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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of an Arbitration  
between  
THE CITY OF WATERTOWN  
and  
THE WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION/LAW ENFORCEMENT  
EMPLOYEE RELATIONS DIVISION  
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Case 38  
No. 43235 MIA-1468  
Decision No. 26343-A

Appearances:

- Mr. James R. Scott and Ms. Lisa M. Leemon, Lindner & Marsack;  
representing the City.
  
- Mr. Richard T. Little, Bargaining Consultant, WPPA/LEER Division;  
representing the Association.

Before:

Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The City of Watertown, Wisconsin, hereinafter referred to as the City, and Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter referred to as the Association, were unable to reach an agreement on the terms of a new collective bargaining agreement. Pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act, the undersigned was selected by the parties as arbitrator in this matter. A hearing was held on May 23, 1990 in Watertown, and the parties filed post-hearing briefs.

Final Offers of the Parties

- City's Final Offer: 5% wage increase effective January 1, 1990.
- Association's Final Offer: 4% wage increase effective January 1, 1990.  
4% wage increase July 1, 1990.

Effective July 1, 1990, all officers with three or more years of experience and who complete mandatory re-certification training shall receive an additional \$500 annually.

CITY'S POSITION:

It is the City's position that the appropriate comparables in the instant case are the cities of Beaver Dam, Fort Atkinson, Waupun and Whitewater. These municipalities are substantially equal to the City of Watertown in terms of geographic proximity, population, and similarity in wages and fringe benefits paid to relevant personnel. Additionally, the City's choice of comparables is supported by a prior arbitration award involving the City and its police employes. See City of Watertown (Police), MIA-206, Decision No. 14487A (Zeidler 1976). In that case, Arbitrator Zeidler stated: "The most comparable cities in population accordingly are in the opinion of the Arbitrator, Beaver Dam, Fort Atkinson, Oconomowoc, Sun Prairie, Watertown and Waupun. Oconomowoc and Sun Prairie are included even though there is some metropolitan economic influence on both."

The City contends that it is not proper to include Oconomowoc and Sun Prairie as comparables because they are influenced to a much greater extent by Milwaukee and Madison respectively. The City further objects to the Union's inclusion of West Bend as a comparable as it is not in geographic proximity to the City, and because it is influenced to a greater extent by the Milwaukee Metropolitan Area. Jefferson should not be included as a comparable because its population is much smaller than that of the City.

Additionally, the City objects to the municipalities of Cudahy, Menasha, Neenah, Wisconsin Rapids, Stevens Point and Manitowoc being included among the comparables. The Association relies on these municipalities as comparables because they were among the municipalities the firefighters used as comparables. However, the firefighters have historically had trouble establishing appropriate comparables because few municipalities in the area have full-time fire departments. This is not the case with the Association.

It is asserted by the City that its wage increase is the more reasonable of the two final offers in the instant proceedings. The City has offered a wage increase of 5% across-the-board for 1990. This is in contrast to the Association's offer of a 4% increase effective January 1, 1990 and another 4% effective July 1, 1990. In addition to the 6.1% lift for 1990, the Association asks the arbitrator to award it a \$500 annual payment for those who maintain their State-required certification, which adds another 2% to the cost of its final offer.

The external comparables clearly support the City's final offer. The evidence establishes that in 1990 of the four comparables, Beaver Dam, Fort Atkinson, Waupun and Whitewater, not one of the comparables received an increase equal to the City's offer of 5%. The city of Whitewater received 3% effective January 1 and 3% effective July 1, 1990, for a 4.5% increase equalling \$126. Other than the city of Whitewater, the City's final offer is also the highest dollar increase among the comparable groups.

The evidence establishes that the Association's final offer far exceeds the increases received by any of the comparables in terms of percentage increases, percentage lift and actual dollar increase. In fact, the Association's final offer exceeds even the increases received by the municipalities it has chosen as comparables. The Association's wage offer for 1990, including the \$500 annual payment it seeks, represents a wage increase of 8.1% for 1990 alone.

It is further argued by the City that the Association cannot claim that it has historically been underpaid and, therefore, an 8.1% lift is required to bring it up to par with the wages received by the comparables. It has presented no justification for an 8.1% wage increase. A review of the top patrol salaries among the comparables establishes that the City's offer would

maintain a \$17 per month above-average level compared to the other comparable municipalities. In contrast, under the Association's final offer, police officers would receive wages \$125 per month above the average. The Watertown police employes would become the highest paid police employes among the comparables without any justification for such a lift in wages.

In 1989, the City's firefighters received a wage increase of 4% effective January 1, 1989, an increase of 4% effective July 1, 1989, and an increase of 3.7% effective December 31, 1989. In 1990, firefighters received an additional 4% wage increase effective January 1. The rationale for granting the firefighters this increase in 1989 is multifaceted. Not only were the firefighters the lowest paid in relation to comparables groups, they were also undermanned in relation to those same groups.

