STATE OF WISCONSIN

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

INTEREST ARBITRATION

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN:

FOND DU LAC PROFESSIONAL POLICE ASSOCIATION, LOCAL 12 (Union) (Association)

Dec. No. 27307-A

-and-

CITY OF FOND DU LAC, POLICE DEPARTMENT (Employer) (City)

_____/

Case 113 #46770
MIA-1683

OPINION AND AWARD

APPEARANCES:

ARBITRATOR:	Mario Chiesa 428 N. Gulley Road Dearborn, MI 48128
FOR THE ASSOCIATION:	Cullen, Weston, Pines & Bach By: Gordon E. McQuillen 20 North Carroll Street Madison, WI 53703
FOR THE EMPLOYER:	Bruce K. Patterson Employee Relations Consultant 3685 Oakdale Drive New Berlin, WI 53151
ALSO PRESENT:	Richard T. Little, Bargaining Consultant, Wisconsin Prof. Police Assn. Ben Mercer, Human Resources Dir. City of Fond du Lac Don Bord, Chief of Police Duane Johnson, Deputy Chief of Police Tom Lemke, Patrolman and Chairman of Wage Negotiations John Graham, Patrolman

Gary Burns, Patrolman
and President of Local 12
Jeff Venne, School Liaison
Officer
Brian Bartelt, Detective
Michael Frank, Patrolman
Pat Primising, Patrolman

INTRODUCTION

The notice of Close Of Investigation And Advice To The Commission is dated June 17, 1992. The Commission's Findings Of Fact, Conclusion Of Law, Certification Of Results Of Investigation, and Order requiring arbitration is dated June 24, 1992. The order appointing me as arbitrator is dated July 2, 1992 and that is the date of the correspondence notifying me of the appointment. The hearing was scheduled for and took place on September 26, 1992 at the City's facilities in Fond du Lac, Wisconsin. After receiving the transcript the parties filed briefs, the last one of which I exchanged between the parties on January 14, 1993.

This arbitration is sanctioned by Subchapter 4, Municipal Employment Relations Act 111.77. The proceedings are being conducted pursuant to Form 2 as outlined in the statute. Section 6 of 111.77 reads as follows:

> "(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

employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees 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 employees, 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."

IDENTIFICATION OF ISSUES

In Appendix A I have included a copy of the Employer's Final Offer and the Association's Amended Final Offer so there will be no question about the precise language utilized by the parties in framing their positions. Furthermore, the fashion in which the Association drafted its offer displays most of the contract

language as it currently exists. In Appendix B I have included additional current language.

It would be appropriate to highlight the issues. The Employer's final offer provides for a three-year Collective Bargaining Agreement running from December 19, 1991 through December 17, 1994. The Association's offer encompasses a two-year Collective Bargaining Agreement, which apparently would run from January 1, 1992 through December 31, 1993.

Health insurance is one of the pivotal issues in this dispute. The Employer's final offer seeks substantial changes to the existing program and involves modification of deductibles, co-pays, out-of-pocket expenses, lifetime maximum benefits, psychiatric care, out-patient psychiatric care in-patient, home health care limitations, etc. The specifics will be dealt with when the issue is analyzed. The Association's position is to maintain the status quo.

In the area of salary increases both parties are offering what the Association has termed as "split wage" increases. The Employer offers four percent effective 12/19/91; two percent effective 12/27/92; three percent effective 7/4/93; two percent effective 12/19/93; and three percent effective July 3, 1994. The Association seeks a three percent increase effective 1/1/92; three percent effective the 14th pay period 1992; three percent effective 1/1/93; and three percent effective the 14th pay period 1993.

The Employer also offers to increase all base rates by $28.50 bi-weekly as a quid pro quo for the insurance modifications it seeks. This would be effective October 4, 1992.

Regarding Article 16, Good Attendance Bonus Program, the Employer's offer modifies 16.04 to increase the exchange rate per credit to $43.63 for 1992, $45.80 for 1993, and $48.09 for 1994. The Association's final offer would change the language in 16.01 by substituting the date of 1992 for 1979 and would reduce the threshold of 800 or more hours as currently contained in the language to 650 or more hours. It also adds a provision that will be effective January 1, 1993, wherein employees who accumulate 400 or more hours of unused sick leave would be eligible to participate in the attendance bonus program. No other changes are proposed until Section 16.04 where the Association seeks to change the current $39.92 per credit for 1990 and $41.94 for 1991 to $47.00 commencing on January 1, 1992 and $52.00 commencing on January 1, 1993.

The Association seeks to change the provisions of Article 6, Longevity. It seeks to increase the current $300, $600 and $900 figures to $400, $800 and $1,200 and introduce a new section which would provide $1,600 upon completion of 20 years of service. The Employer's position is the status quo.

In Article 7, Differential Pay, specifically 7.01, the Union seeks to substitute new language for paragraph A, moving paragraph A with substantial changes to paragraph B, and apparently

eliminating paragraph B in total. The Employer's position is the status quo.

In 7.02 the Association seeks to establish a new paragraph B which would be comprised of the second sentence of the prior paragraph A, eliminating the $34.62 mentioned and substituting language which would require 50 percent of the difference between the maximum patrol officer pay and the maximum investigator pay. The current paragraph B would become paragraph C. The Association also seeks a new paragraph D or Section D, as it refers to it, establishing additional compensation for certain duties it has characterized as specialized. The five areas are specifically referred to in its offer. The Employer seeks a continuation of the status quo.

In Article 17, Shift Changes, specifically 17.05, C.4., the Association seeks to eliminate essentially all of the current language except for perhaps five words and substitute new language dealing with weekend training and providing for the holiday rate of 2 1/4 times the current rate (base plus longevity) for those who are not regularly scheduled to work the hours referred to. Again, the specifics are contained in its offer. The Employer seeks a continuation of the status quo.

In Article 29, Grievance Procedure, specifically 29.01.B., the Association seeks to eliminate the entire second sentence, which refers to the Police and Fire Commission's authority. In Article 23, Rights of the Employer, specifically 23.01.C., the Association seeks to eliminate the terms "as circumstances warrant" and

substitute the words "for just cause." The Employer seeks continuation of the status quo.

