ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

CITY OF EAU CLAIRE

And

EAU CLAIRE PROFESSIONAL POLICE ASSOCIATION, WPPA/LEER

Case 202
No. 47357
MIA-1723
Decision No. 27322-A

Impartial Arbitrator

William W. Petrie
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Hearing Held

Eau Claire, Wisconsin
January 11, 1993

Appearances

For the Employer

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For the Association

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Eau Claire and the Eau Claire Professional Police Association, WPPA/LEER, with the matter in dispute the wage increase(s) to be applicable during July 1, 1992 through July 1, 1993, a period of time covered by a wage reopener provided for under the terms of the current labor agreement.

The parties preliminarily met with one another in an unsuccessful attempt to reach a negotiated settlement, after which the Association on May 4, 1992, filed a petition with The Wisconsin Employment Relations Commission requesting the initiation of final and binding arbitration, pursuant to Section 111.77 of the Municipal Employment Relations Act. After the completion of a preliminary investigation by a member of its staff, the Commission on July 7, 1992, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration; following the selection of the parties, the Commission on October 13, 1992, appointed the undersigned to hear and decide the dispute.

A hearing took place in Eau Claire, Wisconsin on January 11, 1993, at which time both parties received full opportunities to present evidence and argument in support of their respective positions. Both parties thereafter submitted post-hearing briefs, the Employer submitted a reply brief, and the record was closed by the Arbitrator effective March 15, 1993.

THE FINAL OFFERS OF THE PARTIES

The certified final offers of the parties, hereby incorporated by reference into this decision and award, provide in summary as follows:

(1) The Employer offers a 4% across the board wage increase for all members of the bargaining unit effective July 1, 1992.

(2) The Association offers a 3% across the board wage increase for all members of the bargaining unit effective July 1, 1992, with an additional 3% across the board increase effective January 1, 1993.

THE ARBITRAL CRITERIA

Section 111.77(6) of the Wisconsin Statutes provides that the Arbitrator shall give weight to the following arbitral criteria in reaching a decision and rendering an award in these proceedings:

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.

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two offers before the Arbitrator, the City emphasized the following principal considerations and arguments.

(1) That the internal comparables persuasively favor the selection of the final wage offer of the City.

(a) That the data submitted by the City covers all 505 City employees, only 43 of whom are not represented.

(b) That the evidence in the record shows that past internal settlements have been utilized by the parties in arriving at their final wage settlements.

(c) That the exhibits introduced into the record by the Union fail to address the internal comparability criterion, thereby ignoring the striking uniformity among all City employee groups over the past six years.

(d) In 1991-92, that the wage increases for all groups, including the Police Patrol Unit, were identical at 4%; in 1992-93, that all wage settlements, with the exception of the Police Patrol Unit and the Transit Unit (which has not yet settled), provided for 4% increases.

(e) That the Union has failed to make a persuasive case that those in the bargaining unit should receive a "merit pay" increment in addition to a 4% increase; that some members of the Police Command group were entitled to receive up to 2% merit pay increases between 1988 and the present, but these were one time increases based upon individual merit, they were not considered part of the wage or salary bases, and they were not paid to everyone in the group.

(f) That other Wisconsin interest arbitrators have frequently recognized the importance and the weight to be placed upon internal settlements where they reflect settlement patterns previously set by the parties. That such internal patterns should be adhered to for the following principal reasons: first, that a pattern of settlements is an excellent indication of what the parties would have settled for if they had been able to reach a voluntary agreement; second, that equity and employee morale considerations militate against one group getting a better settlement involuntarily than others have already agreed to on a voluntary basis; and, third, that labor unrest, turmoil and excessive arbitrations are encouraged if unions see that they are able to obtain a better settlement simply by resorting to arbitration.

(g) That an internal pattern of settlement between the parties should not be broken unless there is a compelling reason for doing so, and the Union, as the proponent of change, has the burden of establishing such a reason. That the evidence in the record provides nothing which either proves the

existence of such a reason, or from which such a reason could be inferred by the Arbitrator.

(2) That the external comparables proposed by the City provide a more reasonable basis for utilization in the final offer selection process, than those proposed by the Union.

(a) That the City chose its comparables with several considerations in mind, they fall within three categories, and the City has consistently and non-selectively included all units falling within each category.