The Watertown firefighters came into the 1989 negotiations and expressed a willingness to become involved in the EMTI program. EMTI involves the administration of advanced medical techniques at the site of emergency situations. It is one step short of paramedic training. The EMTI program is voluntary, and in order to become certified firefighters must attend a 22-week instruction course, serve 40 hours of hospital clinic work, and perform 24 hours of service with paramedics. To maintain EMTI certification, firefighters must participate in annual training. Firefighters who have become EMTI certified receive an additional \$500 per year.

Compensation for EMT certification, which involves medical training which is less advanced than the EMTI certification, is included in a firefighter's base salary, and if a firefighter is not EMT certified \$300 is deducted from his base salary. Annual training is also required in order to maintain EMT certification, and EMT certification is mandatory for all new hires.

The Association's final offer includes a proposal for a \$500 annual payment for all officers with three or more years of experience who complete mandatory re-certification training. The City considers such proposal unreasonable as it is not comparable to the \$500 payment which firefighters receive for EMTI certification. A police officer's base salary already compensates him or her for fulfilling the mandatory re-certification training.

According to the City, firefighters were also compensated in 1989 for increased efficiency and productivity. Currently, firefighters now put in a full workday between the hours of 8 a.m. and 4 p.m., in addition to remaining on call for the remainder of their shift. Additionally, the work load of the firefighters has increased without the need to obtain additional manpower. The City has operated with 16 firefighters since at least the 1960's.

A factor which played a part in the City's offer to the Association concerns action by the City's Common Council which capped wage increases for City employes at 5% for 1990. This action by the Council was in reaction to a public hearing on the City budget at which numerous members of the public expressed their outrage and displeasure at the proposed tax levy. After the hearing, the Common Council decided that no more than a 10% increase in taxes could be levied for 1990. In order to meet that goal, the Council determined that wage increases for its employes could be no more than 5% for the calendar year. All non-represented City employes received a 5% increase effective January 1, 1990. The City has made the offer to its DPW unit for a 5% wage increase for 1990, and the firefighters settled in 1989 for a 4% increase in 1990. Thus, the hands of the City's negotiating committee were "tied" in terms of the amount of the wage increase which could be offered.

The cost-of-living criteria favors the City's final offer. The Consumer Price Index indicates that in 1989 the cost of living was at 4.8% at year end.

In the first three months of 1990, the CPI-W has remained stable at 5.3% and the CPI-U has reflected a cost of living of 5.2%, 5.3% and 5.2% for January through March, respectively. Thus, the City's offer for 1990 more closely mirrors the actual and projected cost of living for 1990, whereas the Association's offer far exceeds the trend in cost of living for 1990.

The Association's attempt to compare itself to the firefighters is misplaced. Unlike the Association, the firefighters were the lowest paid full-time fire department in the State, they took on additional training in the form of EMTI, and they demonstrated a measurable increase in productivity. Further, there is no historic parity between the police and the firefighters.

The City's offer to the Association is fair and reasonable based upon all the evidence presented. Thus, the City respectfully requests the arbitrator to select its final offer.

ASSOCIATION'S POSITION:

It is the Association's position that the City may legally meet the Association's final offer. Section 111.77 (6)(a) provides that in reaching a decision the arbitrator must give weight to the lawful authority of the employer. Although the City may argue that the level of compensation is now affected by the resolution passed by the City Council on November 7, 1989, which may impact this provision of the statute, the Association asserts that this section is designated to cover illegal subjects of bargaining. The Association argues that if the arbitrator gives weight to this area of the statutes, it should be on the basis that the City's final offer discriminates against all employees affected by the passage of the 5% resolution, as it completely disregards the spirit and intent of Chapters 111.70 and 111.77.

When considering which final offer is more reasonable, the arbitrator must look at the issues agreed upon through collective bargaining. In the instant

case, all issues except compensation have been agreed upon. In this particular situation the negotiations process was hindered, or indeed eliminated, by the City's reliance on the 5% resolution. The fact that there were stipulations on issues other than compensation indicates that collective bargaining did exist between the parties up until the point of wage discussions.

It is the position of the Association that its final offer best serves the interest and welfare of the public by recognizing the need to maintain the morale of its police officers and to retain the best and most highly qualified officers. The evidence provided by the Association establishes that the City of Watertown police officers' wage level has fallen from near average of the proposed comparables to near the bottom. Over the last 10 years, 22 qualified officers have left the Department for other employment. If a comparison of wages is made between a City of Watertown officer and a city of Oconomowoc officer, the conclusion can be reached that the Oconomowoc officer will receive approximately \$3,500 per year (1989) more than the Watertown officer. The city of Oconomowoc lies approximately 10 minutes from the City of Watertown. The Association contends it is inconceivable that the levels of experience, crime rate, duties, or responsibilities can provide for such a dramatic differential in wage levels.

