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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of	:
	:
WISCONSIN PROFESSIONAL POLICE	:
ASSOCIATION/LAW ENFORCEMENT EMPLOYEE	:Case 65
RELATIONS DIVISION	:No. 46964 MIA - 1698
	:Decision No. 27371 - A
For Final and Binding Arbitration	:
Involving Law Enforcement	:
Personnel in the Employ of	:
	:
CITY OF RHINELANDER	:
	:

Appearances:

Wisconsin Professional Police Association/Law Enforcement
Employee Relations Division by Richard T. Little,
Bargaining Consultant, Wisconsin Professional Police
Association.

City of Rhinelander by Philip I. Parkinson, Esq. City
Attorney.

ARBITRATION AWARD

The Wisconsin Professional Police Association/Law
Enforcement Employee Relations Division filed a petition with the
Wisconsin Employment Relations Commission, on February 5, 1992,
wherein it requested the Commission to initiate arbitration
pursuant to Sec. 111.77(3) of the Municipal Employment Relations
Act. The Commission caused an investigation to be conducted by a
member of its staff. After both parties submitted their final
offers, the investigator advised the Commission, on August 28,
1992, that an impasse existed. On October 6, 1992, the
undersigned was appointed to arbitrate the dispute.

The arbitration hearing was conducted on December 9, 1992 at the Rhinelander City Hall. Both parties submitted a series of exhibits into evidence and the City presented oral testimony; the record was closed at the conclusion of the hearing. The parties exchanged post hearing briefs by letters dated January 18, 1993.

DISPUTED ISSUE

The previous contract expired December 31, 1991. Both offers in this proceeding would extend that agreement with stipulated modifications to December 31, 1993. The final draft of stipulated modifications was approved and signed by the parties at the December 9, hearing. The only issue which the parties have been unable to agree upon is wages. Both the amount and structure of proposed wage offers are in dispute. The Union has requested split wage increases of 2% on January 1, 1992 and 3% on July 1, 1992 and 3% on January 1, 1993 with 2% on July 1, 1993. The City has offered 3.75% increases on each January 1, 1992 and January 1, 1993. The first year cost of the City's offer is \$12,696 compared to the Union's offer cost of \$11,928. During the second year the City's offer would cost \$13,176 compared to \$19,512 for the Union offer. Over the two year period of the contract, the wage increases under the Union offer would cost \$31,440 and amount to a 9.31% increase compared to increased wages of \$25,872 totalling 7.66% under the City's offer. The two year difference in the two offers is \$5,568 or 1.65% in monetary terms. The Association's offer would result in 2.5% greater lift by the end of 1993.

THE APPLICABLE CRITERIA

In their briefs, both parties recognized that the evidence in this case does not relate to certain of the criteria set forth in Wis. Stat. 111.77(6). Specifically, each party noted that, the lawful authority of the employer, stipulations of the

parties, comparisons with private employers, changes of circumstances during the pendency of this proceeding and other factors not confined to the statutory criteria were not placed in issue in this proceeding. Both parties addressed the remaining criteria in their arguments.

THE ASSOCIATION'S ARGUMENT

The Union argued that its offer will best serve the interest and welfare of the public by recognizing the need to maintain the morale of its police officers and to retain the best and most qualified officers. "Overall working conditions must be desirable and reasonable." These conditions consist of both tangible and intangible benefits including morale and unit pride. These are particularly important because law enforcement officers from one department work side by side with officers of other departments. The Union said that the Oneida County Sheriff's Department is the most prevalent comparable in these proceedings. That department and many of its employees reside in the City of Rhinelander. The Union stated that it was not attempting to obtain the top pay scale in the area through arbitration. Its offer would attempt to maintain its wage relationship with Oneida County and other comparable departments. Oneida County law enforcement officers received a 6% increase in 1992. The average lift of settled comparable departments for 1992 and 1993 will be 1½% higher than the City's offer. The City's offer can not have a positive effect on this unit's pride. The interests and welfare of the public will be similarly affected.

