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STATE OF WISCONSIN

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the  
Petition of the

Case 18  
No. 42435 MIA-1442  
Decision No. 26225-A

LABOR ASSOCIATION OF WISCONSIN,  
INC. FOR AND ON BEHALF OF THE  
SHEBOYGAN FALLS POLICEMEN'S  
ASSOCIATION,

For Final and Binding  
Arbitration Involving Law  
Enforcement Personnel in the  
Employ of the

CITY OF SHEBOYGAN FALLS

Sherwood Malamud  
Arbitrator

APPEARANCES:

Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin 54915, appearing on behalf of the Association.

Alexander Hopp, City Attorney, 601 North Fifth Street, Box 128, Sheboygan, Wisconsin 53082-0128, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

JURISDICTION OF ARBITRATOR

On December 7, 1989, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator in a dispute governed by Sec. 111.77(4)(b), Wis. Stats., to determine said dispute between the Labor Association of Wisconsin, Inc., For And On Behalf Of The Sheboygan Falls Policemen's Association, hereinafter the Association, and the City of Sheboygan Falls, hereinafter the City or the Employer. Hearing in the matter was conducted on February 6, 1990, at which time the parties presented testimony and documentary evidence. Post hearing briefs were filed by March 13, 1990. Reply briefs were to be postmarked by March 19. Neither party chose to submit a reply brief. The record in the matter was closed on March 21, 1990. This dispute is to be resolved pursuant to form 2, Sec. 111.77(4)(b) in that:

The Arbitrator shall select the final offer of one of the parties and shall issue an

award incorporating that offer without modification.

SUMMARY OF THE ISSUE

The parties submitted one issue for arbitral determination. The amount of the wage increase in the third year of a three year agreement is the sole issue separating the parties in their negotiations for a successor Agreement effective July 1, 1989, through June 30, 1992. The final offers of the parties as to the across-the-board wage increase in each of the three years of the agreement is as follows:

<u>Date</u>	<u>Association's Proposal</u>	<u>City's Proposal</u>
July 1, 1989	4%	4%
July 1, 1990	4%	4%
July 1, 1991	5%	4%

The Association's proposal for an increase of 5% effective July 1, 1991, as contrasted with the City proposed increase of 4% effective July 1, 1991, is addressed and resolved in the Award which follows.

BACKGROUND

The City of Sheboygan Falls is a fourth class city with a population of 5,868. The Association represents eight law enforcement officers in a collective bargaining unit described as: All regular full-time employees of the Sheboygan Falls Police Department, except those employees above the rank of lieutenant. In addition to the law enforcement collective bargaining unit, there is one other collective bargaining unit of employees of the City of Sheboygan Falls. The Public Works and Utilities employees unit is comprised of 19 employees.

The Public Works and Utilities collective bargaining unit entered into a two year agreement effective from July through June, 1989-90 and 1990-91 which provides for a 4% across-the-board wage increase in each year of the two year Agreement. The proposals of both the City and the Association for the first two years of the three year agreement, at issue herein, conform to the settlement in the one other collective bargaining unit of employees in the employ of the City of Sheboygan Falls.

Although the parties refer to some of the same comparables in the evidence presented at the hearing, each proposes municipalities as comparables which differ from those suggested by the other party. However, in their written argument, both the City and the Association refer to all the communities suggested in the exhibits submitted by both the City and the Association in support of their respective positions. The reason underlying

this eclectic approach is that there are no settlements in any of the municipalities suggested as comparable to the City of Sheboygan Falls for calendar year or any part of calendar year 1992. A further complication in this case is that most, if not all, the communities suggested as comparables have collective bargaining agreements in force which coincide with the calendar year rather than a July through June term. The offers of the parties are very close. Since the difference in the proposals of the parties is limited to the third year of the agreement, the cost impact of that difference appears solely in the third year. The total cost difference between the offers of the City and the Association is \$2,717.00.

### STATUTORY CRITERIA

#### 111.77 EMPLOYMENT RELATIONS

. . .

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

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

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

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

1. In public employment in comparable communities.

2. In private employment in comparable communities.

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

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

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

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination

of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

#### POSITIONS OF THE PARTIES

##### The Association Argument:

The Association focuses its argument on the cost of living criterion. It notes that during the three year predecessor agreement in effect from 1986-1989, law enforcement officers covered by that agreement received wage increases totaling 12.25%, when the cost of living increase during that same period of time totaled 13%. The Association emphasizes that during the prior agreement law enforcement officers lost ground to the cost of living by three quarters of a percent (.75%). In addition, the Association notes that the officers received one quarter of a percent (.25%) less of an increase over the three year period than employees in the Public Works and Utilities unit over the 1986-1989 period.