COMPARABLES

The Association has suggested that the communities of West Bend, Oshkosh, Sheboygan, Appleton, Menasha, Beaver Dam and Neenah, should be considered comparable to Fond du Lac for the purposes of this arbitration.

In comparing the communities, it is noted that they are located within a fairly close geographical area. The 1991 population in Fond du Lac was 38,161, falling within the range of 14,212 in Beaver Dam to 66,189 in Appleton. 1991 figures show that Fond du Lac has 60 regular full-time personnel with powers of arrest. This includes managerial, supervisory and non-supervisory. That falls within the range of 27 in Beaver Dam to 90 in Appleton. The data establishes that Fond du Lac would be fourth in population and also fourth in the number of personnel with powers of arrest. Fond du Lac was also the fourth highest in property offenses for 1991 and the highest for violent offenses in the same year.

The Employer has relied heavily on what is often termed "internal comparables." Those employee groups are: Local 1366 AFSCME with 140 employees, Local 400 International Association of Fire Fighters with 52 employees, Fire Department Supervisors Association with 7 employees, Police Department Supervisors Association with 14 employees, and the Administrative Technical Management personnel with 64 employees.

Given the language in the statute, and frankly common sense, I must carefully consider the information regarding the comparable communities, as well as the wages, hours and conditions of employment existing in the so-called internal comparables. However, I am convinced that certain aspects of the relationship between the parties may be more heavily influenced by wages, hours and conditions of employment existing in comparable communities, while other aspects are more heavily influenced by the wages, hours and conditions of employment existing in the so-called internal comparables.

DISCUSSION OF ISSUES AND EVIDENCE

DURATION

As previously indicated, the Association is seeking a two-year Collective Bargaining Agreement, while the Employer's offer encompasses a three-year contract.

The Association maintains that a three-year successor agreement is simply too speculative. It argues there is very little guidance in the record supporting a three-year contract. It maintains that the prior agreement was two years and the agreements in the comparable communities, with the exception of Sheboygan, do not provide a settlement for 1994.

The Employer points out that the organized units comprising the internal comparables all have a contract termination date in December of 1994. In addition, each had a commencement date of January 1, 1992, with the exception of the Fire Fighters, whose contract commencement date was December 19, 1991.

I recognize that multi-year contracts often cover periods of time for which very little information and predictability exist. However, it is also important to remember that a multi-year Collective Bargaining Agreement, in essence, creates its own stability for the period involved. Employers are aware of what their costs will be during the period and labor organizations are aware of the benefit and wage levels which will exist. Both experience extended labor peace when the contract provisions are reasonable in the sense that they do not create a glaring conflict with the economic environment.

One of the very important factors in this case is that this decision is being rendered early in 1993. So the reality is that the uncertainty will at most exist for about a year and a half. In practical terms, that isn't much different than a two-year Collective Bargaining Agreement.

HEALTH INSURANCE

As indicated above, the Association is seeking the continuation of the status quo, while the Employer's final offer includes major changes in the program. In one of its exhibits the Employer compared 24 different areas of the benefit and even though I have carefully studied that exhibit, as well as the entire body of evidence, I don't think it is necessary to display every difference. It would be appropriate, however, to discuss the major aspects of the Employer's offer.

The Employer's offer contains a major medical plan which is comprehensive in nature and which subjects all covered benefits to

a calendar year deductible and a maximum co-pay amount. There are exceptions to the deductible, such as pre-admission testing and second surgical opinions, but generally the plan operates as indicated. The deductible is $100 per person with a maximum of $300 per family. The co-pay is 20 percent of the next $5,000 for single coverage, or 20 percent of $10,000 for family coverage. As a result, the maximum out-of-pocket expense for a single person plan would be $1,100 per calendar year, while a family's maximum out-of-pocket expense would be $2,300 per calendar year. The monthly cost to the Employer would decrease $24.96 for a single plan and $63.62 for a family plan. The total reduction would be $2,553.62 a month or $30,643.44 a year.

The current plan provides a basic level of benefit with 100 percent payment for covered expenses with $100 calendar year deductible, which increases to $200 per family. There is a major medical level of benefits providing coverage for those items not included in the first level or for excess of certain first-level limitations. The calendar year major medical deductible is $50 per person, with a maximum of three per family, and the major medical co-pay is 20 percent of the next $10,000 per person.

The Employer's final offer provides a million dollars maximum per person, while the current coverage provides $500,000 under major medical.

Under the Employer's final offer hospitalization is subject to deductible and co-insurance and pre-admission certification is required. Under the current plan hospitalization as a basic

benefit with a maximum of 365 days per confinement is subject to a deductible, but no co-insurance. Pre-admission certification is required.

A number of the benefits provided under the current program fall within the category of basic benefits, which in general means that a deductible applies, but there is no co-insurance requirement. There are exceptions, such as emergency care and special provisions for psychiatric care, drug and alcohol abuse, and other benefits. Those which are covered under basic benefits would, under the Employer's final offer, in general be subject to a deductible and co-insurance.

Under the current plan other benefits, such as skilled nursing, home health care, out-patient physical, occupation, respiratory and speech therapy, etc., are covered under major medical which of course means they are subject to a deductible and co-insurance. While these benefits are provided under the Employer's final offer, there are certain changes, most of which makes the benefits subject to deductible and co-insurance. There are some specific changes, such as in-home health care, where currently 80 visits per calendar year are allowed, subject to deductible and co-insurance, while under the Employer's final offer, there would be 40 visits per calendar year and an additional 40 visits for Hospice care, both of which are subject to deductible and co-insurance.

So as I indicated, there are substantial changes between the current program and what the Employer has submitted in its final

offer with those changes in general increasing the financial burden placed upon the employee. I do note that part of the Employer's final offer is what it characterizes as the quid pro quo for the insurance modifications and provides $28.50 bi-weekly to all base rates effective October 4, 1992.

The evidence establishes that all of the internal comparables have agreed to the implementation of the health insurance provisions contained in the Employer's final offer.

There was testimony given by officers on behalf of the Association outlining what can only fairly be categorized as the substantial increase in financial burden they would have to assume if the Employer's final offer were accepted.

