

In the Matter of the Arbitration)

Between

CITY OF SUN PRAIRIE

and

SUN PRAIRIE PROFESSIONAL
POLICE ASSOCIATION

) Case 26
) No. 48978
) MIA-1805
) Decision No. 27686-A
)
)
)
)

RECEIVED
DEC 20 1993

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

RECEIVED
DEC 21 1993

APPEARANCES

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

For the Association

- Mr. Richard T. Little, WPPA/LEER Bargaining Consultant
- Ms. Deborah L. Brandt, WPPA/LEER
- Mr. Peter Vickerman, Member
- Mr. Scott T. Gregory, Bargaining Steward
- Mr. Robert Berndt, Steward

For the Employer

- Mr. Thomas R. Crone of Melli, Walker, Pease & Ruhly,
S.C., Attorney
- Mr. Patrick A. Cannon, Finance Officer
- Ms. Jeanette M. Fumelle, Chair, Personnel Commission
- Ms. Jo Ann Orfan, Mayor
- Mr. David Hanneman, Council President

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

Nature of the Case and the Issue

On June 21, 1993, the Wisconsin Employment Relations Commission ordered that compulsory final offer arbitration be initiated to resolve an impasse in collective bargaining between the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division ("the Association") and the City of Sun Prairie ("the Employer") on matters affecting wages, hours, and conditions of employment of non-supervisory law enforcement personnel in the employ of the City. The Commission furnished the parties a panel from which to select an arbitrator, and they selected the undersigned arbitrator from the panel. On July 7, 1993, the Commission appointed the undersigned Sinclair Kossoff "as the impartial arbitrator to issue a final and binding award in the matter pursuant to Sec. 111.77 (4) (b) of the Municipal Employment Relations Act."

Hearing was held in Sun Prairie, Wisconsin, on August 26, 1992. The parties filed post-hearing briefs on October 11, 1993.

Final Offers and Issue in Dispute

The only issue in dispute relates to holiday pay. The prior Agreement, which expired by its terms on December 31, 1992 (hereinafter "the prior Agreement"), provided as follows with regard to holiday pay:

ARTICLE XXVI - HOLIDAY PAY

Section 26.1 - Rate of Pay.

Employees who work on the holidays set forth in Section 26.2 shall receive, in addition to their regular pay, an additional hour of pay for every hour worked, with the maximum rate of pay being double (2) time. All hours worked beyond eight (8) hours shall be compensated at double time and one-half.

Section 26.2 - Holidays.

New Year's Day	Labor Day
February 12-Lincoln's Birthday	Thanksgiving Day
President's Day	Christmas Eve ($\frac{1}{2}$ day)
Easter	Christmas Day
Memorial Day (observed)	New Year's Day ($\frac{1}{2}$ day)
July 4th	

Section 26.3 - Floating Holiday.

In addition to the holiday listed in Section 26.2, each employee shall be entitled to one (1) paid floating holiday per calendar year. The holiday shall be taken in accordance with the provisions of Article 9, Section 9.02. The holiday shall be eight (8) hours of straight time.

The final offer of the Association proposed to amend Article XXVI so that it would state as follows:

Section 26.1 - Rate of Pay

Effective January 1, 1993, each employee shall have a holiday bank of ten (10) holidays, plus one (1) floating holiday for a total of eighty-eight (88) hours. The employee can use these hours upon his/her request and approval of the Chief or his/her designee. All remaining hours at the end of the calendar year not used shall be cashed out to the employee.

Employees who work on the holidays set forth in Section 26.2 shall receive time and one-half for all hours worked on a holiday, in addition to their regular holiday time off as defined above.

Section 26.2 - Holidays

New Year's Day	Labor Day
February 12-Lincoln's Birthday	Thanksgiving Day
President's Day	Christmas Eve (½ day)
Easter	Christmas Day
Memorial Day (observed)	New year's Eve (½ day)
July 4th	One (1) floating holiday

The Employer's final offer proposed that Article XXVI remain unchanged from the prior Agreement.

