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In the Matter of the Arbitration)
Between) Case 326
CITY OF APPLETON) No. 4729
) MIA-1720
and) Interest Arbitration
)
APPLETON PROFESSIONAL POLICE) Decision No. 27421-A
ASSOCIATION)

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

APPEARANCES

For the Association

Mr. Bruce N. Evers and Mr. Gregory B. Gill of
Gill & Gill, S.C., Attorneys
Mr. Reid H. Holdorf, President
Mr. Steven M. Bartell, Board Member

For the Employer

Mr. David F. Bill, Director of Administrative Services/
Director of Personnel
Mr. Rick Bayer, Assistant Personnel Director

O P I N I O N A N D A W A R D

Nature of the Case and the Issues

On October 7, 1992, the Wisconsin Employment Relations Commission issued an order that final and binding interest arbitration pursuant to Section 111.77 of the Wisconsin Statutes, Municipal Employment Relations Act "the Act") be initiated for the purpose of issuing a final and binding award to resolve an impasse existing between Appleton Professional Police Association ("the Association") and the City of Appleton ("the Employer" or "the City"). The order followed a petition filed on April 13, 1992, by the Association to initiate compulsory final and binding arbitration under Section 111.77 (c) of the Act. By its terms the 1990-1991 collective bargaining agreement between the parties was effective for the period January 1, 1990, through December 31, 1991. A mediation session was conducted on June 9, 1992, by Marshall L. Gratz, a member of the Commission's staff. As a result of the mediation, the parties entered into a written agreement to include in their 1992-1993 collective bargaining agreement the following terms "regardless of the outcome of any further mediation and/or arbitration between the parties.":

1. Modification of Article IV, Overtime, to provide that the call time compensation "shall be increased to three hours for everything other than court call time which remains as is."

2. Change in the language of Article XI B, Funeral Leave, "to read that in the event of death of the officer's spouse or dependent child, the officer will be paid for the scheduled time lost during the period from two days before the funeral up to and including two days after the funeral but not to exceed five working days."

3. Addition of the following sentence to the personal account provision in Article XV, Clothing Allowance: "The total amount in any individual account shall not exceed the preceding two years annual allowance."¹

On September 28, 1992, Mr. Gratz issued a Notice of Close of Investigation and Advice to the Commission, finding that "an impasse within the meaning of Sec. 111.77 (3) of MERA exists with regard to the issues in dispute between" the Employer and the Association "as outlined in their final offers" and recommending that the Commission order arbitration in the matter. Attached to the Notice were the final offers of each party, which will here be reproduced:

Final Offers

CITY OF APPLETON FINAL OFFER

1. Article XXXIV - Term of Agreement
Change "January 1, 1990" and "December 31, 1991" to "January 1, 1992" and "December 31, 1993" respectively.
2. Exhibit A - Hourly Wage Rates
Increase all steps of all classifications by:
 - a) 3% effective 1/1/92
 - b) 1% effective 7/1/92
 - c) 3% effective 1/1/93
 - d) 1% effective 7/1/93
3. Incorporate stipulated changes into the successor agreement:

¹The undersigned arbitrator is puzzled by this part of the agreement since the 1990-1991 Labor Agreement of the parties already contains this sentence in the paragraph of Article XV dealing with each officer's personal account for uniforms and equipment.

- a) Call Time
- b) Funeral Leave
- c) Clothing Allowance

ASSOCIATION FINAL OFFER

1. Wage Increases; Article VI-Salaries

Across the board wage increases for all classifications list[ed] on Exhibit A which is attached to the Collective Bargaining agreement on a two year contract as follows:

01/01/92 4% 01/01/93 4%

2. Shift Differential; Article VI-Salaries (as proposed)

Increase the shift differential described in paragraph VI contained in Exhibit A which is attached to the Collective Bargaining Agreement from 10¢ per hour to 30¢ per hour.

3. Add Holidays; Article V-Paid Holidays (as proposed)

Add the following two paid holidays beginning in the respective years and all years after:

Good Friday (1992)
Martin Luther King's Day (1993)

4. Term of Agreement; two years beginning January 1, 1992.

5. Incorporate stipulated changes into the successor agreement.

In response to a request by the Employer, the Association clarified item No. 3 of its final offer as follows:

Item #3 concerns Article X - Paid Holidays of the Collective Bargaining Agreement. The APPA is proposing the additional holiday of Good Friday, beginning in contract year 1992 and a second additional holiday of Martin Luther King Day, beginning in contract year 1993. Paragraph #3 of Article X provides that in lieu of any further compensation for holidays, shift and non-shift employees will receive specified amounts of 120 hours pay and 72 hours pay, per year, respectively. Under the APPA's proposal these numbers would change for both contract years. Shift employees would receive 135 hours pay in 1992 and 150 hours pay in 1993. Non-shift employees would receive 80 hours pay in 1992 and

88 hours pay in 1993.