There is nothing to indicate with any specificity the existing health care provisions in the Collective Bargaining Agreements existing in the comparable communities offered by the Association.

The Employer suggests that its evidence establishes that 86 percent of its employees have accepted a wage and insurance package identical to the proposal set forth in the final offer. It indicates to maintain the status quo ignores the real world of what is happening relative to health insurance and the attempt to control the health insurance costs. It points out that members of the bargaining unit will continue to enjoy the high level of health benefits they currently have during the pendency of the arbitration process because it is virtually impossible to retroactively enforce health insurance plan modifications. Thus, it maintains that the employees will receive the substantial benefits of the salary

increase and, yet, the impact of the health insurance modifications will not be felt until later in the contract term.

The Association maintains that the Employer's proposal is potentially disastrous for members of the bargaining unit and, additionally, because of the overall cost of the plan, the interest and welfare of the City and its taxpayers are not well served. As suggested, in the long run the plan may cost the City and its employees more than it can save.

The Association argues that while the plan may cut Employer annual costs for family participants by about $28,000, as it relates to any individual member, the results could be harmful. To support its proposition it carefully analyzed the circumstances regarding Officer Lemke and Officer Graham and engaged in a number of computations involving various aspects of the proposal.

The Association further maintains that while there is some support for the Employer's proposal from the internal bargaining units, that isn't enough because in cases of this nature the party advocating a change in the status quo bears the burden of demonstrating the need for the change, and of showing that the proposal is reasonably related to correcting difficulties.

WAGES

I have already displayed the specific wage offers and I am not going to reiterate them at this point.

The two classifications outlined in the Collective Bargaining Agreement are patrol officer and detective. Under the prior Collective Bargaining Agreement, the last wage increase was

implemented on July 1, 1991 and raised the maximum patrol officer salary to $29,145.64. The monthly rate would be $2,428.80. Keeping in mind the fact that both parties have offered what they call a split wage increase, which amounts to more than one increase in a year, application of the Association's offer would lead to a monthly base for top patrol in 1992 of $2,576.73. In 1993 the top patrol monthly base would become $2,733.66. Application of the Employer's final offer would provide a monthly base for top patrol officer in 1992 of $2,587.88. Four days before the end of the year there would be another increase, but for the purposes of this analysis, I am ignoring it for 1992 and will consider it as 1993. Thus, at the end of 1993, which would be through and including the July 4, 1993 increase, the monthly pay of a top paid patrol officer would be $2,718.84. At the end of 1994 that rate would be $2,856.40.

If those rates are expressed as an annual salary, the Association's offer would provide $30,920.76 for a top patrol officer in 1992. In 1993 that figure would become $32,803.92. Using the same methodology in applying the Employer's final officer, the 1992 annual rate for a top paid patrol officer would be $31,054.55. In 1993 that rate would become $32,625.91. In 1994 that rate would be $34,276.78. It should be noted that the Employer's offer includes a $28.58 bi-weekly increase effective October 4, 1992. Further, it should be understood that the above figures may be just pennies different than what appears in one or the other exhibits in the record. This is attributable to the

method of calculation which in some cases creates an insignificant difference.

According to the Employer's evidence, its final offer generates a total three-year increase of 17.68 percent or an annual average of about 5.89 percent. The Association's final wage offer would create 12.55 percent increase over two years for an average of about 6.28 percent per year. If the other increases sought by the Association are taken into account, there would be an additional 2.75 percent increase for 1992, with a total increase of 1992 being 9.03 percent. The Association's evidence shows that the 1992 package cost for its offer would be about 5.87 percent. The 1992 package cost for the Employer's offer would be about 4.49 percent. The 1993 package cost for the Association's offer would be 5.89 percent, while the Employer's final offer would generate a cost increase of about 5.36 percent.

The evidence also contains the percentage increases for five other of the employee groups representing about 86 percent of the City's employees. The figures are for the years 1992 to 1994. None of the wage increases on a yearly basis were over 4 percent and none were lower than 2 percent.

The Association's evidence regarding Fond du Lac's ranking in the comparable communities, again using top patrol officer, showed that for 1987, 1988 and 1989 Fond du Lac ranked seventh. For 1990 and 1991 it ranked sixth. In 1992 Fond du Lac, regardless of which offer is accepted, would rank sixth. For 1993, again regardless of which offer is accepted, Fond du Lac would rank third. Of course,

it should be understood that there is less data available for 1993. The evidence also shows that from the period of 1987 through 1992, a Fond du Lac top paid patrol officer received a little less than the average of the external comparables.

Again, utilizing the Association's evidence, the percentage increase provided for 1991 and 1992 would be the highest of the comparable communities regardless of whether the Employer's or the Association's offer were accepted.

The evidence shows a 3.1 percent increase on a December-to-December basis for the all urban consumers, CPI 1982-1984 equals 100, for the year 1991.

In essence, the Association takes the position that its wage offer is superior to the Employer's in all respects. It points out what it perceives to be deficiencies in the manner in which the Employer has calculated the costs and relying upon the evidence relating to salary figures, argues that its position is much more acceptable than the Employer's.

The Employer argues that when the criteria regarding the average consumer price of goods and services, commonly known as the cost of living, and that involved with the comparison of wages, hours and conditions of employment with other employees, etc., is carefully considered, it is apparent that its position is much more acceptable than the Association's.

GOOD ATTENDANCE BONUS PROGRAM

The available evidence regarding this issue is to be found in the data regarding the internal comparables. For instance, in the

AFSCME group the cash conversion is $34.86 on 1/1/92; $36.25 on 1/1/93; and $37.70 on 1/1/94. The eligibility hours are approximately 800. Fire Fighters receive conversion rates which are slightly higher than contained in the Employer's offer, but substantially less than what the Association offers. The eligibility hours seem to work out to about the same as this unit. Fire Supervisors receive slightly more for conversions than provided in the Employer's offer and less than what is provided in the Association's offer. Police Supervisors seem to have essentially the same provision as contained in the Employer's offer, with the exception, and it may be a typo, that the Police Supervisors provide $43.62 exchange rate for 1992, versus $43.63 for 1993 in the Employer's offer. The remaining two figures are identical.