(b) That the three categories selected by the City consist of the following: first, comparable police departments in the local labor market; second, comparable police departments within the state; and, third, sheriff's departments within Eau Claire and Chippewa Counties.

(c) That the Employer proposed comparable police departments within the labor market, within the intended scope of Section 111.77(6)(d)(1) of the Wisconsin Statutes, should consist of all those departments within a 50 mile radius of the City of Eau Claire which have 20 or more police officers; that this external comparison group should consist of the police departments of the cities of Chippewa Falls, Rice Lake and Menomonie.

(d) That the Employer proposed statewide comparable police departments should consist of those departments whose number of full-time police officers fall within plus or minus 45 officers of the City of Eau Claire; that this external comparison group should consist of the police departments of the cities of Appleton, Beloit, Fond du Lac, La Crosse, Manitowoc, Oshkosh, Sheboygan, Stevens Point, Superior, Wausau and Wisconsin Rapids.

(e) That the Employer proposed sheriff's department comparables should include the counties of Eau Claire and Chippewa, since the City of Eau Claire lies within these two counties; that all bargaining unit police officers are required to reside within the City of Eau Claire, and are necessarily residents of either of these counties. That the validity and the persuasiveness of certain comparisons between city police departments and county sheriffs' departments has been recognized in other Wisconsin interest arbitration proceedings, but use of counties other than Eau Claire and Chippewa in the case at hand, would be inappropriate.

(3) That the Union's selection of comparables for use in these proceedings is both inappropriate and inadequate.

(a) That while the Association has included several of the same comparables as the City, its overall selections are deficient in various important aspects.

(b) That the Association includes Dunn County, despite the fact that Eau Claire is not included within this county; that while Dunn County is adjacent to Eau Claire County, the Union elected to exclude other similarly adjacent counties. That those counties adjacent to Eau Claire County are Pepin, Buffalo, Trempealeau, Jackson and Clark, while those adjacent to Chippewa County are Barron, Rusk and Taylor Counties. That while Barron, Clark and Trempealeau Counties have populations which are similar to Dunn County, the

Association has chosen to exclude them from consideration as comparables.

(c) That the Union proposed comparables include the Milwaukee suburbs of Waukesha, Wauwautosa and West Allis, but municipalities located within Milwaukee's immediate sphere of influence should not be considered as comparable to the City of Eau Claire, within the intended scope of Section 111.77(6)(d)(1) of the Wisconsin Statutes. That this principle has been recognized in various other Wisconsin interest arbitration proceedings.

(d) That the Union proposed comparables overwhelmingly represent departments larger than the City of Eau Claire; with the exception of those in the local labor market, only Janesville and Wauwatosa had police departments slightly smaller than that of the City of Eau Claire. That the City proposed external comparables, on the other hand, are more comprehensive, and include departments that are both larger and smaller than the City of Eau Claire.

(e) That Union evidence addressing the incidence of crime in Eau Claire and in other cities, has little relevance to the selection of external comparables in the case at hand; that the Union has failed to explain the significance of the data, the evidence itself is non self-explanatory, and it relates to only a fraction of the overall duties and responsibilities of police officers.

(4) That the final offer of the Union exceeds the pattern of increases among the external comparables, while the final offer of the City is consistent with such comparables.

(a) That the City proposed 4% increase effective July 1, 1992, is supported by consideration of the external comparables selected by the City; that the settlement norm for these cities was 4% or below, that those currently at arbitration involved final offers that are generally consistent with the 4% figure, with the only exception of the City of Fond du Lac.

(b) That no external comparison(s), including those proposed by the Union, reflect the 6% lift contained in the Union's final offer; that the sole comparable where such a proposal has been considered, involves current interest arbitration proceedings involving the City of Fond du Lac; on the other hand, that a consensus of the external comparisons favor the selection of the final wage increase offer of the City.

(c) That Dunn County has only a single 3.5% increase effective January 1, 1992, rather than the two 3.5% increases reported by the Union; even if the Union had been correct, however, the City's 4% increase effective on July 1, 1992 would still have placed it above the second 3.5% increase reported by the Union to have been effective on April 1, 1992.

(d) That consideration of the valid comparables advanced by the Union, favor the selection of the final offer of the City.

(4) That the wage rates of the Union compare favorably to other external wage rates.

(a) That the wages shown in various of the Union's exhibits contain incomplete data, in that they are presented in terms

of monthly rates which fail to take into account the hours worked in each of the various entities; that the record shows that hours worked can vary considerably.