The undersigned arbitrator was selected by the parties to decide the dispute. Hearing was held in Appleton, Wisconsin, on January 19, 1993. The parties filed post-hearing briefs.

Statutory Criteria

Section 111.77 (6) of the Act provides:

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

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

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

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

1. In public employment in comparable communities.

2. In private employment in comparable communities.

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

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

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

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

I shall consider the final offer of the parties in light of the statutory criteria listed above.

Lawful Authority of the Employer

Both sides are agreed that this factor is not pertinent in the present case.

Stipulations of the Parties

The parties have agreed to changes involving call time compensation, funeral leave, and clothing allowance, as set forth above at page 3, to be included in any award rendered in this case.

Comparison with Police Units in Comparable Communities

External Comparables

The parties are in agreement that the following communities are comparable for purposes of statutory comparisons: Fond du Lac, Green Bay, Manitowoc, Menasha, Neenah, Oshkosh, and Sheboygan. The parties refer to these cities as "external comparables," as opposed to the wages and benefits of other Appleton bargaining units, called "internal comparables" by the parties.

The Employer presented data concerning wages, other monetary compensation, and holidays both for police officers and for what the Employer called "advanced" police officers. The latter are officers with the occupational title of "Senior Police Officer" or "Master Police Officer" listed in the Agreement between the Employer and the Association and which they have obtained by participation in the Officer Enhancement Program. In the Green Bay contract they are called Advanced Patrol. The Union objects to comparisons with regard to this classification because it is not clear whether the duties of advanced police officers are the same in different communities. In addition, the Union stresses, participation in the Officer Enhancement Program in Appleton is not mandatory, so that an officer may never reach a classification higher than police officer. "In the past," the Union asserts, "the City has presented their position in a very simple and uncomplicated format" and "simply compared the highest step on the wage scale, for a police officer, to the highest step on the wage scale for police officers in other external bargaining units. This would be Step F (baccalaureate degree) of the wage scale" Injecting the advanced police officer classification into the comparison, the Union urges, would be confusing and misleading, and, therefore, the only classification that should be used in making comparisons is Step F of the Police Officer classification and its equivalent in the other jurisdictions.

I agree with the Union's position. In addition to the Union's arguments, I would add that only two of the seven comparable communities have an advanced officer classification: Green Bay and Oshkosh. The other five do not. This consideration plus the fact that the record does not reveal whether the duties of advanced officer in the three cities are the same or what the eligibility requirements for becoming an advanced officer in the other communities are, makes it difficult to use advanced officer as a basis for comparison. I shall limit

my comparisons to the top step of Police Officer (Baccalaureate Degree) at Appleton with the equivalent position in the other seven jurisdictions. Both sides are in agreement that historically this is the position which the parties have used for their comparisons.

The following table shows the annual base pay for Police Officer (or equivalent classification), top step, in Appleton and the other communities for 1991 and 1992. The figures for 1991 were obtained from the parties' exhibits or the contracts in these jurisdictions. For four of the cities (Manitowoc, Menasha, Neenah, and Oshkosh), the 1992 figures are taken from the 1991-1992 contracts for these communities. For Sheboygan, the 1992 salary is taken from the 1992-1994 contract. The Green Bay salary is from the tentative agreement reached by the parties in current negotiations. At Fond du Lac the parties were awaiting the decision of an arbitrator, and the certified final offers of the City and the Union are given. In parentheses after each salary figure, the ranking of that community is shown. Below each figure for 1992 is the percentage increase that figure represents over the previous salary in effect for that city.