The Association projects that the cost of living will increase by 4.5% in each of the three years covered by the successor Agreement. The Association argues that under its proposal law enforcement officers will lose one-half of 1% to the cost of living during the term of the successor Agreement. However, under the City proposal law enforcement officers would lose 1.5% to the cost of living from 1989-1992. When this shortfall for the successor Agreement is added to the shortfall under the prior agreement, the law enforcement officers will have lost 2.25% to the cost of living over a period of six years from 1986-1992.

The Association notes that it is difficult to project what will happen to the cost of living in 1992. It proposes a 5% wage increase in 1991-92 rather than a 4% wage increase in order to protect law enforcement officers from falling further behind, should the increase in the cost of living either remain at 4.5% per annum or accelerate to levels higher than 4.5% per annum.

The Association argues that the above data supports its proposal for an across-the-board wage increase of 5% effective July 1, 1991. The Association requests that the Arbitrator incorporate its final offer into the successor Agreement.

##### The City Argument:

In its brief, the City emphasizes that the function of the Arbitrator under:

The statutory scheme is that an arbitrator should look at comparisons and decide. There is no provision that he or she should develop a new wage pattern. On the contrary, the assumption is that he or she will use other parties' decisions and show that the arbitrator's choice fits within, or is reasonable in, the context of existing comparables.

The City emphasizes that through calendar year 1991, none of the law enforcement units suggested by either party as a comparable to the City of Sheboygan Falls Police Department received or will receive an increase in excess of 4% in calendar years 1989, 1990 and 1991 (with the possible exception of New Holstein in 1989). The City notes that its Exhibit No. 6 demonstrates that the salary paid to law enforcement officers of the City is adequate.

The City argues that it is the medical cost component which is a dominant force causing increases in the Consumer Price Index. The City notes that since it pays 100% of the premium for health insurance, its police officers are insulated from these increases. Thereby, the impact in the increase in the cost of living is softened.

The City concludes that if this three year agreement does not properly provide for the increase in the cost of living over the term of the agreement, the parties will be in negotiations in 1992 for the final six months of calendar year 1992. In those negotiations, the parties may be able to provide any catch-up adjustments necessary to rectify any error generated as a result of this three year agreement.

The City argues that its final offer is the more reasonable and should be selected by the Arbitrator for inclusion in the successor Agreement.

## DISCUSSION

### Introduction:

The following statutory criteria provide no basis for distinguishing between the final offers of the parties for inclusion in a successor Agreement: (a) The lawful authority of the employer; (c) The interests and welfare of the public; (f) Overall compensation; (g) Changes in the foregoing; (h) Such other factors . . .

In the discussion which follows the remaining criteria are applied to the wage issue.

**(b) Stipulations of the Parties:**

The Association notes that under the Health Insurance plan adopted by the City, which is included in the Stipulations of Agreed Upon Items, requires that law enforcement officers pay deductibles and make "co-pay" payments under the major medical coverage of the plan.

However, the City does continue to pay 100% of the premium for both single and family coverage. Under the agreement of the parties, any increase in premium which may occur over the term of the successor agreement is to be paid in its entirety by the City.

The above agreements are noteworthy. Nonetheless, neither party argues that this criterion provides any basis for distinguishing between the parties' offers. The Arbitrator agrees. The agreement on health insurance terms and premium payments does not suggest a preference for one offer over that of the other.

**(d) Comparability:**

The Arbitrator need not determine the comparability pool in order to reach a decision in this case. Both parties acknowledge the difficulty of projecting salary levels and rates of increases which law enforcement personnel may enjoy in calendar year 1992. Consequently, they refer in their arguments to any and all data available as of the date of the hearing on February 6, 1990. The Arbitrator finds that no matter what comparables are used, it makes little difference with regard to the computation of the average annual salary for law enforcement personnel or to the rates of increase in wages received by these law enforcement officers in calendar years 1989, 1990, and 1991.