(b) That the use of hourly working rates is the most accurate measurement of wages paid, and this was the method used by the City in compiling its comparisons.

(c) That members of the bargaining unit reach the top of the pay range within four years, a relatively rapid rate, and 70% of those in the unit are at the maximum rate; that unit employees thus enjoy a better than average rate of progression to the maximum wage rate, and a faster progress than that applicable within the Appleton, Beloit, Janesville and Oshkosh police departments.

(d) That Union urged comparisons are misleading, in that certain of the wage increases shown are for different time periods; that City comparison data, by way of contrast, shows each split increase and all resulting wage rates.

(e) In the above respect, that City Exhibit 25 compares the wage rates in the seventeen communities comparable to Eau Claire, it demonstrates that the City's final offer exceeds the average of the comparables, and it shows that the City's final offer is consistent with the increase in base wages in the comparable communities in both 1992 and in 1993.

(f) That the wage rates in issue flow from voluntary settlements reached over the years, and there is no indication that the Union is claiming or is otherwise entitled to catch-up; in these connections, there is nothing in the record to suggest the existence of rapid staff turn-over, morale difficulty, or any other problems which might suggest the need for extraordinary catch-up increases.

(5) That arbitral consideration of the City's current level of fringe benefits, confirms the generosity of the City's final wage offer.

(a) That the City's overall compensation package includes excellent fringes, both monetary and nonmonetary, and various of the benefits have a direct effect on the overall monetary compensation of Union members.

(b) That particularly noteworthy fringes include superior longevity payments, a liberal education "incentive pay" benefit, and average total incentive pay averaging $.64 per hour in 1991 and $.66 per hour in 1992.

(6) That the compounding effect of the cost of the Union's final offer makes it unacceptable.

(a) That while the first year cost difference in the Union's proposal is only $159.26 and the first year percentage increase only 4 1/2%, the 6% total lift in the offer generates a difference of $869.23 for each officer after 10 years, and the cumulative differential in payments to all officers over ten years is a staggering $440,371.84.

(b) That the above computations do not take into consideration various other benefits which would be increased due to the fact that they are calculated according to base pay; that such benefits, by way of example, include longevity, incentive pay, shoot pay, and various similar allowances.

(7) That various economic factors in the City of Eau Claire favor the selection of the final offer of the City.

(a) That economic conditions in the City of Eau Claire have contributed to a relatively low rate of pay in the community as compared to the remainder of the State of Wisconsin, and within a six state area.

(b) That the average annual pay in Eau Claire was $19,397 for 1991, compared to the average gross pay of $32,394.83 for those in the bargaining unit.

(c) That while average pay in Eau Claire increased by 2.6% from 1990 to 1991, those in the bargaining unit received 4% increases.

(d) That the economic picture for the City has been further dimmed by the closing of a number of Eau Claire employers.

(e) As a result of the economic conditions facing the City, residents of Eau Claire cannot expect to see salary increases approaching the level of increases demanded by the Union, and these residents are the taxpayers who will be called upon to pay for any wage increases for those in the bargaining unit.

(f) That the Arbitrator is required to consider both public sector and private sector settlements, both in the City of Eau Claire and elsewhere, and in so doing he must give appropriate weight to important economic events occurring within the community.

(g) Despite the economic conditions in Eau Claire, a wage survey of benchmark occupations in the State of Wisconsin for 1991, shows average hourly rates for municipal police officers and deputy sheriffs that are significantly below the rates contained in the final offers of the City and the Union.

(8) That consideration of movement in the consumer price index supports arbitral selection of the final offer of the City.

(a) That whichever CPI index is used, either All Cities or that for Small Metropolitan Urban Areas in the North Central States, the City's final offer is substantially higher than either.

(b) That neither CPI index shows an increase approaching the percentage increase contained in the final offer of the Union; indeed, that the Union proposed 6% lift would almost double the increase in the CPI, while the City's final offer keeps pace with CPI.

In summary, that all the applicable arbitral criteria favor the selection of the final offer of the City, including comparisons and cost of living considerations, that those in the bargaining unit are well compensated, they receive excellent fringe benefits, and no reason exists for granting a wage increase in excess of the pattern of settlements. Alternatively, that the Union's final offer of a 6% lift in base wages is simply not supported by any of the arbitral criteria, it is excessive, and it should be rejected by the Arbitrator.