<u>City</u>	<u>Base Pay, 1991</u>	<u>Base Pay, 1992</u>
Fond du Lac	29,148 (6)	(City Offer) 31,057 (6) 4% +28.58 bi-weekly = 6.55%
		(Union Offer) 30,473 (6) 3% 1/1, 3% 7/1 4.5% average
Green Bay	33,132 (1)	34,457 (1) 4%
Manitowoc	27,708 (8)	28,816 (8) 4%
Menasha	30,588 (5)	31,848 (5) 4.12%
Neenah	30,708 (4)	31,950 (4) 3% 1/1, 2% 7/1 4% average
Oshkosh	31,524 (3)	32,803 (3) 3% 1/1, 2% 7/1 4% average
Sheboygan	28,681 (7)	29,837 (7) 4%

Appleton	31,879 (2)	(City Offer)	33,000 (2)
			3% 1/1, 1% 7/1 3.5% average
		(Union Offer)	33,154 (2)
			4%

In the foregoing table, for 1992, where a salary increase was given in two installments, I gave the actual earnings for the year, rather than the salary in effect at the end of the year. In the City's exhibits it used the salary in effect at the end of the year. In its brief, the Union corrected the Company's figures with respect to Appleton, but it did not do so with regard to Fond du Lac, Neenah, and Oshkosh. The following table shows the difference between the actual earnings by police officers in these cities in 1992 and the salary in effect for the second half of the year in these cities:

<u>City</u>	<u>Actual Earnings</u>	<u>Ending Salary Rate</u>
Fond du Lac - City Offer	31,057	31,057
- Union Offer	30,473	30,923
Neenah	31,950	32,268
Oshkosh	32,803	33,127
Appleton - City Offer	33,000 ²	33,154 ³

In arguing that its final offer is preferable to the Employer's, the Association asserts that Appleton, which has continuously ranked second in base pay, will drop to third place. That conclusion followed, however, from using actual earnings figures only for Appleton and not Oshkosh. The Association used the salary in effect the second half of the year for Oshkosh. If parallel figures are used for both cities, then Appleton remains number two in the group under both the City and the Association final offers.

The Association correctly points out, however, that the dollar spread between Appleton and Green Bay becomes substantially greater for 1992 as compared with 1991 under the City offer than the Association offer. The percentage spread is

²According to the Union calculation, this number should be 32,995. However, that fails to take into account the compounding as the result of a two-stage increase.

³The City and the Association exhibits both list this amount as 33,164, I believe erroneously.

also greater.

The Employer argues that "the actual wage settlement pattern for the comparables, excluding insurance quid-pro-quos, is 4% per year for 1991, 1992 and 1993." The Employer presented testimony that at Fond du Lac, where the parties' final offers are currently pending in interest arbitration, the City is proposing to change from a basic medical plan to a comprehensive major medical plan, with increased individual and family deductibles and a co-insurance provision. In return for this, according to the Employer, the city has offered increased pay, spread over the years 1992, 1993, and 1994. Neenah and Oshkosh, both of which have 1991-1992 contracts, agreed to higher pay settlements in each year, according to the Employer, because of employee concessions with respect to insurance coverage.

An Association witness testified that he spoke to a representative at Neenah and was informed that no insurance benefits were given up for the raise obtained there. The Neenah contract, however, which was introduced into evidence, shows on its face that the prior medical insurance policy was modified to add deductible and co-payment provisions. I therefore credit the Employer's testimony regarding Neenah.

With regard to Oshkosh, the Association witness testified that he was unable to reach anybody to check the accuracy of the Employer's testimony. However, here too perusal of the collective bargaining agreement substantiates the Employer testimony on the insurance issue. In 1991, for the first time, employees were required to contribute toward the cost of the premium for both single and family coverage. For 1992 the amount of the contribution was increased. So far as Fond du Lac is concerned, the Association witness testified that he could not reach anybody to check the truth of the Employer's testimony. However, the relatively large amount of Fond du Lac's final offer--6.65% for 1992 alone--lends probability to the testimony.

If the sole terms of employment in issue were limited to the wage provisions, the Association offer at 4% would be more in line with the pay pattern at the comparable communities than the 3% - 1% split offer of the City, an effective increase of only 3.5%. This is true even with the inclusion of the agreed upon call pay change in 1992, estimated by the Employer as worth .15%.⁴ The table above shows that not one of the other seven

⁴The Association argues in its brief that at no time during negotiations did the City contend that the call time provision would have an economic impact on the total economic package or attach a dollar or percentage value to the change. Mr. David Bill expressly testified at the arbitration hearing that the Employer felt that its offer for 1992 was 4.15 percent and made specific

comparable jurisdictions settled for less than 4% for the year 1992. Where the settlement, however, was more than 4%, the Employer's testimony is probably correct that this is attributable to a return for concessions by the bargaining unit with respect to insurance benefits.