The Watertown police officer, looking at the wage increase received by the Watertown firefighters, once again is told that his services, and retention, are for some reason not as important as that of the firefighter. The Association asserts the issue at hand is not inability to pay, but only unwillingness.

It was determined at hearing that the law enforcement bargaining unit has not had an arbitrator's award in at least the past ten years, and, therefore, no direction from an award as to appropriate comparables could be obtained. It

has been recognized by many arbitrators that municipalities are comparable where they are substantially equal in the following areas: population, geographic proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel, and wages and fringe benefits paid such personnel. City of Cudahy, Case XVIII, No. 20070, MIA-219 (Raskin 7/76).

The Association utilized the above criteria in order to determine the appropriate comparables in addition to those that were provided by the Firefighters' Association to the City and arrived at a combined group. In contrast, the City provides a limited list of four departments, only three of which were settled for 1990 at the time of the hearing. It is the Association's position that its comparable listing gives the best overall view of law enforcement departments, and, therefore, its group of comparables should be utilized by the arbitrator.

It is clear, based on the evidence, that the top patrolman's monthly wage rate was at or near average as recently as 1983. Beginning in 1984 to present, the wage level has steadily declined to a point of approximately \$1,000 per year below the average. There was no evidence presented by the City as to the reason for this decline. It must be noted, the Association does not attempt to gain a highest paid status, but simply to return to average.

The reasoning behind the firefighters' settlement supports the Association's final offer. The Association's final offer follows the guidelines the City utilized in determining the appropriate wage level for the Fire Department. While the City asserts that the firefighters have had a greater work load, the Association has introduced evidence which indicates the State crime index offenses show an increase in workload of 24.3% over the same time frame as used for the firefighter comparable.



The Mayor testified that the City of Watertown firefighters were among the lowest paid, and were therefore entitled to a larger increase than average. This information is verified in the evidence introduced by the Association, which also indicates the Watertown police officers are among the lowest paid.

For all of the above mentioned reasons, the Association asserts that its final offer is the more reasonable. Furthermore, the only factor that differs from the firefighters bargain is the 5% resolution, and it is with this factor that the Association takes the most offense.

The Association also argues that the certification pay for police officers is justified by the firefighter settlement. Both the firefighter settlement and the Association's proposal are framed as compensation for experience and training and neither impact on overtime or any other roll-ups. The Association has proposed a responsible alternative to the firefighters' EMS pay. The only difference between the two is that if a firefighter loses his EMS certification he will suffer a monetary loss; if a law enforcement officer loses his certification he will lose his job.

In the instant proceedings, both parties submitted into evidence information with regard to the cost of living. The Association maintains that settlements within the comparable area have consistently exceeded the Consumer Price Index. The Association's position is best stated by the undersigned arbitrator in City of Superior, Dec. 20422-A:

"These settlements negotiated by other public employers in 1983 were negotiated under the same economic conditions as are confronting the City, including the same increase in the cost of living. This clearly suggests that where voluntary agreements have been reached, while the cost of living may have been a factor, it was not the controlling factor. Certainly as the cost of living has fallen, so too has the pattern of settlements. However, the pattern of settlements has not been the increase in the cost of living."

In concluding its arguments, the Association contends its final offer is more reasonable than the final offer proposed by the City and should, therefore, be adopted by the arbitrator.

DISCUSSION:

The first issue which must be addressed is the selection of comparables. The Association includes among its comparables Cudahy, Menasha, Neenah, Wisconsin Rapids, Stevens Point and Manitowoc. Its rationale for selecting many of these cities as comparable is that it includes the same cities relied upon by the City and the firefighters in arriving at an agreement. The City's comparables include Beaver Dam, Fort Atkinson, Waupun and Whitewater. All but Whitewater were among the comparables used by Arbitrator Zeidler in a previous case involving the bargaining unit and the City.

As noted by the Association, one of the factors frequently relied upon by arbitrators in selecting comparables is geographic proximity. Even a cursory review of the comparables urged by the Association clearly establishes that many of its proposed comparables are not in geographic proximity to the City. While it may be true that in the case of the firefighters a broader geographic base of comparables was considered, it was done so out of necessity; there were simply too few departments in geographic proximity that had full-time personnel to permit a fair comparison. Consequently, the parties went beyond the normal geographic area to find comparables. No such necessity exists regarding police departments. There are a number of full-time departments in geographic proximity to the City.

