an automobile allowance to the members of the bargaining unit.

AWARD ON ARTICLE 33 - OFF DUTY ALLOWANCE

The Employer's proposal to eliminate the off duty allowance to members of the bargaining unit is granted and the 1987-88 collective bargaining agreement

should not include a provision for the payment of an off duty allowance to members of the bargaining unit.

AWARD ON ARTICLE 36 - METROPOLITAN DIVISION PAY

The Employer's proposal the the Metropolitan Division pay be eliminated is rejected and the Metropolitan Division pay benefit should be included in the 1987-88 collective bargaining agreement.

DISCUSSION OF ARTICLE 57 - LONGEVITY PAY

The Union demands longevity pay at the rate of $750.00 per year after three years at the top step and $1,500.00 per year after eight years at the top step.

The Union argues that longevity pay is justified by the fact that most sergeants and lieutentants in the bargaining unit spend the majority of their career in a slot from which they cannot advance. It contends that longevity pay is really a recognition of experience pay for the amount of time employees spend in their slot. The Union points out that an officer gives up his seniority when he becomes a sergeant and is called upon to change his entire work schedule for several years. It takes the position that giving sergeants longevity would compensate them for the loss of their seniority. The Union argues that the Employer's contention that variable shift assignment pay is the same as longevity is not valid. It asserts that variable shift assignment pay addresses a different kind of problem than longevity and the two are not the same. The Union points out that a new sergeant makes only 2.6 percent more than a rank and file police officer at the top of his pay range who receives longevity pay and a sergeant at the top of his pay range makes only 11 percent more than a police officer at the top of his pay range who enjoys longevity pay. It contends that the small gap between the pay of a rank and file police officer at the top of his rank and a sergeant is unrealistic and should be corrected. The Union asserts that most of the police officers in the suburban communities surrounding the Employer receive longevity in some form and the Employer pays longevity to its rank and file police officers. It takes the position that all police officers, not just the rank and file, should receive some form of longevity.

The Employer argues that the only justification for longevity is the need to retain experienced employees. It contends that there is no evidence that it has any problem recruiting or retaining experienced employees in the bargaining unit. The Employer points out that in comparing the pay of a Sergeant to a police officer at the top of his range who receives longevity pay, the Union has omitted the variable shift assignment pay that a first year sergeant receives. It asserts that sergeants have proved themselves to be upwardly mobile by virtue of the fact that they were promoted. The Employer admits that it pays longevity to the rank and file police officers but asserts that it was granted by an arbitrator because of the lack of promotional opportunities for rank and file police officers. It contends that members of the Union have obviously had at least one promotional opportunity and do not qualify for longevity on that basis. The Employer points out that it has successfully resisted efforts of all of its bargaining units to receive longevity payments except for the rank and

file police bargaining unit. It contends that many of the bargaining units have made demands for longevity but it has not given it to any bargaining unit except the rank and file police officers. The Employer points to the history of its negotiations with the Union and contends that the variable shift assignment pay was no more than a new name for the benefit that would provide the same pensionable amount that was provided by longevity pay. It takes the position that the purpose of variable shift assignment pay was to provide a compatible sum to this bargaining unit that was pensionable and could be equated with longevity pay received by the rank and file police bargaining unit. The Employer contends that variable shift assignment pay is more advantageous to the supervisors than longevity because they receive $400.00 per year without regard to length of service in a classification even if they are never asked to change a shift. It asserts that the Union gave up its demand for longevity pay in order to obtain the variable shift assignment pay that provided exactly the same amount of pensionable compensation that the rank and file police receive in the form of longevity pay. It compensates members of the bargaining unit more favorably than longevity pay would. The Employer concedes that a number of cities in Wisconsin do provide some of their police supervisors with longevity pay but none of them come even close to a payment of $1,500.00 per year and none of them have a variable shift assignment pay payment of $400.00 per year with $750.00 in the year of retirement.