The Union argued that a comparison of the wages paid to the employees in this proceeding with the wages of other public employees providing similar services strongly favored the Union's offer. Both parties have submitted Marinette, Merrill, Ashland, Anigo, Rice Lake, Shawano, Oconto, Minocqua, Tomahawk, Peshtigo, Park Falls and Oneida County as appropriate comparables. The Union stated that, between 1987 and 1990, Rhinelander wage rates

remained approximately \$100 per month below the average wage paid to comparable departments. The Union offer has not attempted to address this deficit. "In 1991, and upon application of the final offers of the parties for 1992 and 1993, the wages paid to the members of the Association will fall in ranking and monetary equity. The Union stated that under its offer wage rates will remain between \$113 and \$120 per month below the comparable average wage. The City's offer would place Rhinelander Police Officers \$166.02 per month below the average of comparable departments. The Union stated that, "never in the history of these comparable departments will this have previously occurred." It argued that the Association's offer will most closely meet the average dollar increase and average percentage lift for both 1992 and 1993.

The Association argued that the City of Rhinelander's settlements with other employees should not be considered as primary comparable settlements. The Union cited arbitral authority that: uniform bargaining practices may not be in the best interest of the parties and the public they represent; and, that law enforcement personnel should be compared with other law enforcement personnel. The Union argued that there is no evidence that internal comparisons have served as an important or controlling consideration in establishing settlements with this bargaining unit. It stated that agreements with other Rhinelander units contain clauses that exclude benefits received by the members of this Association.

The Association argued that cost of living data supports its offer. In support of this argument it cited a prior arbitration decision which concluded, "that the proper measure of the amount of protection against inflation to be afforded to employees should be determined by what other comparable employers and associations have settled for, and who have experienced the same inflationary ravages as those experienced by the employees of the instant employer." It concluded 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. .

THE EMPLOYER'S ARGUMENT

The employer noted that this dispute involves wage increases to be granted to two detectives, a school liaison officer, four sergeants and eight patrol persons. These are full-time Rhinelander police officers who are organized as Local 38 of the Wisconsin Professional Police Association. It described the issue "whether to implement a 3.75% wage increase for both 1992 and 1993, or to go with a 2.0%/3.0% split for 1992 and a 3.0%/2.0% split for 1993." "The ultimate difference between the offers would amount to \$51 per month for the top patrol position by the second half of the second year."

The City argued that though the dollar impacts of the two offers during this two year contract period are very similar, the percentage basis in 1993 is almost a full percent higher under the Association's offer. It argued that the best interest of the citizens of Rhinelander requires that all of its employees be treated fairly and uniformly. The City's offer would provide fair compensation for the members of this bargaining unit without creating disparity between those employees and members of other bargaining units.

The Employer said that it had not made any comparisons of the offers in this proceeding with private sector wages and working conditions. It stated that law enforcement is unique work which has few comparables except with other public law enforcement agencies. The parties have compared their offers to settlements in the twelve other municipalities which were relied upon during 1987 and 1989 wage arbitrations. The City has argued in the past, and continues to argue, that only the cities of Merrill, Antigo and Ashland and Oneida County are primarily comparable to Rhinelander. It argued that Merrill, Antigo and Ashland are almost identical in size to Rhinelander, "and are

located in the northern part of the state, providing for very similar circumstances. It said that Oneida County is primarily comparable because Rhinelanders is the Oneida County seat. Oneida County deputies and Rhinelanders police work together on many law enforcement activities. People working side-by-side doing almost identical work are comparable for wage comparison purposes. The Employer cited Union exhibits which it said related to top patrol wages. It stated that Rhinelanders salaries fell approximately in the middle of those comparables. Merrill was higher than Rhinelanders in 1991, Oconto County was higher in the second half of 1991. Antigo and Ashland are either similar or lower than Rhinelanders. Neither Ashland nor Oneida County have settled for 1993. The employer concluded its comparison with its preferred four external comparables by noting that both its offer and the Union offer will "maintain the City of Rhinelanders's relative positions in relation to the four other municipalities of the total thirteen."

