STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition of Wisconsin Professional Police Association, LEER Division For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of City of Menasha (Police Department)	Case 82 No. 48341 MIA-1763 Decision No. 27784-A

APPEARANCES

For the Union:

Richard T. Little Bargaining Consultant

For the City:

James R. Macy, Attorney

PROCEEDINGS

On September 16, 1993 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 (4)(b) of the Municipal Employment

Relations Act, to resolve an impasse existing between WPPA/LEER, hereinafter referred to as the Union, and the City of Menasha Police Department, hereinafter referred to as the Employer.

The hearing was held on December 16, 1991 in Menasha, Wisconsin. The Parties did request mediation services which were unsuccessful and the hearing proceeded. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on April 19, 1994 subsequent to receiving the final reply briefs.

ISSUE

This is a renewal contract between the Parties. Agreement has been reached on all outstanding issues except for wages and health insurance. The respective offers are as follows:

Union Offer

Wages

2% increase effective 1/1/93

2% increase effective 7/1/93

3% increase effective 1/1/94

2% increase effective 7/1/94

Health Insurance

City to pay the full cost of WPS/HMP COMPARE Health Insurance coverage.

Employer Offer

Wages

4% increase effective 1/1/93

4% increase effective 1/1/94

Health Insurance

Status quo with updated contribution levels.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

Wisconsin statute, Section 111.77(6), sets forth the criteria that the Arbitrator should consider in determining which offer is more reasonable. No arguments have been made by either side that the Employer does not have the lawful authority to meet the Association's final offer. The Employer's exhibits and testimony do not provide any indication that any legal deficiencies exist. Therefore, this criterion should have no effect on the Arbitrator's decision.

The stipulations between the Parties are not at issue. The only issues are the appropriate level of compensation and health benefits which will be discussed in the total package costing section of the Union's brief. The Arbitrator must give weight to the interest and welfare of the public and the financial ability of the Employer to meet the physical impact of the contract. Neither of these criteria were brought forth by the Parties as an issue. The Employer did not allege at any time that it does have the economic resources to fund either of the final offers submitted by the Parties. There was no assertion that the public welfare will be

adversely affected by the exception of the Association's final offer. Therefore, these factors need not be addressed further.

Regarding the comparability criterion, past decisions regarding the Parties in this matter show that no appropriate comparability grouping has been specifically established. The Association utilizes the clearly recognized criteria that many arbitrators employ in determination of appropriate comparables. Municipalities are deemed comparable where they are substantially equal in the areas of population, geographic proximity, mean income, overall municipal budget, total complement of relative department personnel, and wages and benefits paid such personnel. The Association has provided base information on all municipal law enforcement departments within the Fox River Valley and a 25 mile radius of the City of Menasha. Several comparables are identical to those proposed by the Employer. Accordingly, only the departments that the Parties do not agree upon will be discussed. In addition to those comparables where agreement exists, the Union would ask to include the City of Appleton, City of Neenah, City of Oshkosh and the Village of Kimberly. The Union agreed that the City of Appleton and the City of Oshkosh might be excluded on the basis of variance in population and departmental size, however, positioned like bookends to the City of Menasha, they must be viewed as

dominant economic influences within the area and should, therefore, be accorded weight. The Village of Kimberly, although smaller than the City of Menasha, has geographic proximity which suggests exclusion. The glaring exclusion from the Employer comparison exhibits is that of the City of Neenah. The Association can find no cause for exclusion of this department and suggests that the City of Neenah meets most, if not all, of the required criteria and should be viewed as a primary comparable in these proceedings.

The Employer proposes the inclusion of the City of Two Rivers into the comparable pool. While the population and departmental size statistics are similar to that of Menasha, this department is located approximately 50 miles from the City of Menasha and does not fall under the economic umbrella of other Fox River Valley departments. Accordingly, the Association's group of comparables should be deemed as the most appropriate set of comparables and utilized by the Arbitrator in making his decision.

With respect to the Association's final offer, the Association argued that its offer is in line with other public sector employees. The department has lost ranking in the last few years with respect to the comparables. The department will remain in 4th position under the impact of either final offer. There has clearly been a deterioration

of Association wage levels in comparison to the average. This decline in wage levels will continue under either final offer in 1993. There is an insufficient number of settlements in 1994 for a fair comparison. In addition the Association notes that the cost impact of the Association's proposal is limited by its utilization of a split wage increase in each year of the agreement. Both actual dollar lift and percentage fall below that of the average of the comparables.

The Union noted that in preparation of its costing exhibits, it used the frozen step method which deletes step movements from the costs and provided a citation in support of this method. The Employer can provide no clear justification for the type of costing utilized in Employer Exhibits 4 & 5, which serves to only artificially inflate the total package costs of the Parties. The Association does not believe that the Employer would consider this type of costing appropriate if numerous senior officers were reaching retirement age.

Regarding the issue of employee health insurance premium contribution, the Association has provided language excerpts from each of the comparable labor agreements. The insurance language contained within these agreements is unique. Employee health insurance premium contributions range from 0%

to 15% of the plan premium costs, while the Employer contributions range from 85% to 100% of premium costs. It is clear that those departments that utilize some type of premium contribution language have framed those provisions within a percentage of total based systems. Neither the Employer's offer nor the Association's offer followed the methods used by other municipalities. Accordingly, this area of comparison should not be afforded weight.

The Association contended that its offer provides for wage increases and health insurance benefits similar to other internal employee units. By insisting on deviation from the pattern of settlements, the Employer seeks to create serious internal problems. The Association provided citations in support of its position. The Association submitted that its final offer regarding health insurance only follows the patterns set by the Employer in its negotiations with other represented city bargaining units. The Association's offer also incorporates a quid pro quo by providing for a smaller wage increase and lift potential for 1993 with respect to other internal comparables.

The Association understands that in interest arbitration, arbitrators are unwilling to change working conditions without affirmative demonstration of need by the moving party. The Association believes that, in accordance

with arbitral authority, it has demonstrated a legitimate problem exists under the Employer proposal. The employee premium contributions will fluctuate wildly from a 0 contribution in 1991 and 1992 to a $51.66 per month family contribution during 1993, and a dramatically lower contribution of $1.67 per month for 1994. In both years there is no prior contribution for single plan participants. The Association also argued that the Employer must address its own status quo needs since the formula would provide for no contributions if the premium rates were inserted into existing language and the formula applied properly. In addition, the maintenance of this contract provision, which is contrary to the standard set by its own voluntary settlements, has no justification.

Finally, the Association argued that the consumer price for goods and services supports the Association's final offer since it meets the settlements of comparable communities which is the best barometer for cost of living.

In conclusion, the Association has applied the statutory criteria set forth in Section 111.77(6). It is the Association's offer that is more reasonable and, therefore, should be adopted by the Arbitrator.

The Association also responded to the Employer's brief in this matter:

The City argued that internal comparables should not be given weight since the police unit is on a different bargaining cycle. At no time did the City ever discuss changing the bargaining cycle of this unit and, therefore, it should be given little weight. In addition, all individual units during this time frame have been covered by the same health plan. The concessions arrived at which resulted in a reduction in the health insurance costs were applied to all the comparables. Yet, now the City wants to deviate from the internal pattern of settlement and have employees of only one of the internal units pay health insurance contributions. Arbitrators have consistently held that the position of internal equity is one to be favored. To award the Employer's offer would be inequitable to this bargaining unit and would have harmful effects on the employee morale within the bargaining unit.

The Association further argued that the Employer's offer would deviate from the status quo, and in order to maintain the status quo the Employer's offer should have included the full 1993 premium with a 15% cushion for 1994. The employees would then be required to pay anything over a 15% increase for 1994. The Employer has proposed to change the intent of

the existing language and has not offered any justification for doing so nor has it offered an adequate quid pro quo.

The Employer has stated in its brief that the Association refused to discuss alternative health insurance options. The Association noted that this offer to negotiate the health insurance options was six months after the contract had expired and four months after mediation occurred in February, 1993. Reason dictates that the raising of this issue so late in the bargaining process could not meet with a reasonable expectation of success.

The crux of the case comes down to the main issue of whether or not internal consistency should be ignored as the City claims. The Association has applied the specific statutory criteria and, as the foregoing analysis has shown, it is the Association's offer that must be considered more reasonable than that proposed by the Employer and, therefore, should be adopted by the Arbitrator.

CITY POSITION

The following represents the arguments and contentions made on behalf of the City:

Since the Menasha Police employees have not been to arbitration, the comparable pool utilized in this dispute will be used as a basis for future negotiations and arbitrations. In developing its comparable pool, the City utilized recognized arbitral criteria of size and geographic proximity. The City's comparable groups consist of similarly sized municipalities located in northeast Wisconsin and includes De Pere, Little Chute, Kaukauna, Town of Menasha, and Two Rivers. The Union agreed with all of the City's comparables except Two Rivers. Its comparable group, however, includes three much larger municipalities-Appleton, Oshkosh and Neenah, and one much smaller municipality-Kimberly. The City provided population, 1992 full values, bargaining unit size, and the number of violent offenses. The Employer asserts that its selection of comparables is established in accordance with recognized comparability criteria, therefore, its comparables are more relevant in this dispute. There is a significant size disparity between Menasha and some of the Association's comparables. Apparently, the Association has gone comparable shopping in an attempt to bolster its position. The City contended that

its comparable pool must be utilized in the resolution of this dispute. With respect to the City's wage offer, this wage offer of 4% of each of the contract years is consistent with the external comparables. Three of the five comparables settled for 4%, one settled for 3%, and one for a 3%/2% split. Three of the comparables are settled for 1994, one for 3%, one for 4%, and one for 3% plus two separate payments of $500, which was a buy-out for health insurance changes. This, compared with the Union's proposal of a 2%/2% split in 1993 and 3%/2% split in 1994, shows that based on settlements provided to the eternal comparables, the City's offer emerges as more appropriate.

In addition, a comparison of Menasha's wages under the City's offer demonstrates that the wages are consistent with the labor market demands. A comparison of the dollar increases on the patrolman's maximum wage provides patrolmen with yearly earnings which slightly exceed the City's offer. The same results occur when analyzing the investigator and sergeant's positions. The statutory criterion directs the Arbitrator to weigh the comparables and the City's offer provides Menasha police officers with wages which are consistent with or exceed the wages paid to their comparable counterparts. There is no justification for the Union's higher wage proposal.

The Union claimed that its offer is consistent with settlements provided to internal bargaining units. It is the City's position that these other units have a different bargaining cycle. In addition, the City was unsuccessful in gaining employee premium sharing but was able to gain other concessions in the health insurance plan which lowered the premium. In addition, the City noted that the other contracts were three year contracts and the Association was on notice that three year contracts would contain a higher wage premium than two year contracts. It is the City's position that it is entering into a two year agreement which is less advantageous to the City. The City is not asking for any economic or contract language concessions from the Union. These factors, in conjunction with the external comparables, are ample justification for the City to deviate from the internal settlement pattern. It is the Union that is asking for dramatic change in the status quo and has provided no justification for its wage demands.

With respect to the other criteria, the City's wage proposal significantly exceeds the cost of living based on the consumer price index for urban wage earners. This is particularly true when including the experience increments in the cost of living comparison. The City has provided and will continue to provide bargaining unit employees with wage increases which significantly exceed the increases in the

cost of living. Therefore, under this criteria the City's offer is reasonable.

The Association has proposed to eliminate the status quo with respect to employee contributions towards health insurance. These have existed in the contracts since the 1991-92 contract. Under the existing language the City pays health insurance premiums up to 115% of the previous year's premiums. Any increase over 15% will be paid by the employees. There was a quid pro quo in that labor agreement in the form of greater sick leave payout benefits. This language was bargained as a means to require employees to bear some of the responsibility of cost containment. As long as the insurance costs did not rise more than 15% in any given year, employees incurred no cost for health insurance benefits. In fact in 1992 employees did not have to contribute a single penny towards the cost of insurance because the premiums did not increase above the 15% cap. Arbitrators have agreed that cost containment must be a shared responsibility. The Association has failed to establish a need to change existing health insurance benefits. It must establish a need and then offer an adequate quid pro quo. The City offered a number of authorities in support of its position. In this case the Union offers no evidence that would demonstrate a need to change the status quo that the Parties agreed upon only one

contract ago. This shows the unreasonableness of its proposal.

The Association may point towards the lack of a required insurance contribution in the other internal bargaining units. This argument is inappropriate. The Association readily agreed to employee contributions in the last contract even though it was the only unit to do so. While the City was unsuccessful in gaining employee insurance contributions during the last round of bargaining, it was able to gain insurance concessions. The Employer also noted that external comparables support its position. Each of the municipalities requires employees to contribute towards the cost of health insurance. While in 1992 Menasha employees were not required to contribute, their comparable counterparts contributed between $17.88 and $71.64 per month for family coverage. While Appleton, Neenah and Oshkosh do not require employee contributions, they do require much higher out-of-pocket costs to employees. The Association refused to even discuss alternative health insurance options and yet has failed to offer the Arbitrator any justification for eliminating the status quo relative to employee insurance participation. There is no external comparable support and based on the evidence the Union's proposal to eliminate the status quo is unreasonable.

In addition to its failure to establish a need for a change in the status quo, the Association's quid pro quo is woefully inadequate. It claimed that its offer of a 2%/2% split in 1993 is a quid pro quo for eliminating the employee health insurance participation. A review of Association Exhibit 20 establishes that a majority of the Union's comparables, 6 out of 8, provided increases in 1993 which resulted in a lift of 4% or less. The Union's proposal also provides for a 4% lift in 1993. The Union's offer is only consistent with external comparables, not a quid pro quo. Even if the Arbitrator were to consider the 2%/2% split as a quid pro quo, it is woefully inadequate to absorb the additional 1993 health insurance costs.

It is a well established precept that significant changes in contract language and/or benefits are better addressed through the give and take of the bargaining process rather than imposed by arbitration. The Arbitrator should decide on an offer that would more closely approximate what the Parties would have agreed to in bargaining. A number of authorities were cited by the City in support of its position. The Association's proposal to eliminate the status quo in the health care area has failed in that the Union has not shown a compelling need to change the status quo. There is no comparable support for such a change. The quid pro quo is woefully inadequate and new benefits should be negotiated

and not arbitrated. Therefore, the Association's offer must be rejected. For the reasons stated above, the City asked that the Arbitrator find its proposal to be more reasonable and should constitute the Parties' bargain for the 1993-94 agreement.

The City also responded to the Association's brief:

The Union's comparable group contains cities that are not comparable in terms of population, full value, bargaining unit size and the number of offenses, only comparable in terms of proximity. The Union's comparables are so dissimilar in size that they cannot be considered comparable. Their proximity is irrelevant in view of their dissimilarity. The City provided authorities in support of its position.

The City's cast forward method of costing more accurately reflects the true cost impact of the Parties' proposals. Step increases represent real wage increases to employees as well as increased costs to employers. There is nothing artificial about them. Again, the City provided a number authorities in support of its position. The Association, on the other hand, has not proposed budget-to-budget costing, rather it has taken employees as of December 31, 1993 and simply frozen them on the salary schedule. Therefore, those newly hired employees stayed on step one

throughout the term of the contract although in reality those employees will move to step three by the end of the negotiated contract term. It is a recognized arbitral precept that in order to measure the true impact of an increase to the salary schedule, one must cost step increments. Therefore, the City asked that its method of costing be preferred over the Union's.

The Union's proposal to change the status quo with respect to health insurance is not supported by the evidence. The Association is asking to change health insurance language which it negotiated in the last contract. This language is either far lower or near the comparable standards. In addition, the Union's proposal fails to reasonably address its perceived problem with the health insurance language. If the Union was concerned about the fluctuation of contribution, the more credible proposal would be to set the employee contribution level at a given percentage. The real problem for the Association is not the fluctuation in contribution but the fact that the employees have to contribute anything at all. The Association wishes to place the entire burden of containing health insurance costs on the City's shoulders. This is an unreasonable burden. Employers have been struggling with health care costs for a number of years. In 1981 the family coverage cost the City $155.38 per month, but 1991 the figure escalated to $457.99, an increase

of 195%. Health care costs are 18% of the salary base. The Employer also noted that the City of Menasha experienced the highest rate of health care increases among the comparable group. The City would note that it has increased the dollar cap by 15% for each year of the contract and, therefore, increased the insurance protection to the employees without demanding a quid pro quo. Therefore, it is the Employer's position that the evidence supports the status quo rather than the Union's proposal with respect to health care.

The Union contended that internal comparability supports its proposal to eliminate employee premium contributions. The City reiterated that it is on a different bargaining cycle with the police unit and, while the City was not successful in obtaining employee premium participation, it did obtain insurance concessions such as a broader right to change health insurance carriers, front end deductible, and an increase in the drug card co-payment. The City has made a significant effort to gain internal consistency. It should be given more than one opportunity to gain a major concession with its other bargaining units.

Therefore, the City again argues that it has established through evidence and testimony that its final offer is more reasonable and should be implemented by the Arbitrator.

DISCUSSION AND OPINION

Since this is the first interest arbitration between the Parties, the comparables will receive more attention than is normal where the comparables have already been established through the arbitration process. Both the City and the Association have agreed on 4 comparables, those being De Pere, Little Chute, Kaukauna, and the Town of Menasha. The Arbitrator will incorporate each of those 4 into the comparables for this collective bargaining relationship. The Union has proposed 4 additional entities, Appleton, Kimberly, Neenah and Oshkosh. The City has vigorously objected to the inclusion of each of these comparables. The decision regarding Appleton, Kimberly and Oshkosh is relatively simple and straightforward. While it is true that Appleton and Oshkosh have a significant economic impact on the life of the communities in the area, the Arbitrator finds nothing other than proximity that would justify including them in the comparable list for this arbitration. With respect to Kimberly, it is much too small to provide a significant comparable for this bargaining relationship; therefore, the Arbitrator will find that Appleton, Kimberly and Oshkosh do not constitute appropriate comparables under the requirements of the statute.

With respect to the City of Neenah, while Neenah is somewhat larger than Menasha, it is in a range that would justify including it in the final list of comparables. The Arbitrator has considered proximity, services provided, the hiring of like employees, valuation and proximity. As those who are familiar with the area, it is hard to mention either Neenah or Menasha in the same sentence without mentioning the other community. They are very much intertwined and certainly this is within the parameters anticipated by the statute for a comparable.

With respect to the City's proposal of including Two Rivers in the list of comparables, while from a size standpoint Two Rivers would be indeed comparable to Neenah, it is simply too far away and not within the Fox Valley economic community. This Arbitrator has spent some time in both communities and finds that they are substantially dissimilar; therefore, the Arbitrator finds no reasonable cause to include Two Rivers in the final comparable list. The Arbitrator, therefore, declares the following communities will serve as comparables in this interest arbitration: De Pere, Little Chute, Kaukauna, Town of Menasha, and Neenah.

The Association has proposed a change in the status quo by virtue of its final offer in this case. It has proposed a

change in the health care contribution schedule that would provide that the City will pay the entire cost of any health care increases for 1993 and 1994. The Union and the Employer have found much to agree upon in this negotiation including most fringe benefit issues and language items. They have reduced the open issues to only 2.

When one side or another wishes to deviate from the status quo, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the bargaining relationship. In the absence of such showing the party desiring the change must show that there is a quid pro quo or that other comparable groups were able to achieve this provision without the quid pro quo. It is the Association that wishes to more significantly alter the status of the collective bargaining relationship in this case. The Association has asked for a significant change in the health care funding provision; therefore, it is the Association that bears this extra burden since it has proposed a significant change.

With respect to the wage proposals, after reviewing all of the arguments, testimony and evidence provided, the Arbitrator has concluded that there is little significant

difference between the City's offer and the Association's offer although the Arbitrator notes that the Union's proposal would ultimately provide more lift to the bargaining unit in future years. The external comparables favor the Employer's position, the internal comparables favor the Association's position. Both sides' proposals are in excess of the cost of living rates. Although, as noted by this and other arbitrators, the best criteria for cost of living are external comparables. Total package considerations seem not to be a significant issue in this case. There is also no showing that either proposal would place an undue hardship on the residents of the Village and apparently other statutory criteria will not come into play in this arbitration. Either offer meets the statutory criteria.

We are then left with the health care proposals of both sides. The Employer has proposed the status quo which really means, in accordance with the language, that the City will assume up to a 30% increase in its health care costs during 1993 and 1994. The Association has proposed that the City bear the entire cost of health care and cited two reasons for this position--that it has offered a quid pro quo in the wage area by accepting a 1% lower increase during 1993 and that its proposal more closely matches the internal comparables.

The Arbitrator finds that the Association's arguments are not persuasive in this area. The Union's wage offer, while lower initially than some of the internal bargaining units, actually amounts to higher increases in real wages over the term of the contract than is seen in comparable bargaining units. While the internal comparables do slightly favor the Association's offer, it is not enough to overcome the external comparables, therefore, the Arbitrator finds that the Association has not provided a sufficient quid pro quo for the change in the status quo that it has proposed.

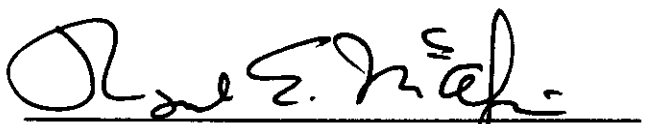
The Association would then be left with providing strong reasons and a proven need to fully justify its position. Again, the Association points to internal comparables and, while providing strong arguments which are noted above, it ultimately has failed to prove its contention. It is true that the internal comparables in the City of Menasha do not require contributions of its employees, but those employees have somewhat different health care coverages particularly in the area of out-of-pocket costs. In addition, the City's proposal provides for a 30% cushion for each of the employees with respect to the point at which health care contributions would kick in. The Arbitrator was also impressed by the City's argument that it should be given more than one negotiation in order to accomplish internal parity in this important area. Health care costs are at the top of the national agenda, and we will all have to do our part if we

are to control this difficult economic burden. All in all the Arbitrator finds that the Association has not provided evidence sufficient for the Arbitrator to deviate from the status quo in this arbitration. The Association has simply not provided this Arbitrator with an overriding reason and has not fully justified its proposed change in the status quo. Therefore, the Arbitrator finds that the preponderance of evidence favor the City's proposals and he will award as follows:

AWARD

On the basis of the foregoing and the record as a whole and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the City is the more reasonable proposal before the Arbitrator, and directs that it, along with the predecessor agreement, as modified by the stipulations reached in bargaining, constitutes the 1993-1994 agreement between the Parties.

Dated at Oconomowoc, Wisconsin this 9th day of June, 1994.



Raymond E. McAlpin, Arbitrator