

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

Case 214 No. 49362 MIA-1820

Decision No. 27855-A

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LEER DIVISION

For Final and Binding Arbitration
Involving Law Enforcement Personnel in
the Employ of

Sherwood Malamud
Arbitrator

CITY OF EAU CLAIRE

Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Gordon E. McQuillen, 20 N. Carroll Street, Madison, Wisconsin 53703, appeared at the hearing and the Association reply brief; Richard T. Little, Bargaining Consultant, 9730 W. Bluemound Road, Wauwatosa, Wisconsin 53226, appeared on the Association original brief.

Frederick W. Fischer, City Attorney, City of Eau Claire, P.O. Box 5148, Eau Claire, Wisconsin 54072-5148, appeared on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On November 23, 1993, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator under Section 111.77(4)(b) of the Municipal Employment Relations Act (MERA) to determine said dispute between the Wisconsin Professional Police Association/LEER Division, hereinafter the Association, and the City of Eau Claire (Police Department), hereinafter the City or the Employer. On March 16, 1994, the Arbitrator attempted to mediate the dispute, however that attempt was unsuccessful. Hearing in the matter was held on May 10, 1994, in the City of Eau Claire's City Hall. Post-hearing briefs and reply briefs were exchanged through the Arbitrator, and the record in the matter was closed on September 2, 1994. This Award is issued pursuant to Sec. 111.77(4)(b) form 2, in that:

The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

SUMMARY OF THE MATTER IN DISPUTE

Both the Association and the City final offers contain identical provisions on: the wage issue- effective July 1, 1993 a 2% increase; effective January 1, 1994, an additional 2% increase; and effective July 1, 1994, an additional 3% increase. Both final offers provide that this successor agreement shall remain in effect from July 1, 1993 through June 30, 1995.

The Association Final Offer

The Association proposes the deletion of Appendix D, a provision attached to the expired collective bargaining agreement, which provides for the conduct of an experiment concerning the establishment of fixed-shifts. The Appendix D experiment provides for officer selection of a fixed-shift in 112 day blocks. The Association proposes the deletion of that addendum. It proposes the addition of the following language to Section 5.01 of the Agreement.

2. ARTICLE V - HOURS OF WORK
Section 5.01 - Hours of Work

Officers assigned to Patrol Division shall be permitted to select their shift preference based on seniority within the bargaining unit. Prior to November 1 of each year, the officers shall select the shift of their choice for a period of one year, in line with their seniority. Preferences shall be granted until shift vacancies are filled. The shifts selected shall begin on January 1 and end on December 31. Officers transferred to Patrol Division during the year shall be allowed to select and receive their shift preference by seniority at the time of selection.

The City Final Offer

The City proposes the deletion of Appendix D. The effect of its proposal is the continuation of the 28-day shift rotation procedure.

STATUTORY CRITERIA

111.77 EMPLOYMENT RELATIONS

...

(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.

BACKGROUND

The City of Eau Claire Police Department employs 85 sworn officers, including command, vested with the power of arrest. The Association negotiates on behalf of 64 of the 85 officers. The sole issue in dispute between these parties is the Association proposal to replace the 28-day rotation system in operation at the time of the hearing in this matter with a fixed-shift system.

In the early 1970's the department did operate under a fixed-shift system. It returned to a rotation. For many years, the Eau Claire police officer has worked a 5-2 & 5-3 schedule and an 8-1/4 hour work day.

In 1990, the Association expressed dissatisfaction with the 28-day rotation system then in effect. At that time, the shift rotated "backwards." Employees went from the midnight shift to the evening shift to the day shift. In the negotiations for the 1990-91, 1991-92, and 1992-93 contract years, Arbitrator Stern served as the interest arbitrator. He convinced the Employer and the Association to experiment with the shift issue. The agreement to participate in the experiment is reflected in a consent award issued by Arbitrator Stern in June 1991. The terms of that experiment are described in that Award, City of Eau Claire & Eau Claire Professional Police Association, Dec. No. 26710-A (6/91), as follows:

4. Section 5.01, second paragraph, of the collective bargaining agreement shall be amended to provide for implementation, solely on a trial basis, of the work shift provisions as contained in Item No 1. in the Final Offer of the Union, attached hereto as Exhibit "1" and incorporated herein by reference as if fully set forth herein; provided that the words "As soon as possible" shall be inserted in lieu of the words "On or before November 15th of each year" in the second sentence thereof.