The Employer argues that the Association is attempting to significantly modify the Good Attendance Bonus Program. It argues that the Association is attempting to reduce the number of hours which are requisite for any good attendance bonus credits and increases credits in a significantly greater fashion than it was done with other City bargaining units. The Employer points out there is no evidence to substantiate these changes. The Association argues that its position is reasonable in light of the statutory factors.

LONGEVITY

The available evidence regarding this issue relates to the longevity provisions, if any, existing within the City of Fond du Lac. The evidence shows that the longevity provision in its current form has existed since at least 1985-1986. It is essentially identical to the longevity provisions in the Fire Fighters Agreement. AFSCME's contract contains a longevity provision, but it is expressed in a percentage form. Apparently there is no contract language for the Fire or Police Supervisors for 1992 through 1994.

The Association's evidence shows that adoption of its final offer would increase cost, vis a vis longevity, by about $10,100 for 1992.

The Employer takes the position that the evidence clearly supports its final offer. The Association argues that its demand is not unreasonable.

ARTICLE 7 - DIFFERENTIAL PAY

The Association's evidence shows that adoption of its final offer would increase the Employer's costs to about $8,700 in 1992. There doesn't appear to be any evidence establishing the character of this benefit, if any, in the comparable communities offered by the Association.

The Association argues that its proposal is justified because of the increased responsibilities that accompany each of the areas of specialization for which pay is sought. The Employer argues

that there is no evidence supporting adoption of the Association's position and, hence, the status quo should continue.

ARTICLE 17 - SHIFT CHANGES, COMPENSATION AND WORK HOUR PROVISIONS

The Association argues that its final offer is reasonable. The Employer maintains that there is no evidence justifying adoption of the mandatory training pay language sought by the Association.

ARTICLE 29 - GRIEVANCE PROCEDURE AND ARTICLE 23 - RIGHTS OF THE EMPLOYER

To recall, the Association's final offer would eliminate the authority of the Police and Fire Commission and substitute the term "for just cause" for the term "as circumstances warrant" as it now exists in paragraph C of 23.01 - Rights Enumerated.

The Association argues that these two non-economic aspects of its final offer are entirely reasonable and should be adopted because they inject neutrality and fairness into the procedure. The Employer takes the position that there has been no showing of any need to change the status quo.

I note that the contract regarding the City Fire Supervisory Association provides that the City Manager's decision is the last step in the Grievance Procedure. The contract involving Fire Fighters contains a Grievance Procedure ending in arbitration, but it is unknown whether that really applies because there is a provision indicating that it applies only in the event the State Supreme Court determines that Chapter 111.70 of the Wisconsin Statutes supersedes Chapter 62.13 of the Wisconsin Statutes. It is

noted that the AFSCME contract provides for arbitration in the last step of the Grievance Procedure. I haven't discovered, nor have I been directed to any such provision in the Police Supervisors Association contract.

DISCUSSION AND FINDINGS

There was a full and complete hearing with both parties being afforded every opportunity to present any evidence they thought was necessary. In addition, both were given the opportunity to file briefs and reply briefs. I was supplied a copy of the transcript before I began my deliberations.

It should be understood that I have carefully and meticulously analyzed the entire record even though it would be impossible and inappropriate to mention everything contained therein.

The statute requires that the arbitrator "shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification." That language describes what is often characterized as package arbitration. Unlike some jurisdictions where the arbitrator is required to rule on an issue-by-issue basis, the law in Wisconsin requires the arbitrator to accept one of the parties' final offer even if those offers contain numerous elements.

The statute also provides the criteria which must be given weight in reaching a decision. I previously displayed it and I am not going to go through every item at this point, but it is clear the legislation requires the arbitrator to make a careful consideration of the enumerated factors in (6) of 111.77.

After carefully analyzing the record and giving weight to the factors outlined in the statute, I am forced to come to the conclusion that the Employer's final offer must be awarded. Hopefully the following explanation will make it clear why I find that I must order that the Employer's offer be implemented.

Before getting into the specific aspects of my decision, I would like to further explain my perception of the impact of evidence regarding wages, hours and conditions of employment existing in communities considered comparable to the community involved in the arbitration versus the wages, hours and conditions of employment affecting employees in other bargaining units employed by the Employer involved in the arbitration. As I previously suggested, there are some aspects of the employment relationship which are more heavily impacted by evidence regarding the external comparables, while there are other aspects of the relationship which are more heavily impacted by evidence regarding internal comparables. Other arbitrators have taken positions on this matter and some have suggested that internal comparables may be more relevant than external comparables. However, I am not ready to take such a clear-cut position. For instance, let's assume that a particular employer has provided a 4 percent wage increase to four different bargaining units in its employ. Let's say, for instance, that those units are the DPW, firemen, patrol officers and secretarial units. Superficially, a 4 percent increase to all would seem fair because all are being treated alike. Yet, that scenario and perception would change or at least

should change if the evidence established that the DPW, fire fighters and secretaries were paid very favorably in relation to the external comparable communities, while the patrol officers were being paid substantially less than the external comparable communities. In those circumstances that 4 percent across-the-board to every bargaining unit, while initially seeming pretty fair, may not necessarily end up being a fair and appropriate resolution.

Nonetheless, there are certain benefits and provisions in an employment relationship which can more effectively be weighed and analyzed by looking to internal comparables. This by no means is a universal and infallible statement because there are numerous exceptions. However, in many circumstances internal comparables become very important, especially when considering benefits which by their very nature do not develop the expectation of substantial difference between employee groups employed by a particular employer or do not create surprise when those benefits are essentially the same for all the employee groups. Furthermore, the fact that employees in other employment groups, i.e., internal comparables, have agreed to what is essentially a uniform package, may tend to establish their realization that such was necessary in order to meet the demands created by problems existing in the employment environment.

Examining the evidence and the arguments regarding duration of the Collective Bargaining Agreement to be created by this award,

strongly indicates that the Employer's position, as outlined in its final offer, is much more acceptable.

The Association speaks of uncertainty and speculation, but the reality is that much of the uncertainty and speculation is already history. Even though the contract runs until December of 1994, as requested by the Employer, there will only be about a year and a half before the parties would start negotiating. In essence, what is left of the three-year Collective Bargaining Agreement proposed by the Employer is less than the two-year contract proposed by the Association.