The City then argued that its offer was most favorable when compared to wage increases granted to other public employees in Rhinelanders. In 1992, Rhinelanders's Public Works employees, Fire Department Employees and non-union employees agreed to 3.75% wage increases for that contract year. The City has established a pattern of 3.75% wage settlements for 1992. The City noted that the Consumer Price Index for non-metropolitan areas increased by 3% during the preceding year.

The Employer argued that it was unaware of any circumstances which justify a greater wage increase for Rhinelanders Police Officers than for other municipal employees. It argued that overall compensation including wages, vacation, holidays, excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and other benefits received are better than or equal to such benefits provided elsewhere. It noted that the cost of dental and health care had increased for the city in 1992 and 1993 with no increase to the employees.

The Employer concluded its presentation by arguing that the package cost of the Union's offer totaled 6.8% compared to slightly less than 6% for the City's offer and a 3% CPI increase. "The benefit of maintaining even settlement among City of Rhinelander bargaining units outweighs the Association's argument for lift or catch-up provisions in order for them to compare more favorably with the higher-paid municipalities, such as Marinette, Peshtigo and Tomahawk."

DISCUSSION

Attorney Parkinson made it clear that the City of Rhinelander has a long standing policy of offering uniform wage settlements to each bargaining unit and employe group. He also testified that the City has never agreed to split salary increases; it has historically insisted upon across the board annual wage increases for all of its employees. The Union has made it clear that the difference in the structure of the two offers is critical from its point of view. It has summarized its position by arguing that if the City's offer is accepted, Rhinelander police officers will begin negotiations for 1994 at an unprecedented \$166 per month below the average of comparable districts. From the foregoing and the entire record herein, it is the differing structure of the two offers rather than the \$5,568 monetary difference which has precluded these parties from arriving at an agreement. It is the arbitrator's responsibility to put the parties into the same position that they would have reached through bargaining, if they had been able to arrive at a negotiated settlement.

The Union has relied primarily upon its comparison of the party's offers in this proceeding with contract settlements in twelve comparables to support its position. The comparable group containing the cities of Marinette, Peshtigo, Tomahawk, Rice Lake, Oconto, Merrill, Shawno, Park Falls, Antigo, Ashland and Minoqua, as well as Oneida County have been utilized in two

previous arbitration proceedings between these parties. All of the comparable municipalities have arrived at settlements for 1992. All except the cities of Marinette, Oconto, Ashland and Oneida County have also reached agreements for 1993. Information regarding these settlements constitutes an excellent basis for comparison under Wis. Stat. 111.77(6)(d), with other public employees providing similar services.

The employer argued that only the cities of Merrill, Antigo and Ashland and Oneida County should be considered "primary comparables." It stated that those three cities are almost identical size and located in the northern part of the state. That argument ignores the fact that the northern cities of Rice Lake and Shawno are closer in size to Rhinelander than Merrill, Antigo and Ashland. The City has failed to present any reason why data from all of the other municipalities should not be considered in this proceeding. The burden to persuade that a previously established peer group should be reconsidered rests upon the party urging the change. The entire group of twelve municipalities which were determined to be comparable to Rhinelander in preceding arbitration proceedings constitutes the appropriate group for comparison herein.

The parties agreed that the appropriate benchmark for making salary comparisons is the salary paid at the Top Patrol/Top Deputy salary level. The Union provided comparisons of salaries in Rhinelander at this level for the period 1987-1991. It also compared party's offers for 1992-1993, with 1992 settlements in all twelve comparables and with settlement data for the eight municipalities which have agreements for 1993. In order to analyze the Association's assertion that wages in Rhinelander would erode under the City's offer, the arbitrator has reviewed wage levels in comparable municipalities for the period 1989 through 1993, with Rhinelander's actual 1989-1991 wages and with wages under the two offers for 1992-1993. It seemed appropriate to begin the comparison with 1989 since both that and the prior settlement were arrived at through arbitration. The data is set out on Table I which follows.