In its reply brief the City reiterated certain of the arguments previously addressed in its initial brief, in addition to emphasizing the following principal considerations.

(1) That the public interest would not be served by adoption of the final offer of the Association.

(a) That the benefits of the Association's wage offer would inure primarily to the interests and welfare of its members, and not to the public.

(b) That the area has experienced several large plant closings with substantial job losses, which has had a severe effect on the local economy; that public interest is not served by requiring that members of the public pay to increase already superior compensation packages in an amount far in excess of that which they themselves have experienced.

(g) That merit pay is not included when calculating the base wage of command group members and, accordingly, their settlement package was 4% each year between 1991 and 1993, the same percentage as contained in the City's final offer.

(2) That the City's comparables have greater validity than the skewed sample selected by the Union, that they more closely adhere to the statutory comparability requirement than those of the Association, and that they should be accepted by the Arbitrator.

(3) That arbitral consideration of the external comparable supports the selection of the City's final offer.

(4) That internal comparisons should not be ignored, and they overwhelmingly support the selection of the final offer of the City.

(a) That internal comparables show a very strong settlement pattern, that equity and morale are well served by internal uniformity.

(b) That the Association has failed to present a compelling reason for its argument that the internal comparisons should be disregarded, particularly in light of the clearly established pattern of settlements.

(c) That the Union's argument that the City must demonstrate a strong reason for uniformity is clearly wrong but, in point of fact, there is a clear need to adhere to the standard established within the City's other employee units.

(d) That the arbitral decisions cited by the Union in support of its arguments against uniformity, are either distinguishable, or they are not persuasive for the proposition for which they are offered.

POSITION OF THE ASSOCIATION

In support of the position that its final offer is the more appropriate of the two before the Arbitrator, the Association emphasized the following principal arguments and considerations.

(1) That Section 111.77(6) of the Wisconsin Statutes sets forth the arbitral criteria to be used in selecting the more appropriate final offer, each of which will be addressed by the Association.

(2) That no argument has been advanced by either party that the City lacks the authority to lawfully meet the Association's final offer, that neither the City's exhibits nor its testimony have provided any indication of the existence of any legal

deficiencies, and, accordingly, that the lawful authority of the employer criterion should have no effect upon the final offer selection process by the Arbitrator.

(3) Since the parties' cases are directed along narrowly defined parameters and allow only the wage schedule to be addressed, the stipulations of the parties criterion is not in issue in these proceedings.

(4) That arbitral consideration of the interests and welfare of the public criterion favors the selection of the final wage offer of the Association.

(a) That the Association's final offer best serves the citizens of the City of Eau Claire, by recognizing the need to maintain the morale of its officers and to retain the best and the most qualified officers.

(b) In the above connection, that overall working conditions must be both desirable and reasonable, and that such conditions include tangibles such as fair salary and fringe benefits and steady work, and such intangibles as morale and unit pride.

(c) That a major factor in the above connection are the wage adjustments available to the supervisory law enforcement staff; although they received a 4% increase for 1992-93, they were also entitled to an additional 2% merit increase.

(d) That morale and unit pride would be negatively affected by adoption of the City's final offer, which is not comparable to the increases available to the supervisory law enforcement staff, and that such action would be contrary to the interests and welfare of the public.

(5) That there is no dispute that the City has the financial ability to meet the costs of the final offer of the Association.

(6) That a comparison of wages paid employees represented by the Association, with the wage of other employees in public employment performing similar services in comparable communities, strongly favors arbitral selection of the final offer of the Association.

(a) That a review of the past decisions involving the parties does not indicate any litigation establishing an appropriate comparability group.

(b) That Wisconsin interest arbitrators have, however, recognized the comparability of municipalities when where they are substantially equal in such areas as 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.

(c) That both the City and the Association have experienced difficulty in preparing appropriate lists of comparables based upon the above referenced criteria. That this difficulty is due in part to the size of the City of Eau Claire in comparison to other communities in the same area; that the City is much larger than geographically proximate law enforcement departments, and when population and department size are considered, the result is a comparison group spread across the State of Wisconsin.

(d) Due to the above, the Association has proposed two separate groups of comparables based first on geographic proximity, and second upon population and department size; that the City, however, has merely lumped all departments into one group, making valid comparisons difficult at best.