The arbitrator agrees with the Union that variable shift assignment pay is a benefit in and of itself and is not longevity pay. The whole rationale behind variable shift assignment pay is different than the rationale for longevity. The history of bargaining reveals that the Union sought a pensionable benefit comparable to longevity pay when the longevity pay of the rank and file police bargaining unit became pensionable. They were unsuccessful in obtaining longevity pay but in the next negotiations the Union proposed variable shift assignment pay. The Employer continued to resist the concept of longevity pay for the Union but was willing to agree to a substitute for longevity pay that did not impact on its bargaining with the other general employees and with the rank and file police. Eventually agreement was reached when the Union dropped its demand for longevity and the Employer agreed to give variable shift assignment pay. There was a trade-off between the Employer and the Union. Now the Union has received the benefit of the variable shift assignment pay and it seeks to also obtain the longevity pay that it traded off in order to receive variable shift assignment pay. New fringe benefits are not given by arbitrators in the absence of evidence demonstrating a compelling need for the benefit. The Union has presented no evidence that would indicate such a need. The basic rationale of longevity pay that the employees are relegated to a career at the bottom end of the economic totem pole does not apply here. All the members of this bargaining unit have received at least one promotion and enjoy both the economic and other benefits that accompany promotions. Through bargaining, they have obtained variable shift assignment pay in return for dropping their demand for longevity pay. Now the Union seeks to have the arbitrator give it the very benefit it traded off in order to receive variable shift assignment pay. Arbitrators are not inclined to give a fringe benefit to a bargaining unit that it has already traded off in bargaining in order to obtain another benefit. The concept of parity is not involved here. The Union has already obtained a form of parity by

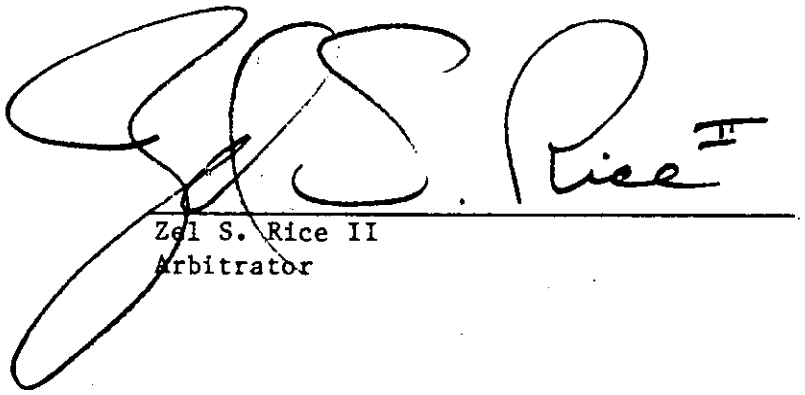
receiving variable shift assignment pay but no longevity pay while the rank and file police receive longevity pay but no variable shift assignment pay. The firefighters have neither variable shift assignment pay or longevity. The Employer has successfully resisted efforts of other bargaining units to obtain longevity payments and it has gone so far as to give this bargaining unit variable shift assignment pay to avoid giving it longevity pay. Under the circumstances, there is no basis for this arbitrator to grant longevity pay to the Union.

An examination of the Union's proposal that a member of the bargaining unit who has completed at least three years of service at the maximum pay step in his classification shall receive longevity pay of $750.00 and an officer who has completed eight or more years of service at the maximum pay step in his classification shall be eligible to receive longevity pay of $1,500.00 convinces the arbitrator that he should make the following

AWARD ON ARTICLE 57 - LONGEVITY PAY

The Union's proposal that each member of the bargaining unit who has completed at least three years at the maximum pay step of his classification shall receive longevity pay of $750.00 and each member of the bargaining unit who has completed at least eight years at the maximum pay step in his classification shall receive longevity pay of $1,500.00 is rejected and should not be included in the 1987-88 collective bargaining agreement.

Dated at Sparta, Wisconsin, this 16th day of September, 1988.



Zel S. Rice II
Arbitrator