The internal comparables convincingly support the Employer's position for a three-year Collective Bargaining Agreement. I fully recognize that in 1994 of the Association's comparable communities only Sheboygan has an established wage rate. However, the duration of the Collective Bargaining Agreements existing in the other communities is unknown and it should not be assumed that merely because most terminated before 1994, they were of a shorter duration than the three-year term contained in the Employer's final offer.

When the above is added to the labor peace and certainty of costs and wages and benefits to be received, it is clear in my mind that the Employer's position is more acceptable.

Certainly one of the most pivotal issues in this dispute involves the Employer's attempt to substantially modify the health insurance provisions in the Collective Bargaining Agreement. There is no doubt that in certain scenarios the Employer's proposal would

require the employees to expend more out-of-pocket dollars to acquire health care.

The testimony offered by the witnesses presented by the Association outlines the individual and personal impact the Employer's proposal would have on their specific circumstances. It is certainly sad to hear of the tribulations the witnesses were experiencing. It is easy to suggest that their situations display the extreme, but certainly to each of them the circumstances are their reality. It would be expected, however, that on a year-to-year basis most of the officers in the bargaining unit would not be forced to pay the maximum co-pays as outlined in the Employer's proposal. It just seems that not every officer would be placed in the position of having to absorb as much of the cost as the witnesses would have to absorb had the Employer's plan been in effect at the time they incurred the expenses displayed in the record.

Adoption of the Employer's health proposal would save the Employer a substantial amount of cost. It is suspected that not only would the savings be realized in the first year, but in comparison to the existing plan, would continue in the future. This seems so, otherwise, it would make little sense to change the plan and provide the $28.50 bi-weekly increase contained in the offer. In essence, some of the cost is shifted to the employees.

There is nothing in the record establishing the benefits in the external comparables and the nature and scope of health insurance benefits provided therein. What is apparent from the

evidence is that the employees in the five groups outlined in the Employer's evidence have health insurance coverage as contained in the Employer's final offer. This is especially significant considering there has been no showing that the coverage available to the other employees represents an increase from what they previously enjoyed or at least a lesser decrease than what it represents to the police officers of this bargaining unit. Additionally, there has been no showing that employees in the aforementioned employee groups receive some extraordinary compensation or benefit adjustment to entice them to agree to the adoption of the Employer's health care plan. As a result, it is logical to conclude that the other employee groups recognized the problem and adopted the Employer's health care provision.

When all of the evidence is examined, it is impossible for me to conclude that the Employer's health care provision aspect of its final offer is of such a nature that it should prevent the final offer from being accepted. It is not easy to change the status quo, but the evidence suggests that in this case it is appropriate to do so.

The specifics of the wage provisions in the parties' final offers have already been displayed and I am not going to reiterate them at this point.

It is significant to note that in general terms the two parties' positions are not all that far apart. For instance, and dealing with a top paid patrol officer, as of December 19, 1991, an officer, under the Employer's offer, would receive $30,311.47 per

year. That is actually higher than the January 1, 1992 rate of $30,020.01 which would exist if the Association's offer were adopted. On October 4, 1992 a patrol officer would be paid at the rate of $31,054.55 per year if the Employer's offer were adopted. If the Association's offer were adopted, as of July 2, 1992, an officer would have been paid at the rate of $30,920.61 per year. On December 27, 1992 a patrol officer would be paid at the rate of $31,675.64 if the Employer's offer were adopted and as of January 1, 1993 would be paid at the rate of $31,848.23 had the Association's offer been adopted. On July 4, 1993 an officer would be paid at the rate of $32,803.68 if the Association's offer were adopted, and that's the last increase the Association proposes, as opposed to the $32,625.91 contained in the Employer's offer. The Employer's offer goes on to provide $33,278.43 as of December 19, 1993 and then on July 3, 1994 increases that amount to $34,276.78. So as I said, for the periods common to both offers, the differences are not really extraordinary.

This is also reflective in the rank in the external comparable communities which Fond du Lac would maintain or attain regardless of whether the Association's or the Employer's offer were accepted. They are that close. However, the Association's offer would cost more.

Additionally, according to the Association's evidence, on a percentage basis, as well as a dollar basis, both the Employer's and the Association's offer provide for greater increases over 1991-1992 than any of the increases existing in the external

comparables. What all of the above suggests is that this case doesn't necessarily turn on the wage issue.

As indicated, both parties have proposed changes to the Good Attendance Bonus Program. The Employer's is restricted to increasing the exchange rate per credit, while the Association seeks both that, albeit to a greater degree, and modification of the eligibility standard.

A comparison of the offers with the available evidence establishes that the Employer's position is more acceptable in light of the provisions existing in the internal comparables.

Applying the criteria outlined in the statute, it is apparent that the Employer's proposal regarding the Good Attendance Bonus Program is more substantially supported than the Association's.

When it comes to the question of longevity, the Employer of course wishes to maintain the status quo, while the Association's offer contains substantial increases.

The Association's offer would increase costs. The evidence is pretty clear that the internal comparables provide more support for the Employer's position. For instance, the language in the Fire Fighters contract provides the same longevity rate for the same level of service as in the current Police contract and, hence, the Employer's offer. The AFSCME unit has a provision which is based on percentages, so it is a little different and not quite as easy to compare. As I indicated above, there is no language in the Fire and Police Supervisors contract. As a result, it is quite apparent that the Employer's position is much more acceptable.

It would be appropriate to lump together the analysis of the issues involving Article 7, Differential Pay, which includes shift time differentials and job position differentials, and the analysis of Article 17, Shift Changes, Compensation and Work Hour provisions, otherwise known as mandatory training.

The evidence establishes that acceptance of the Association's position would increase cost. However, there is no evidence in the record which suggests that adoption of the Association's position is supported by the criteria in the statute. The Association suggests that to do so is reasonable, but beyond that suggestion there is really no persuasive evidence to support adoption of the Association's position.