For 1993 there have been only two settlements, Green Bay and Sheboygan. Both settled on the basis of a 4% pay increase. The Association's 4% final offer on wages is more consistent with the developing pattern for 1993 than the Employer's. Certainly when both years are taken together, one must conclude that factor (d) 1--comparison with employees performing similar services in public employment in comparable communities--so far as it pertains to wages or salaries, favors the Association's position.⁵

Factor (d), however, speaks not of a comparison of wages, but of a comparison of "wages, hours and conditions of employment." The remainder of the parties' final offers must also be taken into consideration in the comparison. Except for the stipulated change in the call time provision, the Employer's final offer provides no additional compensation or other benefit. The Association's final offer, however, would grant employees an additional holiday each in 1992 and 1993 and increase the shift differential from 10 cents per hour to 30 cents per hour beginning in 1992. The cost of a holiday is calculated as .75% per year and of a 20 cent increase in shift differential, as .4%. The total cost increase of the Association offer if adopted, therefore, would be 5.30%, (4% wages + .75% holiday + .4% shift differential + .15% call time) for 1992 and 4.75% for 1993.

5.30% substantially exceeds the 4% pattern for 1992 among the comparable communities where no concessions were made by employees with regard to insurance or other benefits. Even in Neenah and Oshkosh, where insurance concessions were made to take effect during the term of the agreement, the average increase for 1992 was 4%. Comparing the final offers of the Employer and the Association with the comparable communities, I find that the Employer's offer more closely comports with the comparison group than the Association's for the year 1992.

reference to Employer Exhibit 6, where the .15 cost is listed. If the Association wished to dispute this, it should have done so at the hearing. It is too late to raise the issue for the first time in its post-hearing brief.

⁵No evidence was adduced concerning wages paid to employees performing similar services in private employment in comparable communities. That factor will therefore not be given any weight in this case.

With regard to 1993, as previously noted, only Green Bay and Sheboygan have settled, and both on the basis of a 4% increase. Fond du Lac is in arbitration, with the city's final offer of a 3½% average increase, and the association's of a 4½% average increase, before the arbitrator for 1993. Fond du Lac's situation, however, is different from Appleton's because of the city's effort to obtain concessions with regard to insurance benefits. The emerging pattern, if it may be called that, where no special situation exists appears to be 4%.

The Employer's offer for 1993 of a 3.5% average increase is below the increases for which Green Bay and Sheboygan settled, although, because the total increase for 1993 in the wage rate (as opposed to the increase in dollars earned) will be 4%, Appleton employees will end 1993 at a rate 4% above what they were earning at the end of 1992 and 8% above their rate at the end of 1991. The total dollar increase in base pay earnings for 1992 and 1993 under the Employer's offer will be 7.15%, .85% below the increase in earnings in the other communities where no special situation exists.

The Association's final offer comes to a 4.75% increase for 1993. It is .75% above the increase for which Green Bay and Sheboygan settled for 1993. However, for the two years of the Agreement the cost increase of the Association's offer would be 10.05%. This is substantially above what the other communities settled for and much more above the pattern than the Employer's offer is below the pattern. I find that factor (d) 1 of the statutory criteria favors the Employer's final offer when the offers are analyzed in terms of their cost as compared with the cost of settlements in comparable jurisdictions.

The offers can also be analyzed, however, in terms of the resulting wages and benefits at Appleton under each party's offer, if accepted, in comparison with the wages and benefits in the comparable jurisdictions. The Association urges that its holiday pay and shift differential proposals are catch-up proposals to "place the Association in a compatible position with both internal and external comparables." The Employer, on the other hand, contends that the "Association's proposals on holidays and shift differential equate to wage increases. . . ."

Police officers at Appleton have nine contractual holidays. This is the least number of holidays among the comparable jurisdictions, as the following table will show:

<u>City</u>	<u>Number of Holidays-Includes Floating</u>
Fond du Lac	10
Green Bay	13

Manitowoc	11
Menasha	10
Neenah	11
Oshkosh	12
Sheboygan	10
Appleton	9

The following pay provisions appear in Article X of the Appleton Agreement regarding the nine listed holidays:

When any of the above holidays fall on a scheduled work day for non-shift employees, such employee shall be given the day off without loss of pay. If such employees are required to work on a holiday, they shall receive their regular pay plus pay at their regular rate for all hours worked on the holiday.

In lieu of any further compensation for the above holidays, shift employees shall receive 120 hours pay and non-shift employees shall receive 72 hours pay per year at their regular straight time rate. Such payment shall be made no later than the last pay period in November and shall apply only to employees on the payroll as of December 1st. Employees who retire or terminate prior to December 1 shall receive a pro-rata payment based on the number of holidays that fall prior to their last day of work. Employees who have worked in both a shift and non-shift capacity and new employees who have worked for less than one year as of December 1, shall receive a pro-rata payment.