TABLE I.

Percentage of lift to top patrol/top deputy base rate in Rhinelander compared to comparables 1989-1992 and compared to settled comparables for 1993

	1989	1990	% inc.	1991	% inc.	1992	% inc.	1993	% inc.
1. Marinette	2,218	2,301	3.74	2,440	6.04	2,512	2.95	Not Settled	
2. Peshtigo	2,059	2,097	1.89	2,132	1.67	2,217	3.99	2,306	4.01
3. Tomahawk	2,024	2,095	3.50	2,234	6.63	2,382	6.62	2,489	4.49
4. Rice Lake	2,007	2,069	3.09	2,171	4.93	2,247	3.50	2,325	3.47
5. Oconto	1,989	2,059	3.52	2,163	5.05	2,250	4.02	Not Settled	
6. Merrill	1,947	2,045	4.52	2,127	4.01	2,229	4.80	2,340	4.97
7. Shawano	1,939	2,021	4.23	2,113	4.55	2,203	4.26	2,305	4.63
8. Park Falls	1,855	1,920	3.50	1,988	3.54	2,057	3.47	2,129	3.50
9. Oneida County	1,825	1,888	3.45	2,003	6.09	2,126	6.14	Not Settled	
10. Antigo	1,812	1,884	3.97	1,959	4.00	2,078	6.07	2,204	6.06
11. Ashland	1,754	1,806	2.96	1,879	4.04	1,974	5.05	Not Settled	
12. Minoqua	1,703	1,780	4.52	1,858	4.40	1,953	5.11	2,049	4.91
Average	1,928	1,997	3.58	2,089	4.77	2,186	4.64	2,268	4.50
Rhinelander	1,827	1,897	3.83	1,967	3.69	Union 2,066	5.03	Union 2,171	5.08
						City 2,041	3.76	City 2,118	3.77
Percent of Average	94.76	94.99		94.16		Union	94.51	97.6	
						City	93.37	93.39	

NOTE. This table was prepared from data included in Union Exhibits 12-16. Because the data compares split wage increases received by some comparables and offered by the Union in Rhinelander, this data is accurate to reflect the impact of the two Rhinelander offers upon year end salaries and percent of lift only.

The foregoing table demonstrates that in 1989 the top patrol salary in Rhineland was \$1,827 a month compared to \$1,928 for the average salary paid to top patrol/top deputy in all twelve of the comparables. The top deputy salary in Oneida County that year was \$1,825, two dollars less than in Rhineland.

Rhineland's salary at this benchmark equalled 94.76% of the average of all comparable salaries. In 1991, the last time these two parties entered into a voluntary agreement, Rhineland's \$1,967 salary equalled 94.16% of the average \$2,089 for all comparables. That year Oneida County paid its top deputies \$2,003 per month. The County's salary was \$36 a month more than the City's in 1991.

During the first year of this contract period, the Union's 5.05% offer would raise wages at this benchmark to \$2,066 per month compared to \$2,041 under the Employer's offer. These offers compare to \$2,186 among all comparables and \$2,126 monthly in Oneida County. The City's offer is \$145 and the Union's offer is \$120 less than Oneida County's wage at this benchmark for 1992. The Union's offer for 1992 is equal to 94.51% of all twelve comparables compared to 93.37% under the City's offer.