The last two items involve Article 29, Grievance Procedure, 29.01, Procedure - Time Limits and Definitions and Article 23, Rights of Employer, 23.01, Rights Enumerated. As indicated above, adoption of these provisions would eliminate the authority of the Police and Fire Commission and would substitute the term "for just cause" for the term "as circumstances warrant" in paragraph C of 23.01.

I am sure it doesn't take anyone by surprise when I indicate that I, for one, feel that binding arbitration provides an important element of neutrality at the last step of any grievance procedure. Further, I recognize that the cause standard has existed for decades in Collective Bargaining Agreements to express a criteria which must be met before disciplinary action can be ignored.

However, what I like and what I recognize is not the standard which applies in this case. There is no showing of what takes place in the external comparables, and in my prior analysis of the evidence I have outlined what is available in the internal comparables. There is just not enough.

AWARD

After carefully and meticulously analyzing the record and the arguments, I have come to the conclusion that I have no alternative but to find that an application of the factors outlined in the statute demands, and thus I will order, that the Employer's final offer be adopted.

Mario Chiesa

Dated: March 19, 1993

APPENDIX A - THE PARTIES' FINAL OFFERS

City of Fond du Lac, Wisconsin

Employer's Final Offer

In the Matter of a
Negotiation Dispute

Between

The City of Fond du Lac
(The Employer)

Case No. 113 No. 46770
MIA - 1683

And

Fond du Lac Professional Police
Association Local 12

The employer makes the following Final Offer on all issues in dispute for a successor Agreement to begin December 19, 1991 and remain in full force and effect through December 17, 1994.

1. All provisions of the 1990-1991 Agreement between the Parties not modified by this Final Offer or a Stipulation of Agreed Upon Items, if any, shall be included in the successor Agreement between the Parties for the term of said Agreement.

2. The term of the Agreement shall be for the period December 19, 1991 through December 17, 1994. All dates relating to term shall be changed to reflect the above cited term.

3. Health Insurance - Provisions of the current plan modified as follows:

   a.) Modify deductibles to $100.00 per person per year of covered expenses to a maximum of $100.00 per single and $300.00 per family.

   b.) Modify co-payment to be twenty percent (20%) of the next $5,000.00 of covered expenses single and $10,000.00 of covered expenses family.

   c.) Maximum out-of-pocket expenses shall be $1,100.00 for single plan and $2,300.00 for family plan. Under the family plan the maximum out-of pocket expenses for an individual shall be the same as the single plan.

BK Patterson
4/13/92

A

d.) Lifetime maximum benefit increased to $1,000,000.00 from $500,000.00

e.) Psychiatric Care (Outpatient) limited to first $500.00 of services payable at 100% and the next $500.00 of services payable at 90% with no deductible applied.

f.) Psychiatric Care (Inpatient) limited to 120 days per calendar year. The first 30 days per calendar year are not subject to the deductible or co-payment. After the first 30 days each calendar year, each night treatment used reduces the days of inpatient services available by one day.

g.) Home Health Care limited to 40 visits per calendar year. If the attending physician indicates that the member is terminally ill, another 40 home care visits are available each calendar year.

4. Wage Increase: 4% effective December 19, 1991; 2% effective December 27, 1992; 3% effective July 4, 1993; 2% effective December 19, 1993; 3% effective July 3, 1994.

5. Effective October 4, 1992, increase all base rates by $28.58 biweekly as quid pro quo for insurance modifications noted in #3 above.

6. Good Attendance Bonus Credits: Modify Article 16.04 to increase the exchange rate per credit to $43.63 for 1992, $45.80 for 1993; $48.09 for 1994.

B K Patterson 4/13/92

AMENDED FINAL OFFER OF FOND DU LAC PROFESSIONAL POLICE ASSOCIATION LOCAL 12 FOR MODIFICATIONS TO THE WORKING CONDITIONS AGREEMENT DATED JANUARY 1, 1990 - DECEMBER 31, 1991

Dated: May 27, 1992

4.04 Manpower Staffing Shortage.

ARTICLE 5
SALARIES

5.01 Salaries.

A. Salaries shall be paid in accordance with the Salary Schedule set forth in Appendix A attached hereto and incorporated herein by reference as though fully set forth at length and shall be administered in accordance with the rules of administration contained therein.

ARTICLE 6
LONGEVITY

6.01 Schedule. The CITY shall pay the following yearly longevity payments to persons in all ranks in biweekly installments as follows:

A. ~~$300.00 ($11.54 biweekly)~~ $400.00 (15.38 biweekly) upon completion of five years of service.

B. ~~$600.00 ($23.08 biweekly)~~ $800.00 (30.77 biweekly) upon completion of ten years of service.

C. ~~$900.00 ($34.62 biweekly)~~ $1,200.00 ($46.15 biweekly) upon completion of fifteen years of service.

D. [New section]. $1,600.00 ($61.54 biweekly) upon completion of twenty years of service.

The longevity as provided herein shall be reflected in the pay period immediately following the anniversary date creating the benefits as provided herein.

ARTICLE 7
DIFFERENTIAL PAY

7.01 Shift/Time Differentials.

A. At present, the parties hereto recognize the following regular shifts and acknowledge that management retains its staffing rights pursuant to statute and this Agreement:

1. 7:00 a.m. to 3:00 p.m.;
2. 10:00 a.m. to 6:00 p.m.;
3. 3:00 p.m. to 11:00 p.m.;
4. 8:00 p.m. to 4:00 a.m.;
5. 11:00 p.m. to 7:00 a.m.

B. The CITY shall pay ~~$4.50 biweekly~~ $2.00 per day of service to any officer regularly assigned to the 3-11 p.m. shift or ~~$11.70 biweekly~~ $3.00 per day of service to any officer regularly assigned to the 11:00 p.m. - 7:00 a.m. shift or $3.00 biweekly to any officer regularly working 1:00 p.m. to 9:00 p.m. Any officer who works the 8:00 p.m. to 4:00 a.m. shift shall be compensated in the amount of ~~$9.81 biweekly~~ $2.50 per day of service in addition to his or her other salary and benefits. Any officer who wishes the 10:00 a.m. to 6:00 p.m. shift shall be compensated in teh amount of $.50 per day of service in addition to his or her other salary and benefits.