Such trial period shall commence as soon as possible following the date of this Consent Award and shall extend for three blocks of 112 days each, as provided for in said Final Offer of the Union. The trial period can be extended by mutual agreement of the parties. Absent such mutual agreement, following expiration of the trial period, the shift scheduling procedure currently utilized by the Police Department, but providing that the shifts shall rotate forward, shall be placed in effect.

5. The following shall apply to the allocation of officers between shifts, as described by the Arbitrator on pages 5 and 6 of the Transcript of Proceedings made in this matter.

During the trial period described in par. 4, a relatively even balance of seniority among shift officers may be obtained among all three shifts. The parties acknowledge that, as provided in the Final Offer of the Union, the Police Chief may change the shift selection of any officer in order to achieve a relatively even balance of seniority among the three shifts. In doing so,

the Chief may maintain on all shifts, to the degree possible, an equal number of the most senior one-third of all shift officers, an equal number of the next senior one-third of all shift officers, and an equal number of the least senior one-third of all shift officers.

The terms of the final offer submitted by the Association and referenced by Arbitrator Stern in the Consent Award is as follows:

1. ARTICLE V - HOURS OF WORK
Section 5.01 - Hours of Work
Add to the second paragraph:

The City shall provide the patrol officers with permanent shifts. On or before November 15th of each year the officers shall select their shift by seniority for the following year. The calendar year shall be divided into three (3) blocks of one hundred and twelve (112) days. Each officer shall select once per year his/her shift for each one hundred and twelve (112) day block with no more than two (2) of the three (3) blocks having the same shift. The shifts shall rotate forward. The Chief may change the selection of an officer if there is not an even balance of seniority per each one hundred and twelve (112) day blocks. The Chief shall not be arbitrary and capricious in his request to deny an officer his/her selection by seniority.

Effective April 1992, the City terminated the experiment. Thereafter, shifts rotated forward; i.e., employees work 28 days on the midnight shift. They rotate to the day shift for 28 days, and then they rotate to the evening shift for 28 days. On the date of the hearing, this forward rotation system remained in place.

The Association proposes that shifts be selected by seniority for a period of one year. Under the Association proposal, mid-year transfers shall be handled in accordance with the following language:

Officers transferred to Patrol Division during the year shall be allowed to select and receive their shift preference by seniority at the time of selection.

The Association proposal is a strict seniority selection process of fixed shifts for a period of one year.

POSITIONS OF THE PARTIES

The Association Argument

The Association contends that it has met the arbitral standard for its proposal to change the status quo. The comparability data establish the need for the inclusion of the Association's proposal for fixed-shifts in the successor Agreement. The Association argues that its acceptance of the Employer's wage proposal is the quid pro quo necessary under the arbitral test set out by Arbitrator Krinsky in the Village of West Milwaukee, Dec. No. 12444-A and by this Arbitrator in D.C. Everest School District, Dec. No. 24678 (2/88). The Association maintains that its proposal meets the additional test for changing the status quo imposed by Arbitrator Yaffe in School District of LaCrosse, Dec. No. 19714-A (1/83) which is that the party proposing to change the status quo must demonstrate that its proposal is reasonably designed to effectively address the problem.

The Association disputes the inclusion of the city of Ashland as a comparable. It is much smaller than the city of Eau Claire. In light of the inclusion of the city of Beloit as a comparable by both the Association and the Employer, the Association does not strenuously object to the inclusion of Janesville as a comparable.

The Association notes in its original brief that of those comparables without fixed-shifts, two rotate weekly. One of the comparables, Stevens Point, maintains a 28-day rotation similar to Eau Claire's. The other two comparables rotate shifts between two to four times per year.

The Association places great emphasis on the City proposal which it made during negotiations to accept a fixed-shift selection process in exchange for the deletion of longevity from the Agreement. The Association argues that this proposal demonstrates that fixed-shifts would not interfere with the delivery of police services to the citizens of Eau Claire.

The Association deflects any attempt by the City to invoke internal comparables, specifically the rotating shifts worked by employees of the City's Water Treatment Plant. The Association argues that in the past such internal comparables have not been controlling. Those comparables should not be controlling here.

The Association maintains that the statutory criteria of cost of living and overall compensation do not serve to distinguish between the final offers presented in this case. The Association proposal to establish fixed rather than rotating shifts has no cost impact. Consequently, the cost of living criterion provides no basis for selecting either the Association or the City final offer. Similarly, all subjects which comprise overall compensation have been agreed to by the parties. The Association maintains that the City has not presented a basis for rejecting the fixed-shift proposal.

