MAY 25 1995

STATE OF WISCONSIN

ARBITRATION AWARD

- -

In the Matter of the Arbitration between :

CITY OF LA CROSSE (POLICE DEPARTMENT) :

and :

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/ :
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION
:

- -

Re: WERC Case 252
No. 50105 MIA-1846
Decision No. 28069-A

APPEARANCES: For the City of La Crosse: Weld, Riley, Prenn & Ricci, S.C., by Stephen L. Weld, Esq., 715 South Barstow Street, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030. Mr. Weld was accompanied at the several hearing days in this matter by Mr. James W. Geissner, City Personnel Director (who appeared for the City in the first day of the hearing), by Ms. Pam Ghouse, City Personnel Specialist, and Mr. Eric Schoultz, City Personnel Assistant, all of City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601-3396.

For the Association: Cullen, Weston, Pines & Bach, Attorneys at Law, by Gordon E. McQuillen, Esq. Mr. McQuillen was accompanied at the several days of hearings by Mr. S. James Kluss, Administrator, Mr. Richard T. Little, Bargaining Consultant, WPPA/LEER Division, 7 North Pinckney Street, Madison, Wisconsin 53703, and Mr. David Schatzley, President of the local Association.

BACKGROUND

This is an interest arbitration proceeding. The undersigned was appointed by the Wisconsin Employment Relations Commission as arbitrator on July 12, 1994, pursuant to Sec. 111.77(4) (b) of the Municipal Employment Relations Act. The Association is the certified exclusive collective bargaining agent of nonsupervisory law enforcement personnel employed by the City of La Crosse. The dispute herein arises out of negotiations for renewal of a labor agreement that expired by its terms on December 31, 1993. Bargaining over the terms of a renewal agreement commenced in October, 1993. On November 19, 1993, the Association filed a petition with WERC requesting that it initiate final and binding arbitration under provisions of the Act. A member of the WERC staff investigated the dispute and on June 3, 1994 advised the Commission that the

parties (1) were at impasse, (2) had filed final offers, and (3) the investigation was closed. WERC then certified that the conditions precedent to the initation of compulsory and final and binding arbitration had been met and sometime after submitting a panel of arbitrators to the parties proceeded to appoint the undersigned as arbitrator.

Hearings were held in La Crosse on September 21, December 7, December 22, 1994 and January 13, 1995. The parties introduced testimony in documentary form and from witnesses and were given opportunities to cross examine the witnesses. No formal record was kept other than the arbitrator's handwritten notes. At the conclusion of the hearing the parties agreed to send written briefs on March 13 for the arbitrator to exchange. The briefs were actually received on April 3 and exchanged on April 4. Reply briefs were exchanged on April 21. The record is considered closed as of that date. The arbitrator's jurisdiction is limited to selecting either the final offer of the City or of the Association. The City's final offer is attached hereto as Appendix A. The Association's final offer is attached hereto as Appendix B.

THE ISSUES

There are two issues. The Association would delete the residency requirement in the labor agreement and retain all the remainder of the agreement with the changes that have been agreed upon. The City would make the changes that have been agreed upon, keep the residency requirement, and make certain changes in the health insurance provision.

THE HEALTH INSURANCE ISSUE

The parties differ sharply about the origin of this issue and its standing in this procedure. The City asserts that in negotiations in October, 1993, before it filed the petition for arbitration, the Association had proposed several changes in the health insurance provision. These were: (1) a change in insurance benefits so that younger spouses would have access to the plan when the retiree under the plan reached Medicare age; (2) language to limit married couples who were both employed by the City to one plan; (3) a provision for retirees to obtain Medicare supplemental health insurance; and (4) a provision for mail order prescription drug coverage. The Association asserts that it proposed only the first of those four proposals. Although the Association concedes that it expressed concerns about all four issues in negotiations, it did not author any of them and in the form that they have been proposed by the City, they are not acceptable.

The Association asserts that in the 1992-3 negotiations the City declared that it would not propose major changes in health insurance in the 1994 negotiations. Further, the Association asserts that in the 1994 negotiations the City said that its proposals were minor and only for the purpose of cleaning up the language and making it conform to current administration of the plan. The City denies that it committed itself in the 1992-93 negotiations not to make major changes. As to the current proposals, the City holds to its view that the

changes are minor and have been made to conform the language of the agreement to practices in administration of the plan that have been in effect for many years.

On its part the Association has made the following arguments publicly, as recounted in Association and City exhibits, in testimony of witnesses at the hearing, and in its brief and reply brief:

1. The old agreement stated that "The spouse or dependents of an officer who dies before the officer or spouse becomes eligible for Medicare shall be eligible to continue to participate in the health insurance program at the level immediately preceding the officer's death. The City shall continue to pay the City's share of the health insurance premium until the spouse becomes eligible for Medicare or remarries."

Paragraph K. of the City's proposal substitutes the word "retiree" for "officer." The Association argues that this would exclude benefits of the kind described for spouses and dependents of officers killed in the line of duty. The proposed policy also would have spouses receive benefits only until the dead officer would have turned 65 whereas the old provision referred to the spouse becoming eligible for Medicare. Some spouses are significantly younger than their officer husbands. The Association considers these to be very substantial changes.

2. The Association asserts that the City's proposed language in Paragraph J. of its proposal, Retiree Health Insurance- Younger Spouse, "separates the younger spouse from the retiree allowing them to stay on the City's 'BASIC PLAN,' however this plan is not mentioned or defined anywhere else in the City proposal leaving the door of interpretation wide open."

3. The old agreement specified five years of service time for eligibility for health insurance benefits if the employee goes on disability pension. It made no distinction between service connected and non-duty disabilities. Paragraph D. of the City proposal, covering duty disabilities, continues the five year service eligibility requirement for continuation of health insurance benefits, but Paragraph E., covering non-duty disability pensioners, specifies ten years of service for such eligibility. In addition, the City proposal requires that the service will have been as a "sworn police officer." The old agreement referred to service as "employees." Since many police officers have had previous service as employees, this change would raise the requirements for eligibility for these benefits. The Association considers these to be substantial changes.

4. The old agreement states: "Newly hired employees shall be entitled to participate in the health insurance program provided herein, after sixty (60) days of employment." Paragraph L. of the City's proposal states: "Newly hired employees shall be eligible to participate in the City's health insurance program referred to herein after two (2) full months following the month in which they are hired." The City introduced testimony purporting to show that the insurance plan has always been administered in the fashion specified in its proposal, that this is a prime example of why the language needs to be cleaned up and that administratively it is necessary to initiate coverage at the

beginning of the month. The Association argues that the current administration of this feature of the plan is in plain violation of the labor agreement. It cited two instances of new employees who had found it necessary to pay an extra month of premium because of the way the plan is administered. At the time of the hearing the Association presented testimony purporting to show that it had filed a grievance related to this matter. (Although the grievance, as presented in City testimony, was dated September 30, 1994, it was marked as received by the City Personnel Department on October 27. It makes a general assertion that the City had violated the labor agreement, giving as a basis the testimony regarding administration of the labor agreement adduced from the City on the first day of hearing in this matter held on September 21, 1994. Thus, it is not clear to the arbitrator whether the grievance was intended to refer specifically to the new employee paragraph or to general alleged violations.)

5. The old labor agreement makes several references to eligibility for health insurance benefits for employees who retire before age 65 (most police officers retire at 55) as having coverage continue until the employee is eligible for Medicare. The City's proposed policy in Paragraphs D. and E. states that "This benefit ends when the retiree becomes eligible for Medicare or reaches age sixty-five (65)." Although the Association agrees that the present eligibility age for Medicare is 65, it fears that the eligibility age could be raised in the future. If it were raised to 67, under this wording the retiree would have a two year gap in insurance.

6. Although the Association does not oppose a clause called "One Plan for Married Employees," it is not satisfied with the City's specific proposal. The City proposes in Paragraph N. that "The employee with the most seniority shall be the subscriber." The Association fears that this might present problems for younger spouses of police officers who retire or die.

7. The Association asserts that the mail order prescription paragraph (Paragraph M. in the City proposal) in previous discussions was intended to be "no co-pay." Instead, it has been proposed as a co-pay plan. Since the intent of the proposal was to encourage employees to buy cheaper prescription drugs by mail so as to reduce the City's reimbursement obligation, the co-pay feature would reduce or eliminate employee incentive to buy mail prescription products.

8. In the old agreement there was a "carve-out" plan for Medicare retirees. Under City proposal F. Medicare retirees and their spouses have Medicare Supplemental Insurance, which the Association argues would pick up the deductible and co-insurance that Medicare does not pay. The Association asserts that the "carve-out" plan also picks up the difference between what Medicare allows and the provider charges.

The Association and its members take these criticisms of the City's health plan proposals very seriously. During the month following the first day of hearing in this matter the Association mounted an informational picket at City Hall for several days, asserting that the City was not administering the health insurance plan in accordance with the requirements of the labor agreement and that its proposal in this proceeding would reduce present benefits in ways that have been described above. The City then petitioned WERC to change its final

offer so as to remove its health insurance plan proposals and reduce the disputed issues to one: residency. The Association's counsel responded by writing to WERC opposing the City's petition. Ultimately the petition to change the final offer was withdrawn and the parties agreed to a 45 day "cooling off" period after which the second day of hearing in this matter proceeded on December 7, 1944.

On its part the City alleges that the Association had plenty of time before the WERC declared an impasse in the negotiations to analyze the City's health insurance proposals and respond with the kind of criticisms that were withheld until September 21, the first day of hearings in this matter. In its preliminary final offer, dated February 14, 1994, and directed to the Association, the City had included the entire proposal except for the final paragraph, which was added later. The Association responded in a letter to the City Director of Personnel, dated March 16, 1994, specifying the matters on which agreement had been reached and stating that: "The remainder of the contract shall remain status quo for a successor agreement." The City responded in a letter dated March 28, 1994, agreeing with all but one of the items that had been listed by the Association and ending the letter with this sentence: "The City proposes that the language of Article IV Health Insurance be reviewed as attached." The attachment contained the same proposal that had been attached to the February 14 letter.

The Association's April 12 letter to the City listed a number of tentative agreements and stated that its final offer was to delete the residency requirement and leave the remainder of the agreement as it was. This became the Association's final offer, attached hereto as Appendix B. The Association did not respond to the suggestion of the City in its March 28 letter that its health insurance proposals be reviewed. In its reply, dated April 15, the City amended its earlier proposal to add a paragraph calling for a Health Care Cost Containment Committee. This made its offer identical with its May 26 final offer, which is attached to this report as Appendix A.

The City argues that the Association had several opportunities to review the City's health insurance and should have pointed out its dissatisfaction with the wording of the City's proposal, implying (and actually stating in its brief) that the City was willing to improve the wording in response to the Association's comments. In the opinion of the City, by not responding for four months to the City's appeal for comments on the health insurance proposal, the Association ambushed the City at the first day of hearings on September 21. The Association responds that since the City's health insurance proposal was not brought up in the bargaining sessions but was only contained in its preliminary final offer, the procedure does not contemplate further counterproposals on any of the issues. The Association points out that the City did not respond to any of the Association's preliminary final offers wherein it proposed to eliminate the residency requirement from the labor agreement.

THE RESIDENCY REQUIREMENT ISSUE

The current residency requirement, as the Association proposes to delete it, can be found in Appendix B of this report. It has been in all labor agreements between the parties since 1983. City agreements with the Service Employees International Union, covering a general unit of 220 employees, with the Amalgamated Transit Union, covering 34 city bus line employees, and with International Association of Fire Fighters, covering 93 fire fighters, have each had a similar residency requirement in their agreements since 1980. Since an initial 1992 agreement there has been a similar residency clause in agreements with the La Crosse Airport Fire/Police Officers Association, covering 4 employees. Meet and confer terms and conditions of employment for 68 non-represented employees include a similar residency requirement. It has also been contained in agreements covering a police supervisor unit of 34 individuals. A recent settlement with the supervisors included an understanding that the parties would adopt whatever settlement results from this proceeding. All these agreements and arrangements contain grandfather provisions. In the current proceeding 27 of 62 officers in the unit are not covered by the requirement. More than half of those (15) live within the city anyway.

The evidence and arguments on this issue are complex. Perhaps the best way to handle them is to summarize the evidence and arguments of each party on the various important points they made rather than to try to summarize each party's entire presentation separately.

On the issue of residency requirement for police the Association would compare La Crosse with other Wisconsin cities with populations within 20,000, either above or below. This group includes Appleton, Beloit, Eau Claire, Oshkosh, Janesville, Sheboygan, Fond du Lac, Wausau, and Manitowoc. Of these only Eau Claire and La Crosse have a residency requirement. With the exception of Janesville, Wausau, and Manitowoc, the Association states that this group of cities composed the comparables utilized by the most recent La Crosse interest arbitrations involving police, namely Case 140, MIA-1021 (Vernon, 1986) and Case 150, MIA-1196 (Hutchison, 1987). Except for Beloit, Fond du Lac, Wausau, and Manitowoc (64, 62, 55, and 51 respectively), the other cities have police forces of about the same size as La Crosse with 88 (62 in the bargaining unit). The Association argues that these comparisons support its position that a majority of Wisconsin cities of comparable size do not have residency requirements for their police forces.

The City disputes the Association's assertion that its comparable cities are the same as those it used in the 1986 case. The City introduced an Association exhibit from that case that included Green Bay, Kenosha, Racine and Madison but excluded Sheboygan, Fond du Lac, and Manitowoc. In 1986 Green Bay, Kenosha, and Racine all had residency requirements. In this case the City would compare itself both with wider and narrower segments of Wisconsin cities. Of the 22 largest cities half have some form of residency requirement, and of Wisconsin cities with populations between 50,000 and 65,000, which encompasses La Crosse, more than half (West Allis, Waukesha, Eau Claire, and La Crosse) have residency

requirements. Within this smaller group Oshkosh and Janesville do not. It should be noted that the City includes West Allis, Waukesha, and Wauwatosa within the group of cities that have populations within 20,000 of La Crosse's population. None of these was included in the arbitration cases noted above. On the basis of these comparisons the City argues that external comparisons are inconclusive and "provide less than compelling evidence" for the Association's position.

The Association introduced testimony of a witness who had measured the time it took him to drive to City Hall from the northwest, northeast, and southeast edges of the city of La Crosse. The longest time was about twenty minutes for the seven miles from the southeast edge. The Association asserts that many officers who live outside the city limits can reach City Hall in about the same time as those who reside in the far reaches within the city. In any event, Association argues that there has not been a general call-out of officers within anyone's memory and that when a crisis requires more officers to deal with it, the department gets aid from the county sheriff's department and from police forces in nearby communities. This procedure is speedier and more efficient because the extra officers are already on duty and can be deployed immediately.

The City did not respond specifically to this argument. Rather, the City emphasized the desirability of police officer participation in the activities and the affairs of the La Crosse community. The City presented testimony of the police chief who emphasized that such community activity increases the confidence of the citizenry in its police force, increases officer knowledge of the community and its problems and thereby gives individual officers a greater stake in the community. The Association presented several witnesses who gave testimony purporting to show that many of the organizations that were cited by the chief had members and activities that extended throughout the county and beyond and that officers living outside the city limits engaged in many community activities in La Crosse as well as in their communities of residence.

The City presented the testimony of an expert witness who outlined the results of his economic analysis of the potential results of erasing the residency requirement. His conclusion was that if the same percentage of those employees who now live outside the city because of the grandfather clauses in the various agreements, i.e., 53 percent, moved out of the city as a result of erasing all the residency requirement clauses, their total annual wages would be more than $4.5 million, a great deal of which would be expended in the vicinity of their new residences. He testified that there would also be a multiplier effect, although he was unable to predict what it might be. In cross examination the Association was able to elicit his admission that there was no way of knowing whether 53 percent would move out or with what speed those who would move out would act.

Although it was not heavily emphasized, the City argued that departure of employees from the city would erode the tax base as they sold their houses. Since the police are well paid and have considerable job security, it seems likely that those who purchased the homes that were vacated would not have similar incomes and job security. The Association's response was to argue that for every house sold there would be a buyer who would pay the same taxes. The Association asserted that the city's economy would be stimulated because of the

increased income for real estate agencies.

The central argument of the Association, however, is that La Crosse lacks the kind of affordable housing that these officers desire. Both parties introduced a substantial amount of data relating to the availability of housing in La Crosse. The Association introduced testimony to the effect that as of September 16, 1994, there were 54 listings for residences being sold for under $100,000 on the south side and 31 on the north side. As of that same date there were 48 empty lots listed for prices over $10,000, 35 of which were in a new subdivision where building was unlikely to commence before the summer of 1995. An expert witness who was a real estate agent testified for the Association that the supply of housing and lots for building that are within the price range of these employees is very small. (The parties were in substantial agreement that lots valued at under $10,000 were probably undesirable. The Association appears to believe that affordable lots for these police officers should be priced at about $20,000 or less.)

The City responded with its own figures that were intended to refute the Association's data. The City produced figures from the City Assessor's office and the Greater La Crosse Board of Realty purporting to show that in 1993 48 percent of real estate sales had been by owners and that the figures for about the first 10 or 11 months in 1994 indicated that 56 percent were For Sale By Owner sales. According to these data the Association figures (presented in the previous paragraph) must be more than doubled to arrive at a realistic number of homes or empty lots for sale at the present time. According to City Assessor figures, more than 300 residences in the $60,000 to $80,000 price range and 98 in the $80,000 to $100,000 price range were sold during 1993 and during the first 10 or 11 months of 1994.

The City introduced an exhibit purporting to show that there were 171 vacant lots assessed at over $10,000 in the city as of January 1, 1994. Whereupon the Association produced a book of photographs (taken by the President of the Local) of all the lots listed by the City. The Association's summary of its photographs was as follows:

> 120 of the listed addresses are NOT FOR SALE
> 22 of the listed addresses are occupied by a dwelling of some sort already
> 3 of the listed addresses DO NOT EXIST
> 43 of the listed addresses are selling for MORE THAN $20,000
> 5 of the listed addresses are selling for less than $20,000 (2 of these need extensive excavation)
> Leaving 3 affordable properties available

34 of the 171 lots, all selling for more than $26,000, are in the new development that is not expected to be open for business until this summer. (A general difficulty in comparing City and Association data on this issue is that the City uses assessed values and the Association uses asking prices.)

City data indicate that there were 26 houses built in the city in 1993 and

27 in 1994. Because of one existing new subdivision and the prospect for another opening later this year, the City projects 70 new houses to be built in 1995. The Association considers the projected figure for 1995 very speculative, pointing out that the existing new subdivision has high prices and unusual architectural covenants that discourage police officer purchases and that the other new development had not yet been approved by the City.

The City introduced data purporting to show that during the past five years (not including 1995), among the 61 members of the bargaining unit, there have been two dismissals for cause, seven promotions outside the unit, four retirements, and two voluntary quits. During the same period there were 347 applicants for officer positions and 16 new officers hired. The City considers that these figures are an indication of general employee satisfaction. Since most applicants are from outside the city and many from outside the state and know of the residence requirement, the City considers that these figures are an indication of general employee satisfaction.

OPINION

Some of the arguments made by the parties on the two issues cancel one another. The City argues that the Association had several months to review the City's health insurance proposal in its preliminary final offer before the final offers were effectuated and yet waited until after the first day of hearing to express its displeasure. The Association responds that it was under no obligation to comment on the City's final offer and was unaware of some effects of the changes until the City's testimony on the first day of hearing. The City argues that its proposed changes were largely the result of initial proposals that had been made by the Association. The Association argues that the City's wording distorts the changes that had been discussed in the initial bargaining. And finally, the Association argues that the changes are major and the City was obligated to present some form of "quid pro quo" for the changes. The City denies that any "quid pro quo" is necessary for what it says are administrative changes in the health insurance provisions.

Now look at the residency requirement issue. Here the Association argues that it made proposals in the bargaining that would have modified the existing wording. The Association position is that the City was aware of the Association's position on residency for several months before the final offers were effectuated and yet made no move to respond to the Association's earlier proposals to modify it. At the hearing the city objected to testimony about positions taken in the bargaining and asserted that they cannot properly be part of this proceeding. The City argues that the residency clause was freely negotiated in 1983 and that the Association was obligated to present some form of "quid pro quo" in exchange for eliminating it. The Association argues that no "quid pro quo" is necessary since it was unable to ascertain from the City what the value of its proposal was.

In sum, the City says the Association never responded to proposed changes in the health insurance provisions. The Association says the City never responded to the proposed change in the residency requirement. The Association

says that the kind of changes that the City proposes in the health insurance plan should be negotiated, not put into effect by arbitration. The City says that the residency requirement should be negotiated, not removed by arbitration. The City says the Association never offered a "quid pro quo" for elimination of the residency requirement. The Association says the City never offered a "quid pro quo" for the proposed changes in health insurance. In my opinion none of these matters deserve further discussion in this report.

The Health Insurance Issue

That the Association considers the City's health insurance proposals to constitute substantial changes was demonstrated by its informational picket of City Hall in October. In terms of this arbitration proceeding the Association appears to believe that it gained ground when the City petitioned to remove this issue from its final offer. Although the City has maintained that its proposed changes are merely for the purpose of adding some modifications that were originally proposed by the Association and bringing the wording of the labor agreement into conformity with the way the plan has been administered for several years, the Association has strenuously disagreed. In its brief the City has argued that when the proposal in in its final offer is interpreted in the administration of the labor agreement, the record of this proceeding will take precedence over the wording. For instance, the Mayor of La Crosse has stated that the City has had no intention of depriving any widow of her health insurance because of the substitution of the word "retiree" for "officer." In testimony at the hearing by City witnesses there were other instances where responsible City officials testified that no changes were intended in the benefits under the old agreement even where words have changed.

Let us look at the changes that engendered the eight criticisms by the Association that are recounted above:

1. As recounted above, the Mayor's response to the criticism that the word "retiree" had been substituted for "officer," would seem to negate any bad effects of the new wording. That is, despite the wording of the proposal, spouses of officers who die would be treated the same as spouses of retirees who die. This City (actually mayoral) guarantee includes coverage of a spouse until the spouse becomes eligible for Medicare or remarries rather than when the dead officer would have reached 65.

2. As the City has argued, Retiree Health Insurance- Younger Spouse is a provision proposed by the Association in the initial bargaining. I am puzzled by the Association criticism in its brief when it says "BASIC PLAN" is not defined. The City offers Medicare Supplemental Insurance for the retiree. Obviously the BASIC PLAN is the coverage for the spouse, provided the spouse pays the premiums, that the couple has had all along until the retiree qualified for Medicare.

3. Eligibility for non-duty disability pension after ten years is new. The old agreement did not distinguish between duty and non-duty disability. Therefore the ten year service requirement for eligibility for non-duty

disability pension is new and is a change that the City intended. As to the substitution of the words "sworn police officer" for "employee," both parties presented exhibits purporting to show dates of hire for all officers in the collective bargaining unit. In City Exhibits No. 28 and 29 there are 17 names with hiring dates earlier than the dates opposite those names in Association Exhibits No. 17, 18, and 19. I interpret this difference to indicate that the City intends that its dates are to be used to measure service requirements rather than the later dates that the Association has used to show when the person became a sworn police officer.

4. The requirement that new employees serve "two (2) full months following the month in which they are hired" rather than "sixty (60) days of employment" before they are entitled to health insurance is a small change. The policy has been administered substantially in the manner of the new wording for over a decade. The Association, of course, is free to carry its grievance on this matter to arbitration, but from the standpoint of administration of the provision, the City's proposal to change the wording is reasonable and represents past practice.

5. On the matter of a retiree being "eligible for Medicare on reach(ing) age 65" there are no proposals in the Congress to change the eligibility age to 67 that would be effective before sometime in the 21st century. In view of the City's general position that it does not intend to take away any benefits that the officers in the unit now enjoy, the City's proposed change of wording must be interpreted to mean that retirees are covered by the health insurance policy until they are eligible for Medicare.

6. It is hard to envision any serious problem arising from the City's proposal that between married city employees the partner with greater seniority should be the insured.

7. On the issue of co-payment for mail order prescriptions there was testimony indicating that co-payment for locally filled prescriptions are on a monthly basis whereas the proposed mail order program would provide for a single 90 day co-payment for generic drugs. The effectiveness of the Association's criticism about lack of incentive to buy mail order drugs would depend on how much money could be saved. The Association did not present evidence to indicate that this proposal reduces present benefits. In any case the significance of this as an issue is reduced because of its December 31, 1995, sunset provision.

8. On the issue of the Association's perceived difference between the old "carve-out" insurance policy and Medicare Supplement Insurance the hearing record shows that City officials testified that the City's proposal does not change the benefits as they existed under the old agreement.

When I consider (1) the City's commitment to honor its promise that there are no significant changes in existing benefits in the health insurance plan and to be governed by the hearing record on this commitment, and (2) that this arbitrator can identify no significant changes in the health insurance proposal (other than the increase from five to ten years of service for eligibility for non-duty disability pension), I am inclined to the belief that the City's

proposal on health insurance does not reduce the benefits of the members of the collective bargaining unit in important ways.

The Residency Requirement Issue

The Association's pictorial evidence on the scarcity of empty building lots for sale was very effective. Whereas the City listed 171 affordable vacant lots in the City of La Crosse on January 1, 1994, the Association demonstrated with a snapshot album exhibit that, at the time of the hearing, only a handful were for sale, affordable, or desirable for residential building. The Association's evidence on the dearth of affordable houses for sale proved to be less impressive when the City demonstrated that about half the houses sold in the city are by their owners and therefore not included in the data presented by the Association's realtor witness. Although the City's planning officer presented testimony purporting to show that more expansive housing opportunities are coming on the market this year, it appeared during cross examination that some of it was not affordable, some of it was not desirable for these officers because of architectural covenants, some of it was in developments still in the planning stage, and some of it, because of age or debility, was simply undesirable. In sum, although the Association showed by its testimony that there is currently a shortage of vacant lots available for building, it did not convince this arbitrator that there was anything like a similar shortage of existing residential housing for sale.

The Association also presented convincing evidence and argument on the subject of officer participation in community activities. In response to the City's position that residency promotes greater interest and participation in community activities by police officers, which redounds to the benefit of La Crosse, the Association presented witnesses and argument showing that much of the activity and participation that the City considers desirable takes place even though officers live outside the city and that many of the activities that are promoted and advantaged by police officer participation are functions that are county-wide or at least not restricted by city limits.

The Association's evidence and argument were also convincing concerning the need for quick response in case of emergencies in that when extra officers are needed quickly, county personnel and officers from nearby communities can be called for duty more quickly than calling city officers who are off-duty.

The City's evidence and argument about the fiscal effects of eliminating the residency requirement were more convincing than those of the Association. Although the expert witness could not be precise about how many employees would move their residences out of the city or how fast they would depart if the residency requirement were lifted, his conclusions about the possible fiscal effects were carefully presented and were reasonable conclusions from his analysis. Although the Association argued that for every residence sale by a police officer who moved outside the city there would be a buyer who would pay the same taxes, it seems clear to this arbitrator that because of the stability of their income and employment, police officers are rightly considered very desirable residents and the City would not be fiscally advantaged by their

departure to residences outside the city.

The City also made a good argument that the residency requirement has not made it difficult to recruit. There is very little turnover in the City's police force and substantial numbers of applications for openings from outside the city by individuals who are aware of the residency requirement.

The effectiveness of the Association's comparability arguments was somewhat diminished when it was shown that it had left out three cities with populations within 20,000 of La Crosse's population, two of which had residency requirements, although the comparisons still favor the Association's position by a margin of 8 to 3. Such comparisons are readily manipulated by the parties in proceedings like this one. By choosing cities with populations between 50,000 and 65,000, the City was able to assert that three of five other comparable cities had residency requirements. If this award turned on the issue of outside comparability, the Association's comparables would be very persuasive.

It is on the issue of internal comparability that the City's main argument depends. Here there are five other units as well as a meet-and-confer group whose members are all required by their agreements to live in the city. The City's argument that eliminating the residency requirement in this unit would result in pattern bargaining rings rather hollow in the sense that the present pattern is what its argument depends upon. Nevertheless this arbitrator would be very reluctant to depart in this unit from a pattern that applies to all other employees in the city.

Although I have many misgivings about the advisability of residency requirements in general, there are two factors in this case that militate against a decision in favor of the Association's final offer: First, the residency requirement was freely negotiated by these parties in the 1983 agreement. If the requirement is to be eliminated, it would be more appropriate for the parties to do it and not have it imposed by an arbitrator. Second, and more important, an arbitrator should not grant more favorable conditions to one unit, representing less than 20 percent of the City's organized employees, than those that have been negotiated for all the other employees. There was no indication that the police in this proceeding are suffering in comparison with employees in the other units. There is no question but that such an award would cause agitation for the same provision in other units. This might or might not have a domino effect and cause employee flight from the city, as feared by the City. Like other arbitrators, as quoted by the City in many cases in its brief, I am unwilling that this single arbitration proceeding should disturb a pattern of long standing that was freely negotiated by several unions and this City.

In arriving at this decision I have given weight to and carefully considered the eight factors in Sec. 111.77(6) of the Wisconsin Statutes as they apply to the final offers.

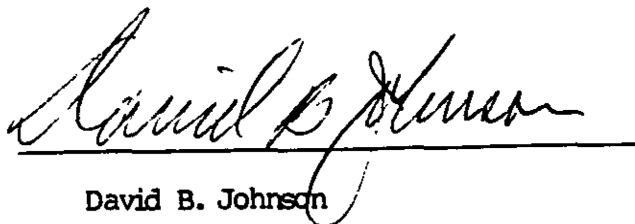
AWARD

The final offer of the City is chosen as the award in this proceeding. It

is understood that as a result of its testimony at the hearing and the arguments in the City's briefs its final offer on health insurance is to be interpreted in the manner I have described in the Opinion section of this report.

Dated May 24, 1995

In Madison, Wisconsin



David B. Johnson

APPENDIX "A"

Association Exhibit No 2

CITY OF LA CROSSE
PERSONNEL DEPARTMENT
400 LA CROSSE ST
LA CROSSE WI 54601-3396
(608) 789-7595
FAX NO. (608) 789-7390

- Recruitment and Selection
- Employee Benefits
- Workers Compensation
- Risk Management
- Labor Relations

RECEIVED
MAY 27 1994
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES W. GEISSNER
DIRECTOR OF PERSONNEL

PAMELA K. GHOUSE
PERSONNEL SPECIALIST

May 26, 1994

S. James Kluss, Administrator
Wisconsin Professional Police Association
7 N. Pinckney Street, #220
Madison, WI 53703

RE: City of La Crosse's Final Offer
Case 252 No. 50105 MIA- 1846

Dear Mr. Kluss;

The City of La Crosse herein amends its final offer as follows:

<u>Issue #1- Residency Requirement</u>

Union's Position: Delete Residency Requirement.

City's Position: Maintain present language.

<u>Issue #2- Health Insurance</u>

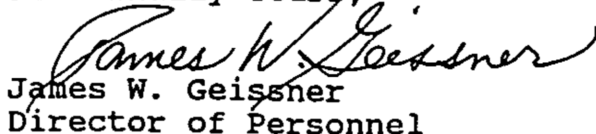
Union's Position: Maintain present language.

City's Position: See attached proposal.

Please note that the City has amended its proposal on health insurance and hereby incorporates same into its final offer.

I remain,

Fraternally Yours,



James W. Geissner
Director of Personnel

Attachment (1)

cc: Edmond J. Bielarczyk, Jr., WERC
David Schatzley, Association President
Edward Kondracki, Chief of Police
William Schmidt, Deputy Chief of Police

v/sjkfo.252

Association Exhibit No. 3

RECEIVED
MAY 27 1994
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ARTICLE IV - HEALTH INSURANCE

A. <u>Employee Premiums</u>
The City contribution to group health insurance shall be 100% of the premium per month for both a family and single plan.

B. <u>Deductibles</u>
Single employees will pay an annual calendar year deductible of $100.00 and there will be three (3) single $100.00 deductibles per family, to a maximum of $300.00 aggregate per anum.

C. <u>Retiree Health Insurance- Normal Service</u>
Employees who are participants in the City's health insurance program and retire at any time after age fifty-three (53) or take early retirement in conjunction with a special early retirement program, may continue their family or single health insurance coverage at group rates until they become eligible for medicare or reach age sixty-five (65).

The City shall pay the retiree's monthly premium charges on the same basis as is in effect for active employees as modified from time to time through collective bargaining. The term "retirement" shall mean that the employee is eligible for and is actually receiving a normal unreduced service retirement annuity. Additionally, the employee must have fifteen (15) years of service to be eligible for this benefit.

D. <u>Retiree Health Insurance- Duty Disability Pension</u>
Eligible employees who are participants in the City's health insurance program and receive a duty disability pension shall receive the same benefits including premium charges on the same basis as is in effect for active employees as described in paragraph C above provided that they have a minimum of five (5) years of service as a sworn police officer in the La Crosse Police Department. This benefit ends when the retiree becomes eligible for medicare or reaches age sixty-five (65).

E. <u>Retiree Health Insurance- Non Duty Disability Pension</u>
Eligible employees who are participants in the City's health insurance program and receive a non-duty disability pension shall receive the same benefits including premium charges on the same basis as is in effect for active employees as described in paragraph C above provided that they have a minimum of ten (10) years of service as a sworn police officer in the La Crosse Police Department. This benefit ends when the retiree becomes eligible for medicare or reaches age sixty-five (65).

F. **Medicare Supplemental Insurance**
Effective February 1, 1992 all active employees and those retiree's that retired after January 1, 1983 that remained in the City's health insurance plan are eligible to continue coverage by the carrier that the City has selected for a medicare supplemental health insurance plan. If the eligible employee has had continuous participation in the City's health insurance plan from retirement to age 65, he shall be allowed into the medicare supplemental plan without waiting periods or limitations because of pre-existing conditions. This medicare supplement plan shall be available to spouses of retirees under the same rules as above. Retirees and spouses are responsible for payment of the monthly premiums.

G. **Level of Benefits**
The health insurance benefits shall be no less than the level of benefits quoted by WPS on May 2, 1978.

H. **City's Right to Name Carrier/Self Insure**
The City shall have the right to name the health insurance carrier and/or to self insure the level of benefits described in paragraph G above.

I. **Coverage for New Employees**
Newly hired employees shall be eligible to participate in the City's health insurance program referred to herein after two (2) full months following the month in which they are hired.

J. **Retiree Health Insurance- Younger Spouse**
When a retiree reaches age 65 and his spouse is younger, the spouse may continue their coverage in the City's BASIC PLAN of medical insurance until the spouse reaches age 65 provided that the spouse pays the total monthly premium.

K. **Health Insurance for Spouses of Eligible Retirees that Die**
The spouse or eligible dependents of an insured retiree who dies before the retiree becomes eligible for Medicare, shall be eligible to continue to participate in the City's health insurance program on the same basis as if the retiree had lived. Such eligibility for benefits shall cease on the date that the retiree would have been age 65 or when the surviving spouse remarries. This provision becomes effective January 1, 1985.

L. **Internal Revenue Service Section #125 Plan**
Employees may participate in an Internal Revenue Service Section #125 salary reduction reimbursement plan in order to pay for medical deductibles and prescription drugs with pre tax dollars. In addition to medical expenses, the plan may be used for vision, dental, and child care expenses.

The City agrees to credit and pay for the "protective with Social Security" pension costs on the salary which is put into the Section #125 Plan. This payment does not include Social

security or the portion of pension costs of a protective pension without social security.

M. **Mail Order Prescription Drug Program**
Within ninety (90) days following approval of this resolution by the Common Council of the City of La Crosse, the City will establish a mail order prescription drug program to supply prescription drugs to eligible employees on a voluntary basis. An employee will be able to receive a ninety (90) day prescription of generic drugs for a single co-pay of $2.00 and a ninety (90) day prescription of brand drugs for $5.00. This paragraph will sunset on December 31, 1995, unless the City can document that the mail order prescription drug program has resulted in cost savings to the City.

N. **One Plan for Married Employees**
Effective January 1, 1994, married employees that both work for the City shall be limited to one health plan. The employee with the most seniority shall be the subscriber. At termination, death or divorce the remaining employee shall become the subscriber without any waiting periods or limitations for pre-existing conditions.

O. **Health Care Cost Containment Committee**
The parties agree to establish a joint labor/management committee on health care cost containment during the term of the 1994-1995 agreement. The committee will be made up of two members from the bargaining unit and two members from the City. The committee shall meet no less than six (6) times during 1994 & 1995 at a minimum of once per quarter, to study and explore methods to make recommendations for health care cost containment. The committee's recommendations will be provided to each representative's side no later than August of each year. Committee expenses up to $1,000 per year may be authorized by the Director of Personnel. The City agrees to provide an additional sum up to $3250.00 worth of health care cost containment initiatives for bargaining unit members during the term of this agreement. Such funds to be allocated as determined by the Health Care Cost Containment Committee.

APPENDIX "B"

Association Exhibit No 6

LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION

WISCONSIN PROFESSIONAL POLICE ASSOCIATION

RECEIVED
APR 13 1994
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

9730 WEST BLUEMOUND ROAD
WAUWATOSA, WI 53226
414 / 257-4000
1-800-236-4002

7 N. PINCKNEY STREET, NO. 220
MADISON, WI 53703
608 / 256-3344
1-800-362-8838

April 12, 1994

Mr. James W. Geissner
Director of Personnel
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

RE: City of La Crosse (Police Department)
Case 252 No. 50105 MIA-1846

Dear Mr. Geissner:

Enclosed please find the revised tentative agreements to be included in the successor agreement and the Association's final offer. This correspondence is being submitted in accordance with the Association's understanding of the instructions received from the mediator, Mr. Bielarczyk.

The following issues are tentative agreements to be included in the successor agreement.

1. ARTICLE VII - SICK LEAVE

   The parties agree to extend for the duration of the contract the memorandum, dated June 17, 1992, regarding the "me too" language on sick leave as contained on page 48 of the 1992-1993 agreement.

2. ARTICLE IX - WAGE AND SALARY SCHEDULE
   A. Wage Adjustments - Amend to read:

   The salaries of the employees for calendar year ~~1992~~ 1994 shall be set out on Schedule "A" attached hereto and made a part of this agreement. Schedule "A" represents a general wage adjustment in the hourly rate of 3% ~~and a labor market adjustment in the hourly rate of between 0% and 1%~~. Salaries for ~~1993~~ 1995 shall be set out on Schedule "B" attached hereto and made a part of this agreement. Schedule "B" represents a general wage adjustment in the hourly rate of ~~4%~~ 3%. For purposes of implementation the salaries will be effective the first complete pay period in January ~~or July as applicable~~.

Association Exhibit No. 7

3. ARTICLE XIII - OVERTIME
C. Oktoberfest - Amend to read:

All hours of work performed between the hours from 7:00 AM Friday to 7:00 AM Sunday on the first weekend of the Oktoberfest shall be paid at double time. ~~For calendar year 1993 only, all hours of work performed between 3:00 PM Friday and 7:00 AM Sunday on the Coon Creek weekend shall be paid as double time.~~

4. ARTICLE XIII - OVERTIME
Add the following new section:

E. Training. All voluntary training sessions that an employee elects to attend shall be compensated at the rate of time and one-half in compensatory time, and the employee shall not have the option of requesting pay unless the training is posted as a pay or comp-time session. Mandatory training, including but not limited to in-service training, Civil Unrest Team training, Emergency Response Team training, or any other mandatory training, will be paid at the rate of time and one-half and the employee shall elect whether he/she shall receive it as compensatory time or paid overtime. Mandatory time shall always be at the rate of time and one-half.

An exception to the above will be when training takes place in lieu of regular work days. In this circumstance, time will be at the employee's regular rate of pay including any shift differential.

5. ARTICLE XIV - CALL BACK AND MINIMUM COURT PAY
A. Recall to Duty - Amend to read:

Employees recalled to duty after having left the premises, or scheduled to return to duty while off duty, shall receive a minimum of ~~two (2)~~ three (3) hours' pay at time and one-half. This includes required court appearances while off duty.

6. ARTICLE XVI - WORK WEEK
At the following language to the end of the paragraph:

It is understood that employees assigned to a five (5) days on, two (2) days off schedule shall receive one (1) day of compensatory time off in lieu of each five (5) days on, three (3) days off work schedule, i.e., sixteen (16) days per calendar year.

Association Exhibit No. 8

7. ARTICLE XVII - SHIFT ASSIGNMENTS
   B. Community Services Bureau - Add the following language to section B:

   The hours of the officers assigned to the Community Services Bureau shall be flexible to regularly start between 7:00 AM to 9:00 AM.

8. ARTICLE XXXII - DURATION
   Amend the first paragraph to read:

   This Agreement shall remain in full force and effect, commencing the first day of January, ~~1992~~ 1994 and terminating on the 31st day of December, ~~1993~~ 1995, and shall continue from year to year thereafter...

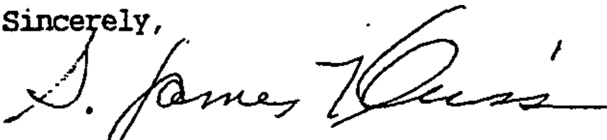
The Association's final offer is as follows:

1. ARTICLE XXV - RESIDENCY REQUIREMENT
   Replace the current language as follows:

   ~~Effective with the signing of this agreement for 1983, all new employees subject to this agreement shall become residents of the City of La Crosse within six months of the completion of their probationary period, unless compliance with this provision imposes an unreasonable hardship on the employee. There is no residency requirement for any employee currently employed who began employment with the City of La Crosse before the signing of this agreement for 1983.~~ The City agrees not to impose any residency requirement on any employee covered by the terms of this agreement.

2. The remainder of the contract shall remain status quo for a successor agreement.

Sincerely,



S. James Kluss
WPPA/LEER Administrator

SJK:jma

cc: Edmond Bielarczyk, Jr.
    David Schatzley

JAN - 2

STATE OF WISCONSIN

ARBITRATION AWARD

- -

In the Matter of the Arbitration between

THE CITY OF LA CROSSE (POLICE DEPARTMENT)

and

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION

Re WERC Case 252
No. 50105 MIA-1846

Decision No. 28069-B

- -

APPEARANCES For the City of La Crosse Weld, Riley, Prenn & Ricci, S C., Attorneys at Law, by Stephen L Weld, Esq , 4330 Golf Terrace, Suite 205, P O Box 1030, Eau Claire, Wisconsin 54702-1030

For the Wisconsin Professional Police Association: Cullen, Weston, Pines & Bach, Attorneys at Law, by Gordon E McQuillen, Esq , 20 North Carroll Street, Madison, Wisconsin 53703.

INTRODUCTION

This is a proceeding under the Municipal Employment Relations Act, Sec. 111 77 Four days of hearing were held in La Crosse in 1994 and early 1995. The parties filed written briefs and reply briefs in April, 1995 and this arbitrator presented an award dated May 24, 1995. Under the statute the arbitrator was required to adopt either the final offer of the City or the final offer of the Association in its entirety. The award read as follows:

> The final offer of the City is chosen as the award in this proceeding. It is understood that as a result of its testimony at the hearing and the arguments in the City's brief its final offer on health insurance is to be interpretred in the manner I have described in the Opinion section of this report.

Subsequently the Association filed a motion with the Circuit Court of La Crosse County to vacate or modify the award for the reason that I had exceeded my jurisdiction by not selecting one of the final offers without modification, as specified by the statute in Section 111.77(4)(5). The court agreed and vacated the award. The City appealed the Circuit Court ruling to the Court of Appeals, which affirmed the order, stating in its final paragraph "Since the arbitrator failed to make an award that was 'final and definite,' we conclude that the arbitrator not only exceeded his powers, but also 'imperfectly executed' them under (paragraph) 788 10(1)(d), STATS " The City then appealed the Appeals Court ruling to the Wisconsin Supreme Court, which declined to review it

This process consumed about a week more than 27 months, from May 24, 1995 to September 2, 1997 Early in August, 1997, I was made aware of the court decisions when I received copies enclosed with a

letter dated August 6, 1997, from James R Meier, Chairperson of the Wisconsin Employment Relations Commission Next I received a letter from Stephen L Weld, dated September 19, 1997, suggesting that the matter had been returned to my jurisdiction and that a scheduling conference be held to discuss how to proceed Before such a conference had been arranged Peter G Davis, General Counsel, WERC, informed the parties by letter dated September 30, 1997, that mediation would be carried out by staff of the Commission. That mediation was unsuccessful, and on October 21, 1997, I was informed that the Association had requested the Commission to issue a new panel of arbitrators The Commission stated that it stood ready to act on the Association's request but that the parties should file additional written arguments The parties did so, and on December 2, 1997, the Commission issued an order denying the Association's request for a new panel, saying that "we think it reasonably clear that (the Circuit Court judge's) order returns the dispute to Arbitrator Johnson In an earlier letter to Mr Weld, with copies to the Association and to WERC, I had said that since I did not know whether I still had jurisdiction, it was not clear to me that I had any standing to withdraw Thus, in a footnote to its report the Commission stated that in light of what I had said, I was free to withdraw if I so chose I chose not to withdraw

On January 26, 1998, I met with the parties in Madison At that time the City presented a four page document that outlined some of the issues on which the parties had agreed and some proposals about issues the City wanted to present at a proposed hearing I took the document and the additional comments made by the parties in the meeting under advisement and on February 7, 1998, answered with a general denial of all the City's proposals, leaving the understanding that in this proceeding I was to consider evidence adduced not later than the last day of hearings in the earlier proceeding in 1995 Based on my answer the parties decided that a hearing would not be necessary and that they would present written briefs Briefs were received on April 18 and 20 Reply briefs were received on May 13 and 14 The record is considered closed as of the latter date

RECONSIDERATION OF THE FINAL OFFERS

HEALTH INSURANCE

The Appeals Court illustrated my failure to issue a final and determinative award with four illustrations of my interpretations of proposals in the City's final offer on the subject of health insurance Since those were only illustrations of where the court stated that I went wrong, it would be well to review all eight of the City's health insurance proposals They are reviewed here in the same order in which they were considered in my award. All section references are to Article IV of the parties' labor agreement.

1 Section K. of the City's final offer states:

> Health Insurance for Spouses of Eligible Retirees that Die
> The spouse or eligible dependents of an insured retiree who dies before the retiree becomes eligible for Medicare, shall be eligible to continue to participate in the City's health insurance program on the same basis as if the retiree had lived Such eligibility for benefits shall cease on the date that the retiree would have been age 65 or when the surviving spouse remarries. This provision becomes effective January 1, 1985.

This was one of the four illustrations cited by the court where I had relied on testimony (in this case testimony by the mayor to the effect that no widow would be deprived of her benefits under the plan because of substitution of the word "retiree" for "officer) instead of the wording of the proposal. Clearly the proposal substitutes the word "retiree" for "officer," which by its words excludes benefits of the kind described for spouses and dependents of officers who die before retirement. In addition, it limits a spouse's eligibility to participate in the health insurance program since the old wording provided for such eligibility until the spouse was eligible for Medicare whereas the proposed policy relates to the retiree's, not the spouse's, age. Since many spouses are younger than their officer husbands, in those cases this represents a significant diminution of benefits

2 Section J of the City's final offer states

Retiree Health Insurance - Younger Spouse
When a retiree reaches age 65 and his spouse is younger, the spouse may continue their coverage in the City's BASIC PLAN of medical insurance until the spouse reaches age 65 provided that the spouse pays the total monthly premium.

This was not one of the Appeals Court's illustrations Although the Association had argued that the term "Basic Plan" was not mentioned or defined elsewhere in the City's proposal, leaving "the door of interpretation wide open." I stated in my opinion that the term referred to the coverage the couple had had all along Whether or not that is a valid comment, I agree that "Basic Plan" is specified.

3 Sections C , D , and E of the City's final offer state the following

C Retiree Health Insurance - Normal Service
Employees who are participants in the City's health insurance program and retire at any time after age fifty-three (53) or take early retirement in conjunction with a special early retirement program, may continue their family or single health insurance coverage at group rates until they become eligible for Medicare or reach age sixty-five (65).

The City shall pay the retiree's monthly premium charges on the same basis as is in effect for active employees as modified from time to time through collective bargaining The term "retirement" shall mean that the employee is eligible for and is actually receiving a normal unreduced service retirement annuity Additionally, the employee must have fifteen (15) years of service to be eligible for the benefit.

D Retiree Health Insurance - Duty Disability Pension
Eligible employees who are participants in the City's health insurance program and receive a duty disability pension shall receive the same benefits including premium charges on the same basis as in effect for active employees as described in Paragraph C above provided that they have a minimum of five (5) years of service as a sworn police officer in the La Crosse Police Department. This benefit ends when the retiree becomes eligible for Medicare or reaches age sixty-five (65).

E. Retiree Health Insurance - Non-Duty Disability Pension
Eligible employees who are participants in the City's health insurance program and receive a non-duty disability pension shall receive the same benefits including premium charges on the same basis as is in effect for active employees as described in paragraph C above provided that they have a minimum of ten (10) years of service as a sworn police officer in the La Crosse Police Department This benefit ends when the retiree becomes eligible for Medicare or reaches age sixty-five (65).

This was also one of the four illustrations by the court where I had accepted City witnesses interpretation of how the program would be administered in conflict with the plain wording of the proposal The old agreement stated the following

> Employees who retire because of a W.R.S special disability at any age, and who have been employed no less than five (5) years, may continue the health insurance coverage at group rates until they become eligible for Medicare The City shall pay such special disability retired employees' monthly premium charge at a rate not to exceed that paid for active employees as provided above.

In my award I stated that I recognized the eligibility change for non-duty disability pension from five years to ten and the fact that while the old agreement did not distinguish between duty and non-duty disability, the City's final offer did make that change But although I noted that in its proposal the City had substituted the words "sworn police officer" for "employee," I stated that I thought the City's practice was to toll employee service from any date that the person was employed by the City. I was wrong in that interpretation of City exhibits and I now state that the substitution of the words "sworn police officer" for "employee" in the City's final offer is represents a significant diminution of benefits. It is a change to the detriment of members of the unit who in the future may have had previous employment by the city but not as "sworn police officers "

4 Section I of the City's final offer states

> Coverage for New Employees
> Newly hired employees shall be eligible to participate in the City's health insurance program referred to herein after two (2) full months following the month in which they are hired

This was not one of the illustrations described by the Appeals Court. The old agreement stated that "Newly hired employees shall be entitled to participate in the health insurance program provided herein, after sixty (60) days of employment " I had accepted a witness's assurance and the City's purported documentation that the actual practice had been as described in the proposal rather than as described in the old agreement I now state that my opinion was contrary to the plain wording The new wording changes new employees' period of eligibility to participate in the health insurance program and to their disadvantage

5 Sections C., D , and E of the City's final offer are quoted above All make reference to health insurance of retirees in terms of its ending when they become eligible for Medicare or reach age 65 The old agreement simply referred to terminating coverage at the time the retiree was eligible for Medicare I suggested in my opinion that a change in the eligibility age for Medicare was unlikely in the near future and that the City did not intend to take away any benefit that the members of the unit now enjoy. This was another of the four illustrations by the Appeals Court where the wording of the City's final offer was contrary to the interpretation expressed in my award. I now conclude that in accordance with the City's proposed wording a future increase in the age of eligibility for Medicare would constitute a reduction in the health insurance benefits enjoyed by members of the bargaining unit.

6 Section N of the City's final offer states the following:

> One Plan for Married Employees
> Effective January 1, 1994, married employees that both work for the City shall be limited to one health plan The employee with the most seniority shall be the subscriber. At termination, death or divorce the remaining employee shall become the subscriber without any waiting period or limitations for pre-existing conditions.

There had been no provision of this kind in the previous agreement. The Appeals Court did not comment on this provision In the opinion section of my award I opined that this was not a significant issue I see no reason to change that opinion

7. Section M of the City's final proposal reads as follows

> Mail Order Prescription Drug Program
> Within ninety (90) days following approval of this resolution by the Common Council of the City of La Crosse, the City will establish a mail order prescription drug program to supply prescription drugs to eligible employees on a voluntary basis An employee will be able to receive a

ninety (90)) day prescription of generic drugs for a single co-pay of $2 00
and a ninety (90) day prescription of brand drugs for $5 00 This paragraph will sunset on December 31, 1995, unless the City can document that the mail order prescription drug program has resulted in cost savings to the City

There was no similar wording in the old agreement The Association had argued that in previous discussions the City had intended to pay the entire price of mail order prescriptions and that because of the co-pay feature, this proposal lacked incentives for use by members of the unit The Appeals Court did not comment directly on this issue and I commented that there had not been enough testimony for or against to make an informed judgment. In any event, it was to expire by its terms at the end of 1995. Those comments are adequate

8 Section F of the City's final offer states the following

Medicare Supplemental Insurance
Effective February 12, 1992 all active employees and those retiree's that retired after January 1, 1983 that remained in the City's health insurance plan are eligible to continue coverage by the carrier that the City has selected for a Medicare supplemental health insurance plan. If the eligible employee has had continuous participation in the City's health insurance plan from retirement to age 65, he shall be allowed into the Medicare supplemental plan without waiting periods or limitations because of pre-existing conditions This Medicare supplement plan shall be available to spouses of retirees under the same rules as above. Retirees and spouses are responsible for payment of the monthly premiums

The old agreement contained the following paragraph on this subject.

Effective January 1, 1986, active employees who retire and are enrolled in the City's group health insurance program and who are age sixty-five (65) or over, may remain in the group's base program at Medicare A and B carve out rates, provided such employees pay their own monthly premium timely

The Association had argued that the proposed change would leave out payments made by the old plan between what Medicare allows and the provider charges This was one of the illustrations contained in the Appeals Court decision that indicated I had depended for interpretation of this proposal on testimony by City witnesses at the hearing and that it was not clear to the Court that this was sufficient to show that this aspect of employment conditions had not changed, as the Association had alleged in the motion to vacate the award Although the City has argued that the wording of its proposal merely incorporates a program that had been in effect for almost two years, it is clear that the wording has changed.

Article IV of the old agreement, which the City's offer intended to revise, had six other sections, none of which were at issue in this dispute. In order to lay out the entire City final offer on health insurance, they are quoted below:

A Employee Premiums
The City contribution to group health insurance shall be 100% of the premium per month for both a family and single plan

B Single employees will pay an annual calendar year deductible of $100.00 and there will be three (3) single $100.00 deductibles per family, to a maximum of $300 00 aggregate per annum

* * * * *

G Level of Benefits

The Health insurance benefits shall be no less than the level of benefits quoted by WPS on May 2, 1978.

H City's right to Name Carrier/Self Insure
The City shall have the right to name the health insurance carrier and/or to self insure the level of benefits described in paragraph G above

* * * * *

L Internal Revenue Service Section #125 Plan
Employees may participate in an Internal Revenue Service Section #125 salary reduction reimbursement plan in order to pay for medical deductibles and prescription drugs with pre tax dollars In addition to medical expenses, the plan may be used for vision, dental, and child care expenses