7.02 Job Position Differentials.

A. Except as provided elsewhere in this Agreement, the benefits provided under this Article are in addition to those provided for elsewhere in this Agreement.

B. Officers assigned to serve as Police Liaison Officer (PLO's) shall receive, in addition to the other benefits provided for in this Agreement, an additional ~~$34.62~~ 50% of the difference between the maximum patrol officer pay and the maximum investigator pay.

C. Officers assigned as training officers (self-defense and firearm instructors) shall be paid an additional $.45 per hour during the period they are assigned to perform these specialized duties.

D. [New section]. Street officers performing other specialized duties shall receive, in addition to the other benefits provided in this Agreement, additional compensation set forth opposite those specialties:

1.	Intoxilyser Operator	$150.00/annum
2.	P.B.T. Operator	$ 50.00/annum
3.	Communications Officer	$100.00/annum
4.	S.W.A.T. Team Member	$300.00/annum
5.	Field Training Officer	$200.00/annum

ARTICLE 16
GOOD ATTENDANCE BONUS PROGRAM

16.01 Eligibility. Effective January 1, 1992, employees who accumulate 650 or more hours of unused sick leave shall be eligible to participate in the Good Attendance Bonus Program. Effective January 1, 1993, employees who accumulate 400 or more hours of unused sick leave shall be eligible to participate in the Good Attendance Bonus Program.

16.02 Credits. Under the program, one and one-quarter (1.25) retirement insurance credits shall be granted for each eight (8) hour accumulation over the accumulated hours as described in Section 16.01, except that use of sick leave within a month shall prohibit the granting of additional credits until the additional accumulation of sick leave has replaced the number of hours used. Previously earned credits shall not be decreased through sick leave utilization.

16.03 Usage. Upon retirement, the cash equivalent of all accumulated retirement credits shall be payable in the form of a lump sum payment, or placed in an escrow account from which the retiree's group health insurance premiums will be paid in monthly installments until the account is exhausted. Each retiree shall have the option to select the form of payment he prefers.

16.04 Exchange Rate. The exchange rate per credit shall be $47.00 commencing on January 1, 1992 and $52.00 commencing on January 1, 1993.

17.05

C. Compensation and Work Hour Provisions.

* * * *

4. Mandatory Training of Five (5) or Less Fewer Days. The CITY may temporarily change an officer's work hours to any hours between 7:00 a.m. and 5:00 p.m on the day of training to conform to the training schedule. If an officer's work hours are changed, pay at the rate of time and one-half (base plus longevity) shall be paid for training and travel time in excess of 8.25 hours per day or for all hours spent in training and travel on a regularly scheduled day off. In the event an officer is called in for purposes of in-service training, the call-in pay provisions included in the agreement shall apply. If the CITY schedules mandatory training for a weekend, defined for purposes of this section as commencing at or after 5:00 p.m. and continuing through 7:00 a.m. the following Monday, any officer assigned to such training who is not regularly scheduled to work during these hours shall be paid at the holiday rate of two and one-quarter (2¼) times the current rate (base plus longevity). Payment for such training hours shall include all training and all travel time.

29.01 Procedure - Time Limits and Definitions.

* * * *

B. Any dispute arising between the parties may be subject to the grievance procedure; however, only disputes arising out of the interpretation and application of the collective bargaining agreement are subject to arbitration. These subjects over which the Police and Fire Commission has authority are expressly precluded from the arbitration process and shall be subject to the rules and regulations of the Police and Fire Commission.

23.01 Rights Enumerated.

* * * *

C. To hire, promote, transfer, assign and retain employees and to suspend, demote, dismiss or take other disciplinary action against employees as circumstances warrant for just cause.

In addition, all tentative agreements previously entered into by the parties, as set forth in the Association's statement of tentative agreements dated February 24, 1992, shall be incorporated in the parties' successor agreement.

APPENDIX A

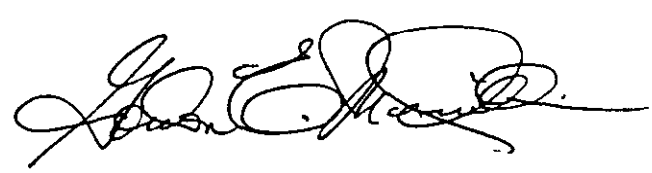
Advance all steps set forth in the parties' 1990-1991 collective bargaining agreement by the following percentages:

3% effective January 1, 1992;

3% effective pay period 14, 1992;

3% effective January 1, 1993;

3% effective pay period 14, 1993.



APPENDIX B - PORTIONS OF THE CURRENT COLLECTIVE BARGAINING AGREEMENT

ARTICLE 10

GROUP HEALTH INSURANCE

10.01 Coverage. Group hospital, surgical, major medical and outpatient and diagnostic coverage shall be provided for employees. During the term of this agreement, the CITY shall pay up to the full cost of the single or family premium. Family coverage will be available to those employees desiring it and being eligible for such coverage.

10.02 Coverage Effective March 1, 1985. Effective March 1, 1985, group health insurance that existed in the past shall be modified as follows:

1. Exempt diagnostic x-ray and laboratory charges from the basic benefits deductible
2. Add the following procedures to the oral surgery coverage: osseous surgery, gingival flap procedure, tissue grafts, vestibuloplasty and stomatoplasty.
3. Include well-baby checkups until a child reaches one year of age.

10.03 Coverage Effective January 1, 1987. Effective January 1, 1987, group health insurance that existed in the past shall be modified as follows:

4. Add chiropractic coverage with a $250.00 per person, per year cap. Charges for x-rays performed by a chiropractor would be applied to the $250.00 per person, per year cap.
5. Add a cost containment program which includes:
   a. Prior notification of planned hospital confinement and notification of emergency hospital confinement within seventy-two (72) hours.
   b. Second surgical opinions on the following procedures: Cataract Removal; Cholecystectomy; Hemorrhoidectomy; Hernia Repair; Hysterectomy for Non-Malignancy; Myringotomy; Prostatectomy for Non-Malignancy; Septoplasty; Thyroidectomy for Non-Malignancy; Tonsillectomy; and Varicose Veins.
   c. Outpatient surgery for the following procedures except cases in which there is a valid medical reason as certified by the attending physician for performing the surgery on an inpatient basis: Adenoidectomy; Aspiration and Drainage of Abscesses, Cysts or Hematomas of Skin or Subcutaneous Tissues; Biopsy of Skin, Muscle, or Bone; Bunionectomy; Carpal Tunnel Release; Cataract Removal; Circumcision (other than newborn infant); Dilation and Curettage; Fistulectomy; Ganglionectomy; Hammertoe Operation; Hemorrhoidal Banding; Meatomy; Myringotomy; Polypectomy; Septoplasty; Sphincterotomy; Tubal Ligation (any method); Vasectomy; Oral Surgical Procedures such as Alveolectomy (not in conjunction with extractions), Apicotomy, Extractions of Impacted Teeth, Frenectomy, Gingival Flap Procedure, Gingivectomy, and Osseous Surgery.