In selecting its comparables the City failed to include two cities which Arbitrator Zeidler concluded were comparable--Oconomowoc and Sun Prairie. It is argued by the City that both Oconomowoc and Sun Prairie are influenced by Milwaukee and Madison respectively, and for this reason should not be included

among the comparables. The City does include Whitewater in its listing of comparables, although it was not among the comparables used by Arbitrator Zeidler, according to the City.

Where, as in this case, the comparables have been established by an arbitrator, the undersigned is of the opinion those comparables should be retained unless there is some evidence that the original selection of comparables was inappropriate. There is no evidence in this case to indicate that the comparables selected by Arbitrator Zeidler were inappropriate. Once appropriate comparables are established their retention adds a degree of predictability to the bargaining process and the extension of the bargaining process, arbitration. Therefore, the undersigned is persuaded the most appropriate comparables for this case are those used in the prior arbitration.

The evidence establishes that in percentage terms the City's offer of 5% exceeds the percentage increases granted in Beaver Dam, Fort Atkinson and Waupun. In dollar amounts, the City's offer at the top patrol salary is exceeded only by Whitewater which settled for a split increase of 3% and 3%. The Association's final offer of a split increase of 4% effective January 1 and 4% effective July 1 is only 1% more than the City's final offer, and if this were the only issue an argument could be made in support of the Association's position. This is especially true if Sun Prairie and Oconomowoc are included among the comparables. There is, however, one additional issue involved in this case. The Association's final offer includes an annual payment of \$500 to each officer with three or more years of experience with the Department who maintains State-mandated certification as a police officer.

There is no evidence in the record to suggest that compensation for maintaining State-mandated certification has become a method of compensation for police officers. To this extent, the Association is seeking a major change

in the method of compensating police officers. It is generally recognized by arbitrators that major changes in wages, hours and working conditions should be negotiated, not imposed by an arbitrator. In School District of Barron

Arbitrator Krinsky noted:

"Any substantial restructuring of the salary schedule should be the result of voluntary collective bargaining and not imposed by the arbitrator."

Certainly the Association's proposal to compensate police officers for maintaining their State-mandated certification is a change of the nature contemplated by Arbitrator Krinsky.

In Drummond School District, Dec. No. 233349-A Arbitrator Rice noted:

"It is a generally accepted principle that interest arbitration should not be used as a procedure for initiating changes in basic working conditions absent a compelling reason for changing them."

The Association has presented no compelling reason for substantially changing the basis for compensating law enforcement personnel. Indeed, the Association's primary argument is that if the City's firefighters are entitled to receive an annual payment of \$500 if they become EMTI certified and maintain certification, police officers are entitled to the same consideration as they too must be certified and maintain certification.

If EMTI certification and State certification for law enforcement personnel were similar, the Association would have a valid argument. However, EMTI certification and certification for law enforcement personnel are significantly different. A firefighter need not be EMTI certified in order to work as a firefighter. There is no State mandate that a firefighter have such certification and the City has imposed no such mandate on the firefighters; it is entirely voluntary. In contrast, the State has mandated that law enforcement personnel be State certified in order to work in the area of law enforcement. Certification is a condition of employment imposed by the State,

not the City.\* The certification requirement of the State, as it relates to law enforcement personnel, is similar to other occupations which the State has determined should be subject to State certification. As a general proposition, the amount of education, training and experience required to become certified and maintain certification in an occupation is reflected in the level of compensation for that particular occupation.

In view of the fact that the Association is seeking a major change in the method of compensating law enforcement personnel, it is the opinion of the undersigned that a change of that magnitude should be negotiated, not arbitrated. The undersigned is further persuaded there is a significant difference in EMTI certification, which is not a State-mandated condition of employment, and certification of law enforcement personnel, which is a State-mandated condition of employment.

If the only issue in this case involved a wage increase of 5% or 4% and 4%, one would have to conclude there is compelling evidence in support of either final offer. However, where the Association is seeking a major change in the method of compensating law enforcement personnel, the undersigned must conclude, based upon the above discussion, that the City's final offer is the more reasonable of the final offers before him for consideration.

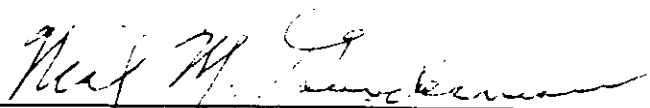
Based on the above facts and discussion thereon, and after giving due consideration to the statutory criteria, the undersigned renders following

AWARD

That the City's final offer, as well as all other items previously agreed upon by the parties, be incorporated into the 1990 collective bargaining agreement.

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\* The City requires that firefighters be EMT certified and retain certification or have \$300 deducted from their salary annually.

  
Neil M. Gundermann  
Neil M. Gundermann, Arbitrator

Dated this 14th day  
of August, 1990 at  
Madison, Wisconsin.