(e) That the Association's dual groups of comparables should be deemed as more appropriate by the Arbitrator, and should be utilized in the final offer selection process.

(7) That the wage offer proposed by the Association would allow it to maintain its relative position with respect to external comparisons of base salary.

(a) That comparisons of top patrol officer wage rates of similar sized municipalities, placed Eau Claire near the bottom of the comparison group; that this position would remain unchanged under either of the two final offers.

(b) That comparisons of the base wage levels of geographically proximate departments indicates that the City of Eau Claire's top patrol base wage has consistently remained at the top of the comparison group; this position would remain unchanged under either of the two final offers.

(c) That while the average wage rate for patrol officers in comparable departments has increased 17.7% over the five years from 1988 through 1992, the City of Eau Claire officers have realized only a 15.6% increase; that it is this deviation in wage level increases that the Association has attempted to address in its final wage offer.

(d) Further, that the cost impact of the Association's proposal is limited by virtue of its utilization of a split wage increase.

(e) On the basis of the above, that arbitral consideration of the external comparisons indicate that the final offer of the Association is the more reasonable of the two offers, and it should be adopted and incorporated into the agreement.

(8) That the internal comparables submitted by the Employer should not be considered the primary comparables in these proceedings.

(a) That while arbitrators have given some weight to internal wage comparisons, recent arbitral opinion and the present fact situation indicate that they should receive limited weight in these proceedings.

(b) That various Wisconsin interest arbitrators have indicated that uniform bargaining may not be in the best interests of parties, and that law enforcement personnel should properly be removed from internal comparisons.

(c) That internal comparisons have not in the past served as the controlling consideration in establishing wages, and this is made clear in the consent award that resulted in the current agreement.

(d) Unless the Employer can point to very strong reasons in support of internal wage uniformity, there is no reason for the Arbitrator to select the Employer's final offer based upon this criterion.

(9) That arbitral consideration of the cost of living criterion favors the selection of the final offer of the Association.

(a) That cost of living can appropriately be considered by application of the comparison criterion, because this factor already reflects a reasonable indication of the weight that should be placed upon cost of living in the final offer selection process.

(b) That each of the parties has provided information with regard to the CPI in support of their respective positions, and that the Association has remained cognizant of the current economic climate and comparable settlements and has framed its final offer in a fair and equitable manner.

In summary, that the Association has applied the various statutory criteria to the final offers, and has shown its offer to be more reasonable than that of the Employer; accordingly, that the final wage offer of the Association should be selected by the Arbitrator.

FINDINGS AND CONCLUSIONS

The underlying impasse arose under the terms of the parties' negotiated wage reopener, and the Arbitrator is limited to the selection of the more appropriate of the two final wage offers covering the July 1, 1992 through July 1, 1993 contract year. During the course of presenting and arguing their respective cases, the parties did not emphasize all of the various statutory criteria, but either or both focused upon various public and private sector comparisons, cost of living considerations, the interests and welfare of the public, and the overall level of compensation received by those in the bargaining unit.

In light of the limited scope of the impasse, and the nature and content of some of the evidence and arguments advanced by the parties, certain preliminary arbitral observations will be offered before addressing in detail the evidentiary record, the arguments of the parties and the various statutory criteria.

Limitations in the Use of Historical Cost of Living, Wages, and Benefit Data Within the Context of a Wage Reopener

Both the City and the Association have utilized time periods prior to the effective date of the current agreement in support of their respective positions, principally within the areas of historical wage comparisons and/or in connection with certain fringe benefits. By way of example, the Association has suggested that top patrol officer wages within the City of Eau Claire had increase only 15.6% between 1988 and 1992, while comparable wages within geographically proximate departments had increased 17.7% during the same period, and both parties addressed the significance of a preexisting and ongoing merit pay program for police command staff personnel.