The evidence submitted by both the Association and the City demonstrates that the salary level of the law enforcement officer in the City of Sheboygan Falls Police Department is slightly above the mean, as of July, 1989. The Association and the City have agreed to wage increases of 4% in July, 1989 in effect to June, 1990 and July, 1990 in effect to June 1991. None of the law enforcement units referenced by the Association and the City which were settled for calendar years 1990 and 1991 will receive wage increases in excess of 4% in those years (with the possible exception of the City of New Holstein). Thus, it is safe to say that by June 30, 1991, the salary levels of the law enforcement officers in the City of Sheboygan Falls will remain no less than slightly above the mean of those salaries paid to law enforcement officers in the geographic area of the City.

The above data tends to support the City offer.

Neither the Association nor the City presented any evidence nor do they make any argument with regard to the level of wage increases to be received by public and private sector employees,

generally, in comparable communities in calendar year 1992. Accordingly, this factor does not serve to support the final offer of either party.

(e) Cost of Living:

Corrected Employer Exhibit No. 2 demonstrates that law enforcement officers employed by the City did suffer a loss of three-quarters of 1% to the cost of living during the prior three year Agreement. From July, 1988 through June, 1989 the Consumer Price Index increased by 5.1%. From July, 1989 through December, 1989 the Consumer Price Index increased by 4.5%. The Association placed in evidence the Kiplinger letter. In that exhibit it is noted that the cost of living has increased each year over the past two years and will continue to increase during calendar year 1990 at a rate of 4.5%. Certainly, the above data provides strong support for selection the Association offer for inclusion in a successor Agreement.

SELECTION OF THE FINAL OFFER

In its brief, the City notes that:

Because this is a single issue matter, its resolution becomes exceedingly difficult. It is hard to find components which separate the parties' positions. A review of the comparable wages exhibits or other settlements does not give rise to disagreement as the pattern has a range of 3 to 4%. An analysis of the exhibits will show that all wage settlements listed by either or both parties, no matter what size community or in what area, are at 4% or below (except for the City of New Holstien's (sic) COLA settlement in 1989.)

The Association notes in its brief that:

Both parties are asking the Arbitrator to speculate what the future wage increases will be for the period of July 1, 1991, through June 30, 1992, as well as determine whether or not the most reasonable offer will reflect the cost of living at that time.

The task of selecting the final offer to be included in the successor Agreement is further complicated by the absence of data for the first six months of 1992. However, there is adequate data available with relation to the first six months of the third year of this successor Agreement. The first six months of the third year of the agreement coincides with the last six months of calendar year 1991. The data presented by the parties demon-

strates that a 4% increase in the wage rate conforms to the wage rate increase provided by other municipalities in the geographic area.

As of this writing, in May, 1990, it appears to this Arbitrator that the cost of living projections suggested by the Association of at least a 4.5% per annum increase in the cost of living in 1991 and 1992 appears to be accurate. Absent any settlements for any portion of the third year of the Agreement, the Arbitrator would find the bare cost of living data determinative of this dispute.

Interest arbitrators have consistently held that the decisions made by employers and unions relative to wage increases made in light of the cost of living is the appropriate measure of the cost of living factor. Employers and unions may reach agreements which are less than, equal to or greater than the increase in the cost of living. Although it appears in 1990 that the rate of increase of the cost of living will approximate 4.5% during the first six months of 1992, nonetheless, during the first six months of the third year of this Agreement, i.e., July through December, 1991, employers and unions representing law enforcement personnel in the geographic area of the City of Sheboygan Falls have provided for a 4% wage increase during that period. To the extent that the 4% wage increase will be less or greater than the pattern of settlement achieved in the communities which the parties determine to be comparable to the City of Sheboygan Falls for the calendar year 1992, the parties will be able to address such distortion in their negotiations for a successor to this one upon its expiration on June 30, 1992.

In this case, the Arbitrator is confronted with two very reasonable offers. There is ample basis for selection of either final offer for inclusion in the successor Agreement. However, the Arbitrator concludes on the basis of the above analysis that the final offer of the City of Sheboygan Falls is slightly preferable to that of the Association's. The City's offer is based upon known settlements. The Association's is based more on educated projections.

On the basis of the above discussion, the Arbitrator issues the following:

#### AWARD

Upon the application of the statutory criteria found at Sec. 111.77(4)(b), Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of the City of Sheboygan Falls to be included, together with the stipulations of the parties, in the Collective Bargaining Agreement between the City of Sheboygan Falls and the Labor Association of

Wisconsin, Inc., for and on behalf of the Sheboygan Falls Police-  
men's Association effective July 1, 1989, through June 30, 1992.

Dated at Madison, Wisconsin, this 9<sup>th</sup> day of May, 1990.

  
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Sherwood Malamud  
Arbitrator