In all other respects the final offers of the parties were identical and provided as follows:

ARTICLE XIV - COMPENSATION SCHEDULE

Effective 1/1/93, 2.0% across the board increase
Effective 7/1/93, 2.0% across the board increase

ARTICLE XVI - NIGHT DIFFERENTIAL

Increase of night differential from 30 cents per hour to 40 cents per hour for the hours worked from 11:00 p.m. to 7:00 a.m. (Hours from 6:00 p.m. to 11:00 p.m. to continue to be paid a 30 cents per hour night differential)

ARTICLE XIX - DURATION/BENEFITS EXTENDED

Section 19.1 - Duration

A one year agreement effective from January 1, 1993, through December 31, 1993.

Section 19.2 - Reopener

Notice of intent to reopen to be given on or before October 1, 1993

Prior to impasse the parties reached tentative agreement on certain other provisions, and each of the offers proposed to include these provisions in the Agreement.

Analysis and Conclusions

Statutory Criteria

Section 111.77 (6) of the Municipal Employment Relations 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 analyze the parties' offers in terms of the criteria listed in the statute.

The Lawful Authority of the Employer

The parties are in agreement that neither final offer raises an issue regarding the lawful authority of the Employer.

Stipulations of the Parties

The parties entered into the following stipulations at the hearing:

1. In each of its last two recruitments for patrol officers the Employer has averaged over 200 applicants per opening.

2. During the last two years, no officer has left for employment with another police department as a patrol officer. Three years ago an officer left to accept employment with the City of Madison police department.

3. For the years 1990, 1991, and 1992, the bargaining unit employees received the following increases (exclusive of step increases):

1990	1/1/90	4.5%
1991	1/1/91	5.0%
	12/31/91	1.0%
1992	1/1/92	3.0%
	7/1/92	2.0%

4. Under the current holiday pay language, officers on a 6-3 schedule work approximately five of the ten listed holidays.

Further, it was not contested that the contractual language on holiday pay has remained the same since 1980, except that in the 1989 Agreement a floating holiday was added. As previously noted, the final offers of both parties are in agreement that tentative agreements reached in the negotiations prior to impasse are to be included in the new Agreement. Also to be included will be the proposed additions and changes which were identical in both sides' final offers.

Comparison with Police Units in Comparable Communities

The Association's Comparables

Before one can make a comparison, one must determine

which jurisdictions are comparable to Sun Prairie. The Association contends that the comparable jurisdictions should be limited to Dane County and has provided demographic data concerning all municipal law enforcement departments within Dane County in cities or towns having a population over 2,500--which is the population cut-off point for access to interest arbitration in Wisconsin. These jurisdictions, in the order of population, are as follows:

<u>Jurisdictions</u>	<u>Population</u>
1. Madison	194,591
2. Fitchburg	16,254
3. Sun Prairie	16,070
4. Middleton	14,160
5. Stoughton	14,160
6. Monona	9,323
7. Madison (Town)	6,459
8. Waunakee	6,363
9. Verona	5,595
10. McFarland	5,506
11. DeForest	5,363
12. Oregon	4,919
13. Mt. Horeb	4,339

Although the Association has provided the population figures for the cities and towns it is using for its comparison, it is not using population as a criterion for selection as a comparable community. Rather its criterion is physical location in Dane County.

I am not persuaded that this is a valid approach in selecting comparable communities. As a general rule, where communities are widely disparate in their populations, the level of governmental income (from property and sales taxes, fees, and revenue sharing), the amount of expenses, the services to be rendered, the number of employment opportunities and the competition therefor, the quantity and kind of property to be protected, and the nature and number of crimes will be sufficiently dissimilar to render the communities not comparable.

The evidence in this case does not establish that the communities in Dane County are an exception to the general rule. I shall, with one exception, therefore exclude from the comparison group any community with a population which is not within a range of plus or minus 50% of the population of Sun Prairie. The 50% standard would exclude the following communities: City of Madison¹, Town of Madison², Waunakee, Verona, McFarland, De Forest, Oregon, and Mt. Horeb. However, for the reasons explained below, I shall make an exception for the Town of Madison.

All jurisdictions but the Town of Madison excluded as not comparable on the basis of population would also be considered noncomparable on the basis of size of police force and number of property offenses. The City of Madison, for example, in 1992 had a force of 317 full-time law enforcement personnel and experienced 10,862 property offenses. This compares with 27 full-time personnel and 727 property crimes in Sun Prairie. On the other hand, Sun Prairie's 27-person full-time force far exceeded the forces of the following remaining jurisdictions: Verona, 10; DeForest, 9; Waunakee, McFarland, and Oregon, 8; Mt. Horeb, 6. Of these six jurisdictions, the largest number of property offenses reported was 182 in Verona. The data concerning size of police force and number of crimes against property support the conclusion based on population comparisons that these six jurisdictions are not comparable to Sun Prairie.

The remaining jurisdiction arguably excludable on the basis of population, the Town of Madison, had 16 full-time law enforcement officers and experienced 664 crimes against property in 1992. Moreover, although its population is much smaller than Sun Prairie's, it had many more violent crimes than Sun Prairie. Its police officers therefore probably work harder and are exposed to more danger than officers in typical communities its size.³ These statistics are much closer to Sun Prairie's than those of the other excluded communities. I think that under all of the circumstances the fact that the Town of Madison is within Dane County tips the balance in favor of including it as a comparable jurisdiction, although it is a borderline case.

¹The population of the City of Madison is more than ten times the size of the city of Sun Prairie.

²The population of the Town of Madison is 60% less than that of the City of Sun Prairie. The difference in populations between the remaining cities excluded and Sun Prairie is even greater.

³Indeed it is probably more dangerous to be a police officer in the Town of Madison than in the City of Sun Prairie, which might account for the higher compensation received by Town of Madison officers.

From the Association's list, I shall therefore accept the following communities as comparable: Fitchburg, Middleton, Stoughton, Monona, and the Town of Madison.

The Employer's Comparables

The Employer dismisses the Association's list of comparables on the basis that it "represents not economic, political or geographic reality, but rather an arbitrary legislative threshold at which interest arbitration applies." The Employer's list of comparables includes the following communities:

<u>Municipality</u>	<u>Population</u>	<u>No. of Personnel</u>
1. Sun Prairie	16,070	27
2. Middleton	14,160	25
3. Fitchburg	16,254	20
4. Beaver Dam	14,590	27
5. Watertown	19,637	33
6. Oconomowoc	11,192	21

The Employer justifies its list on the basis that the municipalities are all "similarly sized communities and departments within a 35 miles radius of the City of Sun Prairie, which is located in the north east portion of Dane County."

Two of the Employer's comparable municipalities are the same as the Association's: Middleton and Fitchburg. Regarding the other three, the Association acknowledges that "these municipalities have population and department size statistics similar to that of Sun Prairie" but would reject them because "these departments clearly do not fall under the economic umbrella of the City of Madison."

The cities of Beaver Dam, Watertown, and Oconomowoc are in physical proximity to Sun Prairie. They would be considered within the labor market of Sun Prairie. This fact plus the similar numbers with regard to population and department size are sufficient reason to consider the three communities comparable to Sun Prairie. In addition, the statistical data introduced into evidence regarding crime and arrests in Wisconsin in 1992 show that the criminal activity in those jurisdictions as compared with Sun Prairie is reasonably similar so as not to require exclusion on that basis. Moreover, examination of a Wisconsin highway map indicates that none of the communities is located

more than approximately 45 to 50 miles from the City of Madison. This is close enough to be within the influence of that city. I conclude that Beaver Dam, Watertown, and Oconomowoc are properly included as comparable jurisdictions together with Fitchburg, Middleton, Stoughton, and Monona, and the Town of Madison.

Wage or Salary Comparisons

The following table shows monthly wage or salary comparisons of the top patrol officer classification at Sun Prairie and the comparable communities. Except for Middleton, all compensation figures are taken from the applicable contracts. Middleton's compensation figure comes from Association Exh. 25. No adjustment has been made for the greater number of hours in the work year in Beaver Dam, Oconomowoc, and Watertown, whose work years are respectively 2,068 hours, 2,084 hours, and 2,080 hours, as compared with 1,948 hours in Sun Prairie. The ranking of each community respectively for 1992 and 1993 is shown in the two sets of parentheses below the name of the jurisdiction:

<u>Municipality</u>	<u>1992 Monthly Compensation</u>	<u>1993 Monthly Compensation</u>	<u>% Increase</u>
Beaver Dam (9) (9)	2,377.29	2,448.61	3.00% ⁴
Fitchburg (6) (7)	2,465.58	2,564.20	4.00%
Madison (Town) (2) (2)	2,544.00	2,646.00	4.01%
Middleton (3) (3?)	2,497.63	Not Settled	
Monona (7) (5)	2,457.00	2,580.00	5.01%
Oconomowoc (1?) (1)	Not in record	2,821.37	
Stoughton (8) (8)	2,414.00	2,518.00	4.31%
Sun Prairie (4) (6)	2,475.12	2,575.11	4.04%
Watertown	2,469.14	2,580.95 ⁵	4.53%

⁴Beaver Dam officers received a split increase in 1992, on January 1, and July 1. The actual dollar monthly base payment during 1992 at the top rate for patrol officer averaged \$2,353.98. Calculated on the basis of that figure, the 1993 increase was 4.02%. The 1993 increase went into effect on January 1, and applies to the entire year.

⁵The monthly salary figure in Watertown was \$2,561.73 from January 1, 1993, through December 30, 1993. A .75% increase was granted effective December 31, 1993, to raise the monthly

(5) (4)

Holiday Benefit Comparisons

The following table shows the number of holidays allowed under the municipality's contract, whether they are paid holidays even if the officer does not work on the holiday, and the compensation received for working on the holiday. The information in the table is taken from the contracts for the municipalities.

<u>Municipality</u>	<u>No. of Holidays</u>	<u>No. of Paid Holidays</u>	<u>Pay for Working</u>
Beaver Dam	11 Named	All Paid	Straight Time
Fitchburg	8½ Named 3 Floating	All Paid	Time & a half
Madison (Town)	9 Named 1 Floating	All Paid	Time & a half
Middleton	8½ Named 2 Floating	All Paid	Straight Time
Monona	6 Named 4 Floating	All Paid	Time & a half
Oconomowoc	9 Named 1 Floating	All Paid	Time & a half
Stoughton	10 Named 1 Floating	All Paid	Time & a half
Sun Prairie (Employer)	10 Named 1 Floating	1 Paid	Double Time
Sun Prairie (Association)	10 Named 1 Floating	11 Paid	Time and a half
Watertown	10 Floating	All Paid	Straight Time

According to the parties' stipulation, patrol officers in Sun Prairie work on the average of five holidays, or one-half of the named holidays. Since they get paid double time, they will receive 80 hours' pay for these five holidays. However, only 40 of these hours represent compensation attributable to the holiday. The remaining remuneration is for hours worked as part of the employee's regular schedule. To the 40 hours should be

compensation to \$2,580.95.

added the 8 hours of holiday pay received for the floating holiday. Thus under the holiday provisions of the prior contract, which the Employer proposes to continue, the amount of compensation which may be considered holiday pay is 48 hours. Under the Association's offer, the amount of pay an officer would receive attributable to holiday pay would be 88 hours for the holidays + 20 hours representing the one-half time premium for the 40 hours worked pursuant to the employee's regular schedule, or a total of 108 hours. The following table shows holiday pay figured on the same basis for all of the comparable jurisdictions. In other words, the table was prepared on the assumption that officers would work one-half of the named holidays in their labor contract during their regular work schedules. In jurisdictions where a premium is not paid for holiday work, such work would not result in additional holiday pay for the employee.

<u>Municipality</u>	<u>Hours of Pay Attributable To Holidays - $\frac{1}{2}$ Named Hols. Worked</u>	<u>Dollar Value of Holiday Compensation⁶</u>
Beaver Dam	88	1,250.48
Fitchburg	109	1,722.20
Madison (Town)	98	1,597.40
Middleton	84	1,292.76
Monona	92	1,461.88
Oconomowoc	98	1,592.50

⁶The figures in this column were obtained by multiplying the hourly wage for top rated patrol officers in the jurisdiction by the number of hours in the preceding column. The hourly wage was obtained by multiplying the 1993 monthly compensation as shown in the table on page 9 by 12 and dividing the product by the number of hours in the regular work year in that jurisdiction. The number of hours in the work year and the top hourly wage for patrol officers in the different jurisdictions for 1993 are as follows: Beaver Dam, 2,068 hours, \$14.21/hour; Fitchburg, 1948 hours, \$15.80/hour; Town of Madison, 1948 hours, \$16.30/hour; Middleton (1992 compensation) 1948 hours, \$15.39/hour; Monona, 1948 hours, \$15.89/hour; Oconomowoc, 2,084 hours, \$16.25/hour; Stoughton, 2,080 hours, \$14.53 hour; Sun Prairie, 1948 hours, \$15.86/hour; Watertown, 2,080 hours, \$14.89/hour. It should be noted that on an hourly basis Sun Prairie ranks fourth in wages behind Town of Madison, Oconomowoc, and Monona as compared with sixth when ranked on a monthly or annual basis.

Stoughton	108	1,569.24
Sun Prairie (Employer)	48	761.28
Sun Prairie (Association)	108	1,712.88
Watertown	80	1,191.20

Not all holiday compensation received represents additional earnings to the employee on top of base pay. For example, typically a floating holiday is taken on a day on which the employee would otherwise normally have worked. The floating holiday enables the employee to receive pay for the day without working, but does not increase what he would have earned without the holiday. If the amount of money attributable to pay for floating holidays is subtracted from the foregoing figures, the remainder⁷ would be as follows:

Beaver Dam	No Floating Holidays	1,250.48
Fitchburg	3 Floating Holidays	1,343.00
Madison (Town)	1 Floating Holiday	1,499.60
Middleton	2 Floating Holidays	1,046.52
Monona	4 Floating Holidays	953.40
Oconomowoc	1 Floating Holiday	1,462.50
Stoughton	1 Floating Holiday	1,453.00
Sun Prairie (Employer)	1 Floating Holiday	634.40
Sun Prairie (Association)	1 Floating Holiday	1,586.00
Watertown	10 Floating Holidays	None

⁷This figure would be closer to the actual compensation above base pay earned by the top rated patrol officers in the various jurisdictions attributable to the holiday provision in their contracts. To the extent, however, that officers are given the day off when a holiday falls on a scheduled workday the additional pay earned during the year because of holidays will be less than appears in the table.

The wage comparison table shows that the Employer's offer will maintain the Sun Prairie police bargaining unit's position vis-à-vis the comparable municipalities in approximately the same position it was in 1992. For example, at the end of 1992, the monthly compensation of the top patrol officer in Sun Prairie was \$68.88 or 2.71% below that of the top patrol officer of the Town of Madison, which ranked No. 1 in salary among the jurisdictions for which compensation figures were available.⁸ Sun Prairie patrol officers earned \$22.51 or .9% more than the next highest paying jurisdiction, Middleton.

This spread is also maintained in 1993. In 1993, patrol officers in the top of the scale at Sun Prairie are paid \$70.89 or 2.68% less monthly than the top paid patrol officers in the Town of Madison. Thus, if anything, the monthly wage or salary of Sun Prairie patrol officers crept slightly closer in 1993 to that of the Town of Madison patrol officers. The next highest ranking jurisdiction in terms of compensation, Middleton, had not yet settled as of the date of the hearing.

The same is true of Sun Prairie's position with regard to municipalities ranking ninth and eighth, or lowest and next to lowest, in compensation among the comparable jurisdictions. At the end of 1992, Sun Prairie patrol officers were earning \$121.14 or 4.89% more monthly than Beaver Dam patrol officers, who were the lowest paid of the comparable jurisdictions. They also received \$61.12 or 2.47% more than the eighth ranked community, Stoughton. For 1993, top paid patrol officers in Sun Prairie will end the year earning \$126.50, or 4.91%, more than their counterparts in Beaver Dam and \$57.11, or 2.21%, above the top paid patrol officers in Stoughton. The spread between Sun Prairie and Stoughton has diminished slightly, but not in a significant amount.

It is true that in 1992 Sun Prairie was ranked fourth among the nine comparable jurisdictions while in 1993 it will end the year ranked sixth. However, the wages of the fourth, fifth, and sixth ranking communities were very close to each other in 1992, and this has continued in 1993. In 1992, less than \$10 monthly separated the sixth and fourth ranking communities. In 1993, the spread between Sun Prairie, ranked sixth, and the fourth ranking community is less than \$6.00 per month.

I think that I would summarize the effect of the wage increases agreed to by the parties for 1993 as, on the whole, maintaining Sun Prairie's position among the comparable

⁸Although Oconomowoc is ranked No. 1 on the table for 1992, this is for the sake of convenience in making comparisons. The 1992 salary figures for patrol officers in Oconomowoc do not appear in the record.

communities. It improved its position very slightly with respect to the highest and lowest ranking communities but lost a little ground among the middle ranked municipalities. Because, however, the wages of the middle ranked communities (fourth through sixth) were very close to each other in 1992 and continued to be so in 1993, one cannot attach much significance to the fact that Sun Prairie has moved from fourth to sixth place. It is fair to state that Sun Prairie has maintained a middle position with regard to its relative ranking on compensation.

The story is different, however, with regard to holidays. Sun Prairie is the only community among the comparable jurisdictions which has only one paid holiday. It is also last among the jurisdictions in additional pay earned attributable to holidays. I have carefully studied the contracts for all of the comparable communities and compared the benefits therein with the benefits contained in the Sun Prairie contract. This includes pension, insurance, longevity, sick leave, vacation, night differential, clothing allowance, and educational assistance. With regard to none of these items is the Sun Prairie benefit so outstanding as compared with what is found in the other contracts that it can be said to offset Sun Prairie's last place on holidays.

The Employer argues that Sun Prairie's current holiday pay benefit is comparable to that in Beaver Dam, Middleton, and Watertown, none of which provides additional compensation for holidays actually worked. Acknowledging that Sun Prairie's holiday pay benefit "is unique in structure," the Employer nevertheless contends that "its economic consequences are roughly the same as those of Beaver Dam, Middleton, Oconomowoc, and Watertown."

I cannot agree that Sun Prairie's current holiday pay benefit is comparable to that in Beaver Dam, Middleton, and Watertown. Because Beaver Dam and Middleton have 11 and 8½ paid named holidays respectively, officers who are scheduled to work one-half of their named holidays in those cities will receive more than \$600 and \$400 annually in additional compensation than officers who work one-half of their named holidays in Sun Prairie. Not only will officers in these two cities have more days off with pay than those in Sun Prairie, but they will earn substantially more money attributable to the holidays. In Oconomowoc officers are likely to earn over \$800 more annually attributable to holidays than officers in Sun Prairie. It is only in Watertown that officers will probably earn less additional money under the contractual holiday article than in Sun Prairie. This is because the Watertown contract lists ten holidays and states, "Employees shall be granted ten . . . days . . . off with pay at a time mutually agreed upon between the employee and the Police Chief . . . in lieu of the [listed] holidays." Under such a provision an employee need never be

scheduled to work on a holiday. The Watertown officers, however, will have nine more days off with pay than the Sun Prairie officers.

Although, except possibly for Watertown, Sun Prairie is last among the jurisdictions with its holiday pay benefit, this is not something that suddenly came into being. According to representations made at the hearing and as acknowledged in the Association's brief, the same holiday article has been in successive Sun Prairie contracts since 1980. Moreover, it appears to be a carefully thought out provision consciously negotiated by the parties. Thus, it is significant that none of the comparable jurisdictions pays double time for holiday work or fails to provide paid holidays. This suggests that the unique holiday provision in the parties' Agreement was specifically bargained by them as part of the structure of their collective bargaining agreement and that the double time provision for working on a holiday was agreed to as at least a partial offset for the absence of any paid holidays. A compelling case must be made by the party which would discard a unique provision of this kind, which has continued unchanged over a number of contract terms. See Elkouri and Elkouri, How Arbitration Works (Fourth Ed.), page 843.

The Association argues that its proposal to change the holiday pay provision should be accepted because it has provided a "quid pro quo in exchange for 'holiday pay' by reducing the premium pay multiplier and by stipulating to a wage increase with an reduction in overall cost impact." The argument based on a reduction in cost impact no doubt refers to the fact that the Association has agreed to carrying out the 1993 4% increase in wage rates in two steps six months apart, thereby saving the Employer approximately 1% in costs as compared with the cost of a single 4% wage increase effective January 1. If one uses the Association's figures, the actual savings comes to \$5,537.52.

The Association's numbers also show, however, that the total additional cost of its offer on holidays, as compared with the current holiday clause, is \$18,026.40. The percentage impact of the Union's holiday proposal, according to its figures, is 3.26%. I do not think that a \$5,500 one-time saving can justify a continuing additional annual cost of \$18,000 or more.⁹ What the Association refers to in its brief as "a quid pro quo in

⁹The \$5,500 savings to the Employer will not carry over into any future contract. In fact, the compounding because of the two-stage increase will be to the Association's advantage in future contracts. On the other hand, the language change in the holiday article, if adopted by the arbitrator, can reasonably be expected to continue in subsequent contracts and to escalate in value as wages or salaries increase.

exchange for 'holiday pay'" is not a fair exchange.

Nor is the situation helped by the Association's additional proposal to reduce the premium pay multiplier by one-half hour of pay for each hour worked. The reduction is illusory because the total payment for holiday work under the Association's proposal will be greater than under the prior contract. Holiday pay plus time and a half comes to more money than double time pay without holiday pay. Payment under the Association's proposal may come from more than one pocket, but the suit has only one owner.

On the other hand, I do not want to give the false impression that the evidence does not justify improvement of the holiday pay benefit. It clearly does. I agree with the Employer's assessment, however, that the Association's "proposal is too much, too fast." The pattern of settlements that has been established among the comparable jurisdictions for 1993 has been a percentage lift as of the end of the year in the neighborhood of 4%. The actual average is 4.27% based on the percentages shown in the table at page 9 above. No evidence was presented at the hearing that any of the other comparable jurisdictions has increased holiday pay or any other contractual benefit besides wages so that it cannot be said that Sun Prairie alone is seeking to exceed the cost pattern of settlement by so substantial an amount. Had the Association proposed improvement of the holiday provision by an amount reasonably close to the average cost of the comparable settlements, I would have been much more favorably inclined toward adopting a final offer which included improvement of the holiday pay benefit. The cost of the package proposed by the Association, however, is so out of line with the pattern in the comparable jurisdictions that I cannot adopt its final offer.

Similarly, if the Employer's wage offer were widely out of line or there was some other glaring inequity in its final offer, I would be more inclined to accept the Association's holiday pay proposal. The Employer's proposal, however, is generally in step with what has been negotiated in the other comparable communities and must, therefore, be deemed reasonably consistent with the pattern established among the comparable jurisdictions. I emphasize, I am not stating that had the Association's final offer provided for some holiday pay improvement--for example, making a second¹⁰ holiday a paid holiday--the offer could not be justified on the basis of the cost pattern. However, adding ten paid holidays would clearly bring the Employer's contract settlement costs substantially

¹⁰The example given should not be read as indicating any maximum or minimum number of holidays this arbitrator would have allowed had the Association presented a different offer.

beyond the pattern which has been established for the comparable jurisdictions.

Interests and Welfare of the Public
and Financial Ability of City to Meet the Costs

The Employer has not claimed inability to pay the costs of the Association's final offer, and both sides recognize that financial ability to pay is not an issue in this case. The Association argues that its offer best serves the interests and welfare of the public because requiring Sun Prairie patrol officers to work side by side with officers of other departments who receive holiday pay while Sun Prairie officers do not is likely to have a negative effect on the morale and pride of the force. This, the Association contends, is not in the interests and welfare of the public. The Employer takes the position that the interests and welfare of the community are not served by awarding to the Association "an improved holiday pay benefit equal to 3.26%, on top of a wage increase of 4%, at a time when inflation is running at less than 3% . . . , the Department has experienced no defections to other police departments and has been swamped with applications from qualified candidates for the new positions it has created."

I think the record falls short of establishing a morale problem among the officers in the Sun Prairie police department. No concrete evidence of such a problem was introduced, and it is speculative to assume that one will arise on the basis of rejection of an offer which attempted to turn around a 12 year contractual practice in one fell swoop at a substantially higher cost to the Employer than the pattern established in comparable jurisdictions. On the other hand, it is not in the interest and welfare of the public to settle a contract at a cost far in excess of the established pattern among comparable jurisdictions.

The Average Consumer Prices for Goods and Services

The Employer argues that the consumer price index factor favors its position because in 1992 it rose by 2.9% and as of the date of the hearing had risen by 2.8%. Its offer of a 4% lift in wages and 3% dollar cost increase for 1993 keeps pace with the cost of living increase, the Employer contends, while the Association's offer, "which represents an actual cost of 6.26% and a lift of 7.26%," far exceeds it and is unreasonable. The Union maintains that the cost of living criterion supports its final offer in light "of the current economic climate and comparable settlements."

As of the date of the hearing the consumer price index had increased less than 3% during 1993, and the current estimate

among economists is that it will increase 3% for the entire year. Because of the two-step increase, the Employer's offer for 1993 comes to a dollar increase in wages of 3% for the top grade patrol officer, which is the classification being used for comparison, and a total percentage increase in the monthly compensation rate as of July 1, 1993, of 4%. The Employer's offer thus closely parallels the increase in the cost of living for 1993.

The Union's offer, by contrast--whether measured in terms of percentage increase of dollars earned in 1993 over 1992, or in terms of the percentage increase in the monthly compensation rate--far exceeds the rise in the index for the comparable period. Nor does the Union's argument based on comparable settlements hold up. The evidence shows that the cost of its final offer substantially exceeds the pattern established for settlements among comparable jurisdictions. The cost of living factor clearly favors the Employer's final offer.

Overall Compensation Presently Received by the Employees and Other Factors Normally Taken into Consideration

I believe that the overall compensation factor favors the Association proposal because officers at the top step in most of the other jurisdictions are able to earn \$600 to \$800 per year more as a result of contractual holiday pay provisions than Sun Prairie officers.¹¹ However, this factor is offset by other factors normally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining and in interest arbitration. These additional considerations were discussed above with regard to the Comparison with Comparable Communities factor.

I refer to the generally accepted principle that a party which desires to change longstanding contract language has the burden of making a compelling case for acceptance of the changed language. I pointed out that the Association has failed to do so in this case because the total cost of its offer substantially exceeds the cost of the settlement pattern established among the comparable jurisdictions, and it is not offering any concession sufficiently adequate to make up for the significant additional cost above the pattern that adoption of its proposal would entail. Instead of proceeding with moderation, it grasped for too much and came up empty handed.

¹¹As previously noted, my examination of the contracts of all of the comparable jurisdictions does not turn up any direct compensation or fringe benefit at Sun Prairie so superior to what is available in most of the other jurisdictions as to offset its substantially lower holiday pay benefit.

Changes during Pendency of Arbitration Proceeding

I am not aware of any changes of circumstances during the pendency of this proceeding which could affect its result, and neither party has contended that there have been any.

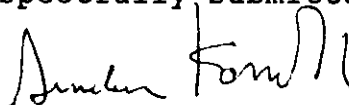
The foregoing discussion shows, I believe, that, on balance, the statutory criteria favor the Employer's final offer over the Association's. I, therefore, select the Employer's final offer.

A W A R D

1. Pursuant to section 111.77 (4)(b) of the Municipal Employment Relations Act, the arbitrator selects the final offer of the City of Sun Prairie.

2. The said offer shall be incorporated into the new Agreement between the parties without modification, including the tentative agreements of the parties reached prior to impasse and the proposed additions and changes which were identical in the final offers of both parties.

Respectfully submitted,



Sinclair Kossoff
Arbitrator

Chicago, Illinois
December 15, 1993