Interest arbitrators normally refuse to go beyond the parties' most recent trip to the bargaining table in considering various types of evidence, including wages and benefits comparisons, particularly when addressing cost-of-living considerations or when operating within wage reopener contexts. The underlying rationale for this principle is arbitral reluctance to reopen or to relitigate the parties' prior negotiations or interest arbitrations. The following excerpt from the still highly regarded book by Irving Bernstein, has frequently been offered by the undersigned as an excellent explanation of these principles:

> "Base period manipulation...presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule: the base for computing cost-of-living adjustments shall

be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go beyond such a date,' a transit board has noted, 'would of necessity require a relitigation of every preceding arbitration between the parties and a reexamination of every preceding bargain between them.' This presumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost-of-living in their negotiations. Where the legislative history demonstrates that this issue was considered, the holding becomes so much the stronger." [1]

On the basis of the above, it is clear that when operating within the context of a wage reopener, arbitrators will distinguish between those considerations which preexist the parties' last negotiated settlement, versus those which have arisen since that time; the former considerations will normally carry little or no weight, while the latter will normally carry weight which varies with the extent to which they bear upon the adequacy of wages during the term covered by the reopener. In applying these considerations to the dispute at hand, the following preliminary arbitral observations are offered:

(1) The Association urges that the Employer proposed 4% wage increase is inadequate, in part because those in the bargaining unit do not have the benefit of the 2% merit pay program available to those in the police command structure. Since the merit pay program was in existence at the time that the parties negotiated the current contract, however, when they agreed the 4% increase for those in the bargaining unit, which increase was identical to the 1991-92 increase for those in the police command structure, the Associations's argument is entitled to little or no weight in these proceedings. The Union's concern with the absence of a merit pay program for those in the bargaining unit is understandable, and if the program had been unilaterally introduced by the Employer during the term of the current agreement and prior to the wage reopener, its arguments would have carried substantially more weight in these proceedings.

(2) What next of the Employers argument that the City's current generous level of fringe benefits should be considered by the Arbitrator in the final offer selection process? When parties have previously put to rest all elements of bargaining on fringe benefits for the term of a renewal agreement, an interest arbitrator operating under a wage reopener, will not normally place any significant weight on the parties' previously negotiated levels of fringe benefits in the final offer selection process, as such action would amount, in effect, to reopening the parties' prior agreement.

(3) The Association also alleged that there had been an erosion of relative earnings for officers in the bargaining unit, in that the differential between their wages and those in geographically proximate municipal police departments had narrowed in recent years. Interest arbitrators, under wage reopeners, will carefully consider any claims of erosion of relative earnings alleged to have occurred <u>subsequent to</u> the effective date of the current agreement, but they will give short shrift to any such erosion claimed to have occurred <u>prior to</u> the current agreement. In the

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[1] Bernstein, Irving, <u>The Arbitration of Wages</u>, University of California Press, 1954, p. 75. (included citation: Public Service Coordinated Transport and Amalgamated Street Railway Employees, 11 LA 1050)

> latter connection, the parties must be presumed to have considered comparable wages in arriving at their pre reopener wage levels, and an interest arbitrator operating within the context of a reopener has no authority to revisit or to otherwise review the merits of such earlier wage settlement.

In addition to the above, it is noted that arguments urging maintenance of historic differentials between a wage leader and other members of an intraindustry comparison group normally come into conflict with the principles of intraindustry wage uniformity, and are rejected by arbitrators. This principle is described as follows by Bernstein:

> "This discussion of wage history suggests a final problem in administering the intraindustry comparison, namely, the historic differential. That is, how do arbitrators behave when an established disparity in rates conflicts with the principle of wage parity within the industry? Here the force of the intraindustry comparison is clearly paramount. In the *Pacific Gas & Electric Case*, for example, the Utility Workers argued that the Company's 'traditional leadership' should be maintained. Kerr replied:
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> > 'The doctrine of historical relationships runs directly counter to that of standardization. Standardization cannot be achieved by bringing the lower paid up to the higher paid, if the higher paid insist always on being higher paid. If the lower paid were constantly to insist on standardization and the higher paid on historical differentials, the effect would be that of a dog chasing his tail. While standardization seldom occurs at one jump, it seems to be the more widely recognized and constantly effective of the two doctrines. Consequently, the argument that Pacific Gas and Electric rates should permanently be maintained a given amount above other rates is not accepted as valid.' " [2]

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that neither the 2% merit pay available to the police command staff, nor the alleged partial erosion of wage leadership between the City of Eau Claire Police Department and other geographically proximate municipal police and sheriffs' departments, can be accorded significant weight in the final offer selection process in these proceedings. Similarly, the preexisting level of fringe benefits within the bargaining unit should be accorded little or no weight in the final offer selection process.