It is clear from Article X that for shift employees holidays are strictly a monetary benefit. They receive 120 hours' pay for the nine holidays no later than the last pay period in November. The two additional holidays would give them no additional days off, only additional hours of pay. For shift employees holidays constitute a cash bonus rather than paid days off from work. The Employer is correct therefore that holidays should be viewed as part of the cash compensation received by police officers and are in the nature of wages.

The Employer contends that even for nonshift employees the two additional holidays requested would not give employees any more time off work but would merely increase their cash compensation. The reason for this, according to the Employer, is that the contract guarantees nonshift employees 122 days work. This number would remain the same, the Company asserts, except

that the nonshift employees would get paid for two additional days that they are off work.

The pertinent contract provision is Article III - Hours, which provides as follows:

* * *

B. Work Schedule: The work schedule shall consist of five (5) days on, two (2) days off, five (5) days on, three days off, except that new employees shall work a five (5) day week, Monday through Friday, during their formal training period. All employees not on this schedule shall be scheduled by the Police Department with one hundred twenty-two (122) days off annually. * * *

Officers who are currently assigned duties requiring them to work a schedule other than 5-2, 5-3 may, with permission of their Bureau Commander, forfeit up to five of their contractual off days. Officers requesting this provision shall notify their Bureau Commander not earlier than October 1 nor later than October 15 of the number of days which they are requesting for the following year. Employees shall be paid for eight hours at their regular straight time for each day forfeited. Payment for days forfeited during a year will be made with the holiday payment in November of that year.

Director of Administrative Services David F. Bill testified for the Employer as follows regarding holiday pay (Tr. 69-70):

It's [The holiday benefit is] strictly a pay issue. Whether you're a shift employee or a nonshift employee it's strictly a pay issue. . . . It gives them [nonshift employees] more money. . . . Since Good Friday is listed as a holiday [in the Association proposal for 1992] they would get that day off. . . . But under the contract they get a total of 122 days off including holidays, so if they take that day off there's a different day they don't get. It does not increase the total days off. . . . Because the contract says that in lieu of any other compensation, they receive currently 72 hours in a lump sum at the end of the year, and under the Associations's proposal it would be 80 hours in '92 and 88 in '93.

No witness disputed Mr. Bill's testimony concerning holidays. His testimony is substantiated by the contract language quoted above. I find that even for nonshift employees, since the

Association's holiday proposal would not increase the number of days off they receive but would increase their annual compensation, it is more in the nature of a wage benefit than a non-monetary fringe benefit.

I turn now to consider whether shift differential is properly viewed as a separate benefit or as part of employees' overall pay compensation. All of the police officers on a shift schedule at Appleton rotate among the three shifts. Consequently every officer will be on a shift entitled to differential pay one third of the year. In cities such as Green Bay, where employees are assigned a permanent shift, those on less desirable shifts have an equitable argument that they should receive an additional premium as part of their wage to reflect their undesirable working hours. Where all officers take turns on the less desirable shifts, however, there is less equity to such an argument because everybody will eventually work all shifts for the same number of weeks during the year.

In the latter situation--which is the case at Appleton--there is less merit to an argument that even if the overall compensation of employees at Appleton ranks high among the comparable communities, as a matter of equity employees should receive a shift differential comparable to that paid in the other communities, although the overall compensation in those communities is substantially less than in Appleton. I think that it is proper at Appleton, where, because of rotation, every shift officer will receive substantially the same amount of shift differential pay, to view shift differential as part of a police officer's overall pay compensation rather than as a separate benefit.

In the following table I shall compare the overall compensation of police officers at Appleton with that of officers in comparable communities. Overall pay at Appleton consists of base pay, shift differential, physical fitness pay, and holiday pay. Article XXXI of the Agreement, entitled Physical Fitness Program, establishes a program whereby employees may earn a monthly premium of 2% of base pay for scoring "excellent" when tested and 1% when scoring "good." I think that there is merit to the Union's objection that the physical fitness figure used in the Employer exhibits is unrealistic when applied to the bargaining unit as a whole because it assumes an excellent rating. I shall halve that figure for purposes of my table to \$319 where \$638 is used, to \$332 in place of \$663, and \$345 for \$690. For the other jurisdictions I shall include education pay and longevity pay. The former is included in Appleton in the baccalaureate degree category and the latter, although not paid in Appleton, is in the nature of wages. In each of the following tables the ranking of the city is shown in parentheses below the name of the city.