ARTICLE 16

GOOD ATTENDANCE BONUS PROGRAM

16 01 Eligibility. Effective January 1, 1979, employees who accumulate 800 or more hours of unused sick leave shall be eligible to participate in the Good Attendance Bonus Program.

16.02 Credits. Under the program, one and one quarter (1.25) retirement insurance credits shall be granted for each eight (8) hour accumulation over 800 hours, except that use of sick leave within a month shall prohibit the granting of additional credits until the additional accumulation of sick leave has replaced the number of hours used. Previously earned credits shall not be decreased through sick leave utilization.

16.03 Usage. Upon retirement, the cash equivalent of all accumulated retirement credits shall be payable in the form of a lump sum payment, or placed in an escrow account from which the retiree's group health insurance premiums will be paid in monthly installments until the account is exhausted. Each retiree shall have the option to select the form of payment he prefers.

16.04 Exchange Rate. The exchange rate per credit shall be $39.92 per credit for 1990 and $41.94 for 1991.

ARTICLE 6

LONGEVITY

6.01 Schedule. The CITY shall pay the following yearly longevity payments to persons in all ranks in biweekly installments as follows.

A. $300.00 ($11.54 biweekly) upon completion of five years of service.

B. $600.00 ($23.08 biweekly) upon completion of ten years of service.

C. $900.00 ($34.62 biweekly) upon completion of fifteen years of service.

The longevity as provided herein shall be reflected in the pay period immediately following the anniversary date creating the benefits as provided herein.

ARTICLE 7

DIFFERENTIAL PAY

7.01 Shift Differentials.

A. The CITY shall pay $4.50 biweekly to any officer regularly assigned to the 3 - 11 p m. shift or $11.70 biweekly to any officer regularly assigned to the 11 p.m. - 7 a.m. shift or $3.00 biweekly to any officer regularly working 1:00 p.m. to 9 00 p.m. Any officer who works the 8 00 p.m. to 4.00 a.m. shift shall be compensated in the amount of $8 91 biweekly, in addition to his or her other salary and benefits.

B. The CITY shall pay to any officer not assigned to one of the shifts mentioned in Section A of this Article who works any hours between 6:00 p.m. and 11:00 p.m. ten (10) cents for every full hour thereof so worked and fifteen (15) cents for every full hour so worked between 11:00 p.m. and 7:00 a.m. Officers assigned to one of the shifts mentioned in Section A of this Article and who work overtime between the hours of 6:00 p.m. and 7.00 a.m. shall be eligible for the benefits under this section.

7.02 Job Position Differentials

A. Except as provided elsewhere in this Agreement, the benefits provided under this Article are in addition to those provided for elsewhere in this Agreement.

Officers assigned to serve as Police Liaison Officer (PLO's) shall receive, in addition to the other benefits provided for in this Agreement, an additional $34.62.

B. Officers assigned as training officers (Field Training Officers, self-defense and firearm instructors) shall be paid an additional $.45 per hour during the period they are assigned to perform these specialized duties.

ARTICLE 17

SHIFT CHANGES

* * *

C. Compensation and Work Hour Provisions

* * *

4. Mandatory Training of Five (5) or Less Days - The CITY may temporarily change an officer's work hours to any hours between 7:00 a.m. and 5:00 p.m. on the day of training to conform to the training schedule. If an officer's work hours are changed, pay at the rate of time and one-half (base plus longevity) shall be paid for training and travel time in excess of 8.25 hours per day or for all hours spent in training and travel on a regularly scheduled day off. In the event an officer is called in for purposes of in-service training, the call-in pay provisions included in the agreement shall apply.

* * *

ARTICLE 29

GRIEVANCE PROCEDURE

29.01 Procedure - Time Limits and Definitions. All grievances as herein defined shall be processed in the following manner:

A. Both the ASSOCIATION and the CITY recognize that grievances and complaints should be settled promptly and at the earliest possible stage and that the grievance process must be initiated within five (5) days of the incident or knowledge of the incident, whichever is later. Any grievance not filed within five (5) days shall be invalid.

B. Any dispute arising between the parties may be subject to the grievance procedure; however, only disputes arising out of the interpretation and application of the collective bargaining agreement are subject to arbitration. Those subjects over which the Police and Fire Commission has authority are expressly precluded from the arbitration process and shall be subject to the rules and regulations of the Police and Fire Commission.

* * *

ARTICLE 23

RIGHTS OF EMPLOYER

23.01 Rights Enumerated. It is agreed that the rights, functions and authority to manage all operations and functions are vested in the employer and include, but are not limited to the following:

A. To prescribe and administer rules and regulations essential to the accomplishment of the services desired by the City Council.

B. To manage and otherwise supervise all employees in the bargaining unit.

C. To hire, promote, transfer, assign and retain employees and to suspend, demote, dismiss or take other disciplinary action against employees as circumstances warrant.

D. To relieve employees of duties because of lack of work or for other legitimate reasons.

E. To maintain the efficiency and economy of the CITY operations entrusted to the administration.

F. To determine the methods, means and personnel by which such operations are to be conducted.

G. To take whatever action may be necessary to carry out the objectives of the City Council in emergency situations.

H. To exercise discretion in the operation of the CITY, the budget, organization, assignment of personnel and the technology of work performance.

Nothing contained in this management rights clause should be construed to divest the ASSOCIATION of any rights granted by Wisconsin Statutes.