The Statutory Criteria

While the Legislature has mandated in Section 111.77(6) of the Wisconsin Statutes that interest arbitrators shall give weight to all of the various criteria listed therein, they have not established a hierarchy of relative importance for the various criteria, thus leaving this determination to the parties and to the arbitrators on case-by-case bases. In this connection, the normal goal of interest arbitrators is to attempt to put the parties into the same position they would have occupied, but for their inability to agree. In so doing, Wisconsin interest neutrals look closely to the parties' past agreement and to their negotiations history, both of which considerations fall well within the scope of sub-section (h) of the referenced section of the Statutes.

The Comparison Criteria

It is widely recognized by arbitrators in Wisconsin and elsewhere, that the comparison criterion is normally the most important of the various

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[2] The Arbitration of Wages, pp. 66-67. (included citation: Pacific Gas & Electric Company, 7 LA 532)

arbitral criteria, and that the so called intraindustry comparison criterion is normally the most important of the various possible comparisons; the term intraindustry comparisons, within the context of the present dispute, refers to comparisons with comparable police and sheriffs' departments within the State of Wisconsin.

As is the situation in the case at hand, parties to interest arbitrations frequently disagree with respect to the proper composition of intraindustry comparison groups, with each emphasizing those comparisons which it perceives as most persuasively supporting the selection of its own final offer. Where the parties' bargaining history, including prior interest arbitrations, indicates that they have normally utilized or emphasized a particular comparison group, an arbitrator will be very reluctant to abandon, to modify, or to otherwise vary either the composition of the group or the weight historically placed upon such comparison(s). This principle is described as follows by Bernstein:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or to create a differential.....
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> "The last of the factors related to the work is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[3]

The weight and the importance of bargaining history in arbitral selection and utilization of comparisons, is also briefly addressed in the following except from the widely cited book by Elkouri and Elkouri:

> "Where each of the various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons which the parties themselves had considered significant in free collective bargaining, especially in the recent past."[4]

Despite the normal emphasis placed upon the so-called intraindustry comparison criterion in the interest arbitration process, there is little or nothing in the record to suggest that the parties have ever done so in their previous negotiations; their apparent reliance upon internal rather than external intraindustry comparisons, dating back to at least 1987, is quite apparent from the contents of Employer Exhibit #8. Indeed, the Union itself emphasized the parties' lack of any significant previous use of intraindustry comparisons, it conceded in its brief that "Comparisons of the base wage levels of geographically proximate departments in a historical perspective reveals that the City of Eau Claire top patrol base wage has consistently remained at the top of the comparison data," [5] and it supported the latter

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[3] The Arbitration of Wages, pp. 63, 66.

[4] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, p. 811.

[5] Association's Post Hearing Brief, at page 9.

conclusion with the contents of Association Exhibits #9 through #13. It is probable that the size of the City of Eau Claire in relationship to nearby municipalities, and the parties' willingness to pay somewhat higher wages than those paid in geographically proximate city police and sheriff's departments, have contributed to their significant past reliance upon internal rather than external comparisons. Regardless of the underlying reasons, however, the parties' negotiations history of significant reliance upon internal rather that external intraindustry wage comparisons, supports substantial arbitral weight being placed upon the internal comparisons criterion in the final offer selection process; conversely, the undersigned has concluded that due to the unusual circumstances present in the case at hand, the intraindustry comparison criterion is not entitled to substantial weight in the final offer selection process. Employer Exhibit #8 shows a uniform pattern of 4% (or equivalent) wage increases for 1992-93 within the other six settled units in the City of Eau Claire, which clearly and strongly supports arbitral selection of the 4% wage increase offer of the City in the dispute at hand.

In consideration of the above referenced bargaining history, the parties' apparent lack of significant use of intraindustry comparisons in the past, and the significant weight to be placed upon internal comparisons in this matter, it is unnecessary for the Arbitrator to identify a principal external intraindustry comparison group or groups for use in these proceedings or in the future. The parties are likely to address external intraindustry comparisons in their next contract renewal negotiations, however, and it is noted by way of dicta that any such group(s) should probably include police units above a minimum size threshold within reasonable proximity of the City of Eau Claire, in addition to certain other comparable municipal police departments located elsewhere in the State; in the latter connection it is noted that Milwaukee area suburbs, located over two hundred miles from Eau Claire, would probably be excluded from any primary intraindustry comparison group.