Total⁶ Compensation - 1991

<u>City</u>	<u>Base Pay</u>	<u>Phys. Fit.</u>	<u>Educ.</u>	<u>Shift Differen.</u>	<u>Longev.</u>	<u>Hol. Pay</u>	<u>Total</u>
Fond du Lac (5)	29,148		1,440	167	900 ⁷	1,394	33,049
Green Bay (1)	33,132			465	360	1,992	35,949
Manitowoc (8)	27,708		516	280	480	373	29,357
Menasha	30,588		1,200 ⁸	297		1,651	33,736

⁶The word "Total" is actually a misnomer since not all opportunities for earning compensation at Appleton are covered in the table. For example, Appleton officers can earn additional compensation through the Position Enhancement Program and by scoring higher in the Physical Fitness Program. Nonshift employees can collect additional pay by forfeiting up to five of their contractual off days. Most probably opportunities for additional compensation exist in the other cities also. The categories of wages and benefits and the amounts listed represent what I believe a police officer in the various jurisdictions at the highest step for his classification with a baccalaureate degree should be able to earn with average effort.

⁷The \$900 amount is for someone with 15 years of service. Longevity is \$600 upon completion of ten years of service and \$300 for five years' service. Source: Article 6, page 3, 1990-91 Fond du Lac contract.

⁸Employer Exhibit 6, which sets forth the maximum police officer pay in each of the comparable communities, uses an \$1,800 figure for Menasha. \$1,800 is paid only to an officer with a doctorate (\$150 monthly). An officer with a bachelor's degree receives increased compensation of \$100 monthly. Since the wage figure at Appleton is for an officer with a baccalaureate degree, I also used the stipend applicable to an officer with a bachelor's degree at Menasha. Source of Menasha entry: Article IV, Section I,

(4)	Neenah	30,708	900	253	300 ⁹	1,771	33,932
(3)	Oshkosh	31,524	900				32,424
(6)	Sheboygan	28,681		113	1,291	1,882	31,967
(7)	Appleton	31,879	319	67		1,906	34,171
(2)							

Total Compensation - 1992

<u>City</u>	<u>Base Pay</u>	<u>Phys. Fit.</u>	<u>Educ.</u>	<u>Shift Differen.</u>	<u>Longev.</u>	<u>Hol. Pay</u>	<u>Total</u>
Fond du Lac							
City	31,057		1,440	167	900	1,485	35,049
Union	30,473		1,440	406	1,600	1,478	35,397
(?) ¹⁰							
Green Bay	34,457			483	360	2,071	37,371
(1)							
Manitowoc	28,816		516	280	480	387	30,479
(7)							
Menasha	31,848		1,200 ¹¹	297		1,718	
35,063							
(4)							
Neenah	31,950		900	253	300 ¹²	1,861	35,264
(3)							
Oshkosh	32,803		900				33,703
(5)							
Sheboygan	29,837			156	1,343	1,958	33,294
(6)							

page 8 of 1991-92 Menasha contract.

⁹The \$300 figure is for someone with 20 years of service. An officer with 15 years' service receives longevity of \$240 annually, while one with ten years on the force receives \$144. Source: Article IV, page 5, 1991-1992 Neenah agreement.

¹⁰I have not ranked Fond du Lac on total compensation because there is no explanation in the record as to who would be entitled to \$1,600 in longevity pay under the Union proposal (an increase from a top rate of \$900 the previous year) or the basis on which shift differential would be increased from \$167 in 1991 to \$406 in 1992. No decision had yet been issued in the case as of the date of the arbitration hearing.

¹¹See footnote 8 above.

¹²See footnote 9.

Appleton						
City	33,000	332		67	1,982	35,381
Assn.	33,154	332		67	2,230	35,783
(2)						

Total Compensation - 1993

<u>City</u>	<u>Base</u> <u>Pay</u>	<u>Phys.</u> <u>Fit.</u>	<u>Educ.</u>	<u>Shift</u> <u>Differen.</u>	<u>Longev.</u>	<u>Hol.</u> <u>Pay</u>	<u>Total</u>
Fond du Lac							
City	32,628		1,440	167	900	1,560	36,695
Union	32,806		1,440	406	1,600	1,569	37,821
(?) ¹³							
Green Bay	35,835			502	360	2,154	38,851
(1)							
Manitowoc	Not Settled						
Menasha	Not Settled						
Neenah	Not Settled						
Oshkosh	Not Settled						
Sheboygan	31,033			156	1,396	2,036	34,621
Appleton							
City	34,330	345		67		2,063	36,805
Assn.	34,489	345		201		2,577	37,612
(2)							