During the second year of this contract period, the Union's offer of \$2,171 is equal to 97.6% of the average \$2,268 in those eight comparable municipalities with 1993 contracts. The Employer's \$2,118 offer is 93.29% of the average wage for settled comparables. Though it appears that the base wage would increase disproportionately under the Union's offer to 97.6% of the comparable average, that comparison is misleading because three of four of the unsettled comparables have higher 1992 base wages than Rhineland does. Those eight comparables which have settled for 1993 granted average increases of 4.5% compared to the Union's 5.08% offer and the Employer's 3.77% offer. The foregoing analysis of the two offers compares only the lift which would be added to 1991 base wages in Rhineland by the end of the 1992-1993 contract period. Because the lift would be phased in over two six month periods, the financial impacts during this

contract period would be less than the amounts recorded on Table I. This comparison demonstrates that the Union's concern that base wages would erode seriously under the Employer's offer is justified.

The employer has placed heavy emphasis upon comparisons of the two offers in this proceeding with wage offers it has made to other represented and unrepresented City of Rhinelander employees. The Employer offered and succeeded in negotiating 3.75% across the board wage increases for 1992 with its represented public works and fire department employees. It also granted 3.75% across the board increases to its unrepresented employees during both 1992 and 1993. It has made 3.75% across the board offers to the Unions representing both public works and fire department employees for calendar year 1993. The City has argued that it is unaware of any circumstances which would justify a greater salary increase for its police officers than the amount of the increase which was granted or offered to other municipal employees.

The statutory criteria require that the offers be compared to wages, hours and conditions of employment of these police officers first with wages, hours and conditions of employment of other public employees performing similar services and then with other employees generally. The City has recognized that, "Law enforcement is unique work with which there are few comparables, except with other publicly employed law enforcement agencies." (Er. Brief p. 4). This recognition by the Employer that its law enforcement officers are unique is the circumstance which would justify a greater salary increase for these police officers than increases granted other city employees. In applying statutory comparisons, arbitrators traditionally determine whether the employee group involved in the arbitration proceeding is distinguishable by virtue of educational background or job related skills and requirements from other public employees with whom they are being compared. If it is determined that such an objective distinction between employee groups should be made, an

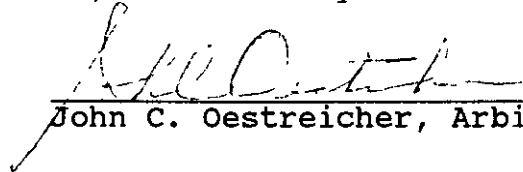
intra-industry comparison of wages, benefits and working conditions is deemed to be more significant than maintaining parity with other employees within the municipality. Arbitrators have recognized that those persons who pursue careers in law enforcement are distinguishable from other municipal employees by work related skills and job requirements.

In the present case, each party has predicated its position upon the argument that its offer is more comparable than the other party's offer. The arbitrator has found that, the Association's offer is more comparable in relation to wages being paid to other law enforcement personnel in similar communities than the City's offer. The fact that the City's offer is most comparable in relation to the wage increases it has offered or granted to other municipal employees, is a significant factor for consideration herein. That factor is not as serious matter of concern, however, as the realization that police officer salaries in Rhinelander would continue to fall substantially below those salaries which are being paid to law enforcement personnel in municipalities which are similar to Rhinelander.

Both parties argued that their offer was most reasonable when compared to increases in the Consumer Price Index. That increase for the preceding twelve month period in small metropolitan areas was 3.9 percent. Both offers will result in wage increases of less than that amount during 1992. It would be simplistic to simply compare 1991 CPI data to the parties' 1993 offers. The Employer has argued that the total cost of the Union offer during 1993 would be 6.8% compared to the 6% for its offer. Since neither party presented total cost information for comparable settlements the arbitrator is not able to evaluate what merit, if any, this information is entitled to receive. After evaluating the limited information which has been presented relating to increases in the Consumer Price Index with the offers in this proceeding, the arbitrator is unable to say that the CPI comparison favors either party's offer.

Based upon the entire record in this proceeding, it appears that the offer of the Rhinelander Professional Police Association is more reasonable than that of the City of Rhinelander. The Association's offer shall be incorporated into the 1992-1993 collective bargaining agreement between these parties.

Dated at Madison, Wisconsin, this 1st day of February, 1993.



John C. Oestreicher, Arbitrator