What next of the Employer's general comparisons of average yearly earnings within the City of Eau Claire versus similar averages within the bargaining unit? Not only are the comparisons far too general to carry significant weight, but the 1990 and 1991 data used by the City cannot directly be compared with current bargaining unit earnings. Without unnecessary elaboration, the Arbitrator has preliminarily concluded that these Employer proffered comparison data are not entitled to any significant weight in these proceedings.

The Cost of Living Criterion

The relative importance of cost of living considerations varies on a case-to-case basis, depending upon the amount of recent movement in the Consumer Price Indices. As discussed above, the only changes in cost-of-living that are material and relevant to the final offer selection process in this case, are those which have taken place since the effective date of the current agreement. The rate of inflation during this period has totalled approximately 3%, and since this is below the percentage increases contained in the final offers of either party, it is apparent that the cost of living criterion favors the selection of the final offer of the Employer.

The Interests and Welfare of the Public Criterion

In this connection, the Union submitted that the interests and welfare of the public were best served by recognizing the need to maintain officer morale and to retain the best and the most qualified officers; it submitted that these interests would be best served by the 6% split wage increase urged by the Association, rather than by the City's 4% wage increase offer. The Employer, on the other hand, cited difficult economic times among private sector employers including plant closings and loss of jobs, and it indicated that it was unaware of any morale problems in the bargaining unit which could be attributed to a low rate of compensation.

While the financial interests of the taxpaying public are valid considerations, the necessity of maintaining qualified and capable police officers obviously also serves the public interest. There is no claim of either inability or impaired ability to pay in the case at hand, and the evidence and the arguments of the parties are difficult to quantify and use in the final offer selection process. Accordingly, the undersigned has preliminarily concluded that arbitral consideration of the interests and welfare of the public criterion does not definitively favor the position of either party in these proceedings.

Summary of Preliminary Conclusions

As discussed in more significant detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) During the course of presenting and arguing their respective cases, the parties did not emphasize all of the various statutory criteria, but either or both emphasized certain private and public sector comparisons, cost of living considerations, the interests and welfare of the public and the overall level of compensation criteria.

(2) When operating within the context of a wage reopener, interest arbitrators will distinguish between those considerations which preexist the parties' last negotiated settlement, versus those which have arisen since that time; the former considerations will normally carry little or no weight, while the latter will normally carry weight which varies with the extent to which they bear upon the adequacy of wages during the term covered by the contract.

(3) For the reasons described immediately above, neither the 2% merit pay available to the police command staff, nor the alleged partial erosion of wage leadership between the officers in the bargaining unit and other geographically proximate municipal police and sheriff's departments, should be accorded significant weight in the final offer selection process. Similarly, the preexisting level of fringe benefits within the bargaining unit should be accorded little or no weight in the final offer selection process.

(4) While the legislature has mandated arbitral consideration of all of the statutory criteria contained in Section 111.77(6) of the Wisconsin Statutes, it has not established a hierarchy of relative importance for the various criteria, thus leaving this determination to the parties and the arbitrators on case-by-=case bases.

(5) Wisconsin interest arbitrators operate as extensions of the bargaining process, they attempt to put the parties into the same positions they would have occupied had they reached voluntary settlements, and they closely consider the parties' prior agreements and negotiations history.

(6) The Comparison criterion is normally the most important of the various arbitral criteria, and the so called intraindustry comparison criterion is normally the most important of the various possible comparisons. The parties' bargaining history, however, justifies principal arbitral reliance being placed upon the internal comparison criterion in the final offer selection process in these proceedings; conversely, the intraindustry comparison criterion is not entitled to substantial weight in these proceedings.

(7) The Employer advanced evidence and argument generally comparing average yearly earnings within the City of Eau Claire with similar averages for officers in the bargaining unit, are not entitled to any significant weight in these proceedings.

(8) Arbitral consideration of the cost-of-living criterion favors the selection of the final offer of the Employer in these proceedings.

(9) Arbitral consideration of the interest and welfare of the public criterion does not definitively favor the position of either party in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record, including a review of all of the statutory criteria, the undersigned has preliminarily concluded that the final wage offer of the Employer is the more appropriate of the two final offers before the Arbitrator.

AWARD

Based upon a careful consideration of all of the evidence and arguments advanced by the parties, and a review of all of the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the City of Eau Claire is the more appropriate of the two offers before the Arbitrator.

(2) Accordingly, the final wage offer of the City, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

May 14, 1993