Analysis of the three tables above gives no cause for favoring the Association's final offer over the Employer's. Appleton was number two in total compensation behind Green Bay in 1991 and remains in second place in 1992 and 1993 under the Employer's offer. It is true that if the arbitrator adopts the union's offer in Fond du Lac, that city will move ahead of Appleton in 1992 and 1993. Equally, however, if the arbitrator accepts the city's offer, Appleton will remain number two. Moreover, even under the union's offer, Fond du Lac jumps ahead of Appleton in earnings only for someone with at least 15 years of service. Further Fond du Lac is a special situation because of the medical insurance concessions being sought by the city. In any event, since a priori there is no way of knowing at this time whether the union's or the city's offer will be accepted at Fond du Lac, it is best to ignore that city for purposes of this analysis.

Commending the City offer is that, on the whole, it

¹³See footnote 10.

maintains greater stability in relation to the wage structure of the other comparable cities both above and below it in earnings. For example, in 1991 Green Bay officers earned \$1,778 or 5.2% more than Appleton officers. In 1992, under the City's offer, the difference in total compensation between the two forces would be \$1,990 or 5.6%. In 1993, the difference remains at 5.6% under the City offer, the dollar difference being \$2,046.

The Association's offer, on the other hand, both closes the gap between Appleton and Green Bay and widens it with those below Appleton in total compensation, in each case to a substantial degree. In 1992, the difference in wages between Green Bay and Appleton would fall from 5.2% to 4.4%. In 1993, under the Association's offer Appleton police officers would move to within 3.3% of total compensation earned by the Green Bay force.

In 1991, Appleton officers earned \$239 more annually than Neenah police officers, a difference of .7%. Neenah is ranked number three in total compensation immediately behind Appleton. In 1992, the difference in earnings between officers in the two cities would diminish to \$117 or .3% under the City's offer. Under the Association's offer the difference in earnings would increase to \$519, a 1.5% difference.

For 1993, the only comparison available is with Sheboygan. In 1991, Appleton police officers earned \$2,204 more in total compensation than their counterparts in Sheboygan, a gap of 6.9%. In 1992, under the City's offer, the difference in earnings between them would decrease to \$2,087, a difference of 6.3%. In 1993 the City's offer would afford Appleton officers \$2,184, or 6.3%, more in total compensation than the Sheboygan settlement would bring to that city's police officers. Thus the relationship between the City and Sheboygan in terms of compensation structure remains relatively stable over the two year term of the Agreement under the City offer.

Under the Association's offer the spread between Appleton and Sheboygan would widen to \$2,489 in 1992, or 7.5%. In 1993, the Association's offer would result in total compensation of \$2,991 more than earned by Sheboygan officers, a difference of 8.6%.

It is clear therefore that the Association proposal not only exceeds the prevailing pattern of settlements by a substantial amount when 1992 is viewed separately or when 1992 and 1993 are considered together, but it would also disproportionately increase total compensation in Appleton as compared with the one city above it and those below it in earnings. While the split increase of the City offer served to compress somewhat the spread in earnings between Appleton and those below it in the earnings hierarchy of the comparable group

and increase the gap with Green Bay, that was small compared with the opposite effect of the Association's proposal in excess of the prevailing pattern. No reasonable argument has been offered why I should adopt a proposal that bestows substantially greater compensation on the Appleton bargaining unit than its counterparts in other comparable jurisdictions have obtained where no concessions are being made by the Appleton police officers. I find that whether the respective offers are evaluated in terms of the prevailing cost pattern of the settlements in the comparable jurisdictions or in terms of the results of the respective offers on the overall compensation of the bargaining unit, factor (d) 1 favors the City's final offer so far as the external comparables are concerned.

Internal Comparables

The Association contends that its offer is more consistent with the situation in other bargaining units than the Employer's proposal with respect to the three economic items in dispute. Thus it argues that its 4% wage offer is more in line with the settlements in the Employer's other bargaining units than the Employer's offer. As proof of this it points to its Exhibit 4, which shows that 15 of 17 bargaining units in the City settled for a 4% increase for 1992, and the other two units have not settled. By contrast the Employer's final offer is for a wage increase averaging 3.5% for 1992.

With regard to holidays, the Association notes that 14 City bargaining units have 11 or 12 holidays. With regard to shift differential, most other City labor contracts which provide a shift differential allow 30 cents an hour.

Company Exhibit 6 shows that at least going back to 1987, the Employer has treated all bargaining units similarly with respect to the percentage cost of wages and benefits negotiated. Differences of treatment have reflected different circumstances in particular units, but the overall cost of the settlements has, generally, been the same for each unit. For example, there was unchallenged testimony that the Association at one time had a floating holiday but gave it up for shift differential (Tr. 27). Based on the entire record, it is a fair assumption that at the end of 1991 the various contracts were in fair alignment to each other considered in terms of the factors ordinarily taken into consideration in collective bargaining.

It follows therefore, I think, that the proper focus of comparison for 1992 and 1993 is not on the number of holidays, amount of shift differential, etc. in the contracts of the various units, but the settlement pattern among the units in

terms of costs.¹⁴ That is especially true in this case where, according to the evidence, on several occasions a particular unit took less of one kind of benefit obtained by the other units in order to get more of another kind of benefit it preferred. It may well be that the lower number of holidays in the police contract reflects the higher dollar value of each holiday, as the City contends, or that it is made up for by higher amounts of other direct compensation. Where there is a history of a conscious effort to treat each unit substantially equally in terms of costs, the likelihood that less of one benefit is made up for by more of another is not far-fetched.

If the Associations's offer were limited to a 4% wage proposal, I would agree with it that internal comparisons favored its offer over the Company's 3.5% offer. However, the Association has added other parts to its proposal which brings it significantly out of line with the settlements in the other Appleton units. For this reason I find that the internal comparisons favor the Employer's offer over the Association's.

The Interest and Welfare of the Public
and the Financial Ability of the City to Pay

The Employer has not claimed inability to pay the costs of the Associations's proposal. Inability to pay is therefore not a factor in this case. The City correctly asserts that the fact that it "could pay the cost of the Association's proposal certainly does not translate directly into a conclusion that [it] should." (emphasis in Employer brief). I think that there is merit to the City's further contention that to grant the Association in arbitration an increase substantially greater than the pattern established with numerous other City units through voluntary settlements would likely reduce the potential for reaching voluntary agreements with other City units in the future. Although the Employer's own offer deviates from the pattern established in the other units, it does so much less than the Association's proposal does. This would tip the balance toward the City's offer.

The Average Consumer Prices for Goods and Services

The increase in the Consumer Price Index from January

¹⁴I do not rule out the possibility that special circumstances or equitable considerations may create a compelling need for a deviation from the general pattern of settlement in a particular case. The burden, however, is on the party requesting the departure from the norm to establish adequate grounds for doing so. No such grounds were shown in this case--merely that a difference in the number of holidays and the amount of shift differential exists in the police unit as compared with other units.

1, 1992, to January 1, 1993, in the north central region was 3.0%, and for all United States cities, 3.3%. From January 1, 1991, to January 1, 1992, the escalation in the north central region was 2.8% and, 2.6% for all cities. The latter figure would have been pertinent to the parties in their negotiations for a new contract at the expiration of the previous contract, which expired on December 31, 1991. Thus both in terms of interest arbitration viewed as a substitute for the parties' negotiations, assuming that they had been successful; and in terms of the actual economic conditions which prevailed during the first year of the contract, which has already gone by, the amount of increase which the parties would have to negotiate to meet the rising cost of living would be approximately 3%. It is too early to tell what the increase will total for 1993. The cost of living factor clearly favors the Employer's proposal.

Overall Compensation Presently Received by the Employees

I have discussed total compensation above with respect to factor (f). Neither side has contended that a consideration of vacation benefits, excused time, insurance and pensions, medical and hospitalization benefits, and the continuity and stability of employment would be determinative of whether the Association's or the City's final offer should be adopted in this case.

Changes in Any of the foregoing Circumstances during Pendency of Arbitration Proceedings

No changes of circumstances of which I am aware have occurred during the pendency of this arbitration which could affect its result. Certain changes or corrections of information appearing in exhibits have been made in preparing this opinion, but they have been explained in the course of the opinion.

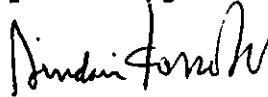
The foregoing discussion plainly establishes, I believe, that the statutory criteria favor the Employer's final offer over the Association's. I shall therefore select the Employer's final offer.

A W A R D

1. Pursuant to Section 111.77 (4) (b) of the Municipal Employment Relations Act, the final offer of the City of Appleton is selected.

2. The said offer shall be incorporated into the new Agreement between the parties without modification, including the stipulated changes agreed to by the parties.

Respectfully submitted,



Sinclair Kossoff
Arbitrator

Chicago, Illinois
March 29, 1993