In its reply brief, the Association maintains that there is no status quo in effect for this bargain. Over three years ago, the City patrol officers worked a 28-day rotating shift. The rotating shift in place three years ago rotated from midnights to evening to day shift; i.e., backward. Now, the shifts rotate forward; i.e., employees moved from midnight to day shift and from day shift to evening shift. The present shift rotation differs, in this respect from the shift rotation in effect three years ago.

The consent award mediated by Arbitrator Stern establishes a structure for fixed shifts. Police officers select the shifts for three blocks of 112 days each. An officer could not select the same shift for all three blocks. In addition, the City did not insist that supervision operate under the same fixed-shift, 336-day experiment. As a result, supervision continued to rotate shifts on the 28-day basis as they had in the past. The City exercised its right under the consent award to terminate the experiment. After the City terminated the experiment, the forward shift was put in place.

The Association notes that the quid pro quo and status quo arguments presented by the City are subsumed under the catchall criterion Such other factors. However, that is but one of the statutory criteria to be considered and weighed by the Arbitrator.

The Association argues in its reply brief that its proposal to establish fixed-shifts is sui generis. The Association acknowledges that it attempts to achieve through arbitration what it could not obtain through negotiations; that is the purpose of interest arbitration. The Association emphasizes that the need for fixed-shifts in place of rotating shifts is well documented in the book The Impact of Shift Work on Police Officers, published by the Police Executive Research Forum, 1991.

The Association deflects the City's criticism of the experiment relative to the supervision of police officers. First, any problem which arose during the experimental period was not so severe as to dictate the failure of the experiment. The supervisory and managerial officers of the police department, many of whom work Monday through Friday on a fixed daytime shift, decided to refrain from participating in the experiment. The Association meets the City's criticism in the form of testimony from the Chief of the Stevens Point Police Department Kreisa and Chippewa Falls Coughlin. The Association notes that Chief Coughlin preferred a longer rotation period than 28 days. Chief Barker, the Chief of the City of Superior's Police Department, acknowledged that his officers functioned well despite the long existing practice of annual shift selection by seniority. The Association underscores that the evidence it presents on shift work is in the form of a literature review of health and sleep problems of employees working shifts. By contrast, the City's evidence on this point is in the form of anecdotal testimony of the chiefs of police of several Wisconsin cities and supervision and management of the Eau Claire Police Department.

The Association meets the City's argument concerning the detrimental impact of having police officers on fixed-shifts while their supervisors rotate shifts. The Association argues that the inclusion of more supervisors in the evaluation process is likely to produce better rather than worse evaluations.

The Association minimizes the weight to be given to City Exhibit #20. In that exhibit, the City presents the disparity in experience and seniority of officers present on each of three shifts. The Association notes that the Eau Claire Sheriff's Department, which operates a fixed shift, maintains a lower disparity among shifts than the Chippewa Falls Police Department, which rotates shifts. The Association argues that there is no statistical significance to the data presented in Exhibit #20.

With regard to matters such as mid-shift transfers and the accommodation of probationary employees under the language of the Association proposal, new recruits would not select a fixed-shift until the date when the entire department will make that selection. The Association proposal would not change the manner in which the Department trains and introduces new recruits into the department's force. Any problems which may arise from the introduction of new recruits may be resolved through the grievance process. The handling of any mid-year transfers would not differ from the manner in which such transfers are presently handled during the 28-day rotation. The Association maintains that these are minor problems which should not impact the choice of shift systems for the patrol division of the City of Eau Claire Police Department.

The Association concludes that there is a need for its fixed-shift proposal to maintain the morale and health of police officers in the City of Eau Claire. The Association argues that its proposal to establish fixed-shifts will permit police officers to participate in scheduled family events. The health literature survey in Union Exhibit "E", the book entitled The Impact of Shift Work on Police Officers suggests that fixed-shifts is the best method to address sleep and other health problems encountered by employees, such as police officers, who must work afternoon and midnight shifts to provide 24 hour coverage.

The Association emphasizes that fixed-shifts permit officers to be both physically and mentally alert to perform the stress laden work inherent to law enforcement. The medical literature on sleep deprivation documents the debilitating effects of shift rotation on the biorhythm of employees working rotating shifts. Rotating shifts do not permit officers to participate in family events. Shift rotation leads to diminished work performance and fatigue. The first manifestation of fatigue is the use of inappropriate force in making arrests. In addition, rotating shifts result in an increase in absenteeism and accident rates.

The Association notes that the comparability criterion provides strong support for the inclusion of its proposal in a successor Agreement. In addition, the Association argues that the overwhelming comparability data in which eleven of sixteen comparables have some form of fixed-shift selection process in place establishes the need for including this contractual change and benefit. The Association notes that an overwhelming majority of the police officers in the unit support a fixed-shift rather than a shift rotation of 28 days. Accordingly, the Association urges the Arbitrator to select its final offer for inclusion in the successor Agreement.

The Employer Argument

The City emphasizes that the Union attempts to change the status quo through its shift proposal. The City argues in its original and reply briefs that the Union has failed to demonstrate a need to replace the 28-day rotation in the City of Eau Claire Police Department with fixed-shifts. The City argues that comparability does not establish need. The City notes that the review of the health literature on sleep deprivation and shift work presented in the book The Impact of Shift Work on Police Officers was compiled by the City of Chicago Lieutenants' Association. That organization used this text as a basis as a tool in its negotiations with the City of Chicago. The City directs the Arbitrator's attention to comments made in this book which clearly illustrate the editorial bias of the authors in favor of fixed-shifts over rotating shifts.

More significantly, the City argues that the evidence it presented demonstrates that sick leave and workers compensation usage are no higher in the City of Eau Claire Police Department than any other City department. If anything, the data indicates that usage in the Eau Claire Police Department is less than in other departments. There is no evidence of an increase in the divorce rate. There were no divorces in the City of Eau Claire for the period of its survey.

The City meets the Association argument that fixed-shifts provide officers with an opportunity to participate in family events. The City notes that under Section 5.05 of the expired agreement, officers may trade days off, shifts, or an entire month's rotation of shifts.

The City emphasizes that objective data establish that police officer work performance has not suffered under a rotating shift system. Clearance rates of crimes, both violent and property, are above the statewide average.

The shift rotation system in place permits the department to spread experienced officers on all shifts. There is a mixture of experienced and younger officers on all shifts. Most importantly, the relationship between supervision and the police officers supervised and evaluated, the team concept is maintained under the shift rotation system. It is the team concept which suffered most, in the City's view, during the one-year

experimental period. The evaluation process is enhanced when supervision and patrol officers rotate shifts together.

Police command negotiates with the City. Supervision and management staff did not wish to participate in the experiment with fixed-shifts. Supervisors prefer the rotating shift. They do not become stale in working on a particular shift. In addition, they are not over exposed to one segment of the population. Officers who must work the midnight or parts of the evening shift encounter many drunks. The rotating shift minimizes this contact with this segment of the population. Under a fixed-shift system a police officer may be on the midnight shift for many years before they can accrue sufficient seniority to move to another shift. The continuing change in work assignment inherent in shift rotation maintains officer interest in their work. In addition, the balance of experienced officers and young officers serves to strengthen police operations. The young officers are self-starters, but their exuberance is tempered by the presence of more experienced officers. Yet, the Association does not include in its proposal an opportunity for the chief to spread experienced officers among the various shifts.

Under the shift rotation process training is normally done on the day shift. Training may be provided to the officer when the officer's team rotates to the day shift. On a fixed-shift system, the department would have to pay officers overtime to come in off shift to receive training or it would have to provide training on the afternoon and midnight shifts. The City underscores that the Association proposal does not provide for the smooth introduction of new officers, nor does the Association proposal provide for mid-year transfers from other police divisions into the patrol division.

The City emphasizes that Association negotiator Klus admitted at the hearing that the Association offered no quid pro quo for the inclusion of its fixed-shift proposal in a successor Agreement. The agreement of the parties on wages is consistent with the agreements reached by the City with its other collective bargaining units.

In its reply brief, the City argues that comparability does not determine the need for a change. Each local government and police department is faced with unique problems. The shift system in effect in a particular Department, such as fixed versus rotating shifts, addresses the problems of that police department. The City argues that the Association was unable to identify any legitimate problem in the Eau Claire Police Department which would be corrected by a fixed-shift system.

The City argues that the shift system in effect in many of the comparables is not the same as the fixed-shift system proposed by the Association. Furthermore, where a fixed shift is referenced in the collective bargaining agreement, a provision is made for the chief or sheriff, as the

case may be, to move personnel from one shift to another for purposes of balance, training or discipline.

Dr. Charles Czeisler of Harvard University is referenced at length in the Association's Exhibit E, The Impact of Shift Work, *supra*, and in City Exhibit #70, the March 1994 issue of the magazine Law and Order which describes Dr. Czeisler's study of and recommendations for the Philadelphia Police Department. These studies recommend that where fixed shifts are established, selection by seniority be employed for 75% of the positions on a particular shift, and the remaining 25% be filled by management discretion. Yet, the Association offer provides no authority to the Chief to balance the staffing of shifts.

The City notes that its Exhibit 48, a study entitled Shift Work taken from Psychological Services for Law Enforcement indicates that a shift worker who works a fixed shift of five nights and two weekend days off may still suffer the same ill effects of those working rotating shifts. If on the employee's days off he/she sleeps during the night, it is still necessary for that individual to re-synchronize her/his body rhythm when she/he works at night.

The City responds as follows to the Association arguments concerning the other statutory criteria, namely, the interest and welfare of the public and the internal comparables. The City emphasizes that the Association has failed to present any evidence that the present shift rotation system has negatively effected the mental and physical health of police officers. There is no evidence supporting the assertions made by the Association in its brief that the morale, health or job performance of the Eau Claire police officers in the patrol division have suffered from rotating shifts.

The City emphasizes that the internal comparables criterion supports its position. The wastewater plant operators work rotating shifts. The City's position is consistent with this internal comparable. Accordingly, it urges the Arbitrator to reject the Association's attempt to break pattern here, citing Oneida County (Professional Police Association/LEER Division), Dec. No. 26116-A (3/90).

The City concludes that the Association has failed to meet its burden of proof. It has failed to demonstrate that the rotating shift system should be replaced with a fixed-shift system. The Association has failed to establish a need for this change. It does not offer any quid pro quo for the inclusion of its proposal in the successor Agreement. Accordingly, the City requests that the Arbitrator select its final offer for inclusion in the successor Agreement.

DISCUSSION

Introduction

The Arbitrator has applied each of the eight statutory criteria to the final offers of the parties. The Arbitrator finds that the following criteria do not serve to distinguish between the final offers of the parties: a) the lawful authority of the employer; b) stipulations of the parties; g) changes in any of the foregoing . . .

The City suggests that two criteria, e) the cost of living and f) overall compensation, support the selection of its final offer. The parties did not present any data demonstrating the cost impact of the Association offer. The record evidence does not isolate the overtime costs associated with the operation of the rotating 28-day system in place at the time of the arbitration hearing. In the absence of any economic data and in light of the identical final offers submitted on the matter of wages, the Arbitrator concludes that the cost of living criterion does not serve to distinguish between the offers of the parties.

The City emphasizes that the educational incentive program in place in the City of Eau Claire which pays half the tuition for officers attending school and permits officers to increase their pay by an amount slightly in excess of 11% of the police officer top step, and the high end longevity program in place in the City of Eau Claire support its position. Certainly, the record evidence establishes that these economic benefits are much greater than the educational benefits and longevity paid by many of the comparable communities. In a general sense, this criterion provides some support for the City position.

Each of the parties believes in the justice of its position. For its part, the City believes that the 28-day forward rotation provides a more effective police operation while at the same time the forward rotation of shifts meets many of the health and sleep concerns which the Union raises in its argument.

On the other hand, the Association believes that a fixed-shift system best addresses the debilitating effects of shift work, while maintaining an effective police force. In this kind of dispute, overall compensation is of little assistance in determining which final offer is to be included in a successor Agreement. This criterion is accorded little weight in the resolution of this dispute.

Before turning to an analysis of the remaining statutory criteria, the interest and welfare of the public, comparability and such other factors, the Arbitrator addresses the Employer argument that a minority of the membership of the Association prefers the present rotation system. The Arbitrator finds that it makes no difference whether all or an overwhelming

majority of police officers in the Patrol Division support a fixed-shift system. The final offer of the parties is reflective of the positions held by the principals to this dispute. The position of the Association is reflected in its final offer.

Interest and Welfare of the Public

The Association argues that its proposal will improve morale and protect the health of police officers. It argues that its proposal most effectively addresses the problems inherent in shift work. The City argues that the 28-day shift rotation system meets the operational needs of the Department. The Association offer, the City maintains, will have a negative impact on the operation of the Department.

As noted above in the Background section of this Award, the parties participated in an experiment for a period of one year. The command officers of the Eau Claire Police Department voted to retain the 28-day shift rotation. They demurred from participating in the experiment. The Chief decided to refrain from requiring command to participate in the experiment. Now, the City argues to this Arbitrator that the Association proposal for a fixed shift will devastate: the team concept; the evaluation of the work performance of police officers; the ability of the department to effectively and consistently discipline officers. The City continues in its criticism of the Association proposal: it will affect the department's ability to provide consistent supervision; police officers will not be accountable; there will be deterioration of morale; vacation draws are cumbersome; it will have a negative impact on the officer-coach program; four month rotations are too long, consequently one year rotations would be even more debilitating; some officers will be assigned to shifts they do not want. These arguments were presented to the Association by the City as the basis for the City's termination of the experiment.

The City emphasizes that it negotiates with its command staff. It does not wish to require that command participate in the experiment. However, that position deprived the City, the Association, and command staff of the firsthand experience of how 112-day blocks of fixed shift would affect all of the objections posed by the City to a fixed-shift system. Without going through the experience of participating in the experiment and providing command staff with the opportunity to select fixed shifts for blocks of 112 days each either at the same time as or soon after patrol officers selected their 112-day fixed shift block, it is not known how the experiment would have turned out. Certainly, the City may elect to allow command staff to work the shift system that they desire while forcing patrol officers to work a shift system that their collective bargaining representative finds burdensome. However, there is a consequence to the City's failure to fully participate in the experiment and obtain firsthand knowledge and experience with a fixed-shift system. The City objections are the direct result of its failure to participate in the experiment. The City objections

listed above to the Association proposal which relate to the experiment in which the City did not participate are given no weight.

Any shift system has its advantages and drawbacks. In the debate over a fixed-shift system versus a rotation system, each party points to the advantages of one while identifying the disadvantages of the other. The City argues that a fixed-shift system will leave junior officers on the midnight and/or evening shifts for many, many years. The testimony of the police chief of Stevens Point, Kreisa concerning his experience in the Sheboygan Police Department is instructive. Officers were unable to move to day shift until they had seniority approaching 17 years of service.

Officers on a fixed shift who have contact with a particular segment of society will begin to develop a cynical attitude and become over aggressive in dealing with that segment of society. A clique of "us versus them" may develop among junior officers relegated to the midnight or evening shifts as a result of their lack of seniority. Certainly, these are serious and valid concerns in adopting one shift system over another.

A shift rotation system of 28 days prevents officers from learning their "beat." By the time they are acclimated to the signs and clues of developing trouble that may occur on a particular shift, they rotate to another shift. There is a suggestion in the studies provided by the Association that officers over 40, and certainly those over 50, have increasing difficulty adjusting to the change in sleep patterns associated with rotating shifts. A rotating shift system makes it difficult for police officers to attend family events and participate in community affairs. It may make it difficult for police officers to attend school or classes when the hours of their work obligations change every 28 days.

The record evidence establishes that shift work runs counter to the circadian rhythm, the biorhythm of the body. However, a political decision has been made in the City of Eau Claire to provide police protection for 24 hours per day, 365 days per year. As a result, some police officers in the patrol division must work during the evening and midnight shifts. Most of the studies presented by the Association in the book The Impact of Shift Work on Police Officers document the debilitating effects of shift work. Few of the studies distinguish between rotating and fixed shifts.¹ The evidence

¹ Ch. 2 footnote # 17, Colligan & Tasto, et. al. NIOSH Technical Report: Health Consequences of Shift Work (1978). This study focuses on the effects of rotating shifts on circadian rhythms. It documents that rotating shift workers who work the night shift obtain only 5.5 hours of sleep. The Impact of Shift Work does not indicate the average number of hours of sleep a worker obtains who is permanently assigned to the night shift. It is this comparison of the effects of fixed shift vs. rotating shift which would strengthen the Association argument. However, that discussion does not appear in The Impact of Shift Work.

presented by the City indicates that the problems normally associated with rotating shift work are not present in this department. The forward rotation of shifts comports with the recommendations found in several studies referenced in this book. On the basis of this evidentiary record, the Arbitrator concludes that the evidence presented with regard to this criterion is inconclusive. The Arbitrator finds that this criterion does not serve to distinguish between the final offers of the parties.

Comparability

For the most part, the parties agree on the comparability grouping to which the Eau Claire Police Department is to be contrasted and compared. The City proposes the inclusion of the cities of Ashland and Janesville in the comparability grouping.

The City proposes the inclusion of Ashland as a comparable in order to increase the number of comparables from the northwest part of the state. However, small police departments, such as, Chippewa Falls, Rice Lake and Menomonie are already included in the comparability grouping identified by both parties. Ashland has 19 full-time officers, 12 of whom are sworn non-supervisory police officers. The Arbitrator concludes that the City of Ashland is much smaller than the Eau Claire Police Department. The City of Ashland is a much smaller community than the City of Eau Claire. The comparability grouping agreed to by the parties already contains a number of smaller departments in the northwest corner of the state. If anything, the inclusion of the City of Ashland will serve to distort the comparability grouping with smaller police departments than the City of Eau Claire's. Consequently, the Arbitrator excludes the City of Ashland from the comparability grouping.

The Association acknowledges the similarity between the City of Janesville and the City of Beloit. It does not voice serious objection to the inclusion of the City of Janesville in the comparability grouping. The similarities between Janesville and Beloit and more importantly the City of Eau Claire and the Janesville police departments provide the basis for including Janesville in the comparability grouping. The number of full-time officers in the Janesville department is 87 with 69 sworn non-supervisory

the 115th Precinct: Its Effects on Police Officer Stress, Community Perceptions and Precinct Management (Executive Summary) New York: Vera Institute of Justice, 1986. This study documents the impact of a change from rotating shifts to fixed shifts had on sick leave usage and "productivity" in this busy New York City precinct.

The Impact of Shift Work on Police Officers references to Dr. Czeisler's and Dr. Monk's studies focus on shift work in general, rather than the differential effects of rotating and fixed shifts for workers who work evening and night shifts.

personnel. Eau Claire's department employs 85 full-time officers with 64 full-time equivalents used as the basis for costing the economic proposals of the parties.

Five of the 17 police departments rotate shifts. Eleven of the 17 have some form of fixed shift.

The City emphasizes that the Association proposal makes no provision for balancing of shifts for purposes of distributing more senior officers across the various shifts, to balance the shifts with experienced officers, for training and for including officers coming off probation into the department's regular staffing and organization. The collective agreements of the following police departments contain specific contract language which insures the right of police officers to exercise their seniority rights to select shift preference. These contracts contain no provision which permits the police chief to force an officer to regularly work the shift other than the one of his choice. The departments are: LaCrosse; Manitowoc (officers with five years or more seniority); and Wisconsin Rapids. In Wausau, the chief approves officer shift selections.

Other departments provide for shift selection by practice. Except for the City of Superior whose Chief testified at the hearing, the evidence does not establish whether the chiefs of the departments with collective bargaining agreements which do not contain shift selection provisions, provide the chief with the discretion to remove an officer from a shift of the officer's choice for reasons other than discipline. The City failed to establish this objection to the Association proposal.

Eleven of the seventeen comparables operate under some form of fixed shift system. Therefore, the Arbitrator concludes that the comparability criterion provides strong support for inclusion of the Association final offer in the successor Agreement.

Such Other Factors - Introduction

There are a number of sub-issues determined under this catchall criterion. The City refers to internal comparables which this Arbitrator subsumes under the such other factor criterion. In addition, the status quo analysis argued by the parties falls under this criterion. In the analysis which follows, the Arbitrator discusses these two issues under this criterion.

Internal Comparables

The City argues that shift rotation is the pattern prevalent in the City for its workers who must work 24 hours/day. The other employees who work shifts, the wastewater treatment plant employees, work a rotating shift.

Police work is different from operating a wastewater treatment plant. The kind of work performed; the contact with the public; and the life and death decisions which police officers must make on the basis of split second judgments differ substantially from the operation of a wastewater treatment plant. The work setting for law enforcement personnel is unique. The shift system which will provide effective operation of the police department and maximize the job performance of police officers while minimizing the deleterious effects shift work poses to the circadian rhythms of the body is the focus of this dispute.

In addition, there is no pattern of rotation in the City of Eau Claire. The wastewater treatment plant employees rotate backward; i.e., from midnight to evening to day shifts. Police officers rotate forward from midnight to day shift to evening. Accordingly, this factor is given no weight in distinguishing between the final offers of the parties.

Status Quo

This Arbitrator applies the following mode of analysis to ascertain if there is an arbitral basis for changing the status quo. In this Arbitrator's award in D. C. Everest Area School District, Dec. No. 24678-A, this Arbitrator set out the following test for changing the status quo:

1. Has the party proposing the change demonstrated a need for the change?
2. If there has been a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change?
3. The party proposing the change must present clear and convincing evidence to establish that the requirements set forth in paragraphs 1 and 2 have been met.

The City argues that the Association has failed to demonstrate a need for the change. As noted above, the Arbitrator finds that the evidence submitted by the Association on the deleterious physical and mental effects of shift rotation as contrasted with fixed shifts is inconclusive. The bulk of the evidence pertains to the deleterious effects of shift work, whether that shift work is performed on a rotation or under a fixed-shift system.

The Association has established that fixed shifts permit officers to plan their personal and family lives. Even though the department readily permits shift trades, nonetheless, the officer must find someone with whom to trade in order to participate in a family event. The Arbitrator concludes that the Association has demonstrated a need for the change.

in order to participate in a family event. The Arbitrator concludes that the Association has demonstrated a need for the change.

It appears that the Association has not offered a quid pro quo for its proposal. Then, to prevail on this criterion, the Association position assumes that as the need for change in the status quo increases, the quid pro quo necessary to justify arbitral acceptance of the change may correspondingly decrease. Assuming, but without deciding the validity of that supposition, has the Association been able to establish that its proposal to change the status quo would materially effect police officer health? Such evidence would demonstrate the immediacy of the need for a change.

The evidence suggests that the City of Eau Claire police officer does not suffer the ill effects of rotating shifts claimed by the Association. The forward rotating shift in the City has not resulted in increased sick leave usage and workers' compensation claims or a reduction in job performance effectiveness as reflected in crime clearance rates. The Association has demonstrated a need for the change from a rotation to a fixed shift selection system. However, the Association has not presented evidence of a compelling need for this change. The Association must present a quid pro quo sufficient to justify the change.

In its original brief, the Association claims that its acceptance of the City's wage offer is the quid pro quo for implementing a fixed shift system to replace the 28-day forward rotation system in the City of Eau Claire. The record evidence establishes that the wage increase agreed to by the parties may well be slightly below the average of the comparables. However, wages are impacted by other economic elements of overall compensation such as longevity, tuition incentives, and the level of contribution paid by the Employer for health insurance. There is nothing in this record to suggest that in the course of negotiations, the Association agreed to the Employer wage offer as a quid pro quo for the City's acceptance of a fixed-shift selection system. Association negotiator Kluss admitted at the hearing that the Association did not offer any quid pro quo to establish the fixed-shift system in the City of Eau Claire.

The matter of shift has been the subject of negotiation between the parties for four years. It is of great importance both to the City and the Association. In the absence of any quid pro quo, the City proposal is supported by this criterion.

SELECTION OF THE FINAL OFFER

In the above discussion, the Arbitrator concludes that only two criteria serve to distinguish between the final offers of the parties. The comparability criterion provides strong support for the selection of the Association final offer, and its inclusion in the successor Agreement.

The Association has demonstrated a need for changing the status quo, albeit, not a compelling need for this change. The Association has failed to provide a substantial quid pro quo for its proposal to change the shift selection system.

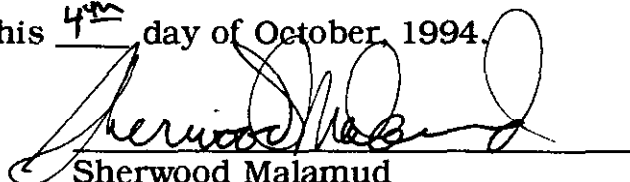
The Arbitrator gives greater weight to the status quo analysis, under the Such Other Factor criterion, than the Comparability criterion. The three-pronged test for arbitral action to change the status quo provides substantial latitude for achieving change through the interest arbitration process. There is evidentiary support to retain the 28-day forward rotation system. The quid pro quo requirement provides the basis for making a change. In a voluntary collective bargaining setting, quid pro quo is necessary to provide the basis for change to the status quo. Quid pro quo serves the same purpose in the interest arbitration process, as well.

Based on the above Discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.77(4)(b), Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of the City of Eau Claire, attached hereto, which together with the stipulations of the parties, are to be included in the collective bargaining agreement between the City of Eau Claire and the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, effective July 1, 1993, through June 30, 1995.

Dated at Madison, Wisconsin, this ^{4th} day of October, 1994.



Sherwood Malamud
Arbitrator

CITY OF EAU CLAIRE
FINAL OFFER
Case 214 No. 49362 MIA-1820

1. All items not addressed in this final offer shall remain unchanged in the successor agreement.

2. Wages:

Article IV Section 4.01 Wage Schedule:

All steps shall be amended as follows:

Effective July 1, 1993, steps will be increased by 2%;
Effective January 1, 1994, steps will be increased by 2%;
Effective July 1, 1994, steps will be increased by 3%.

3. Delete Appendix D.

4. The term of this contract is two years, expiring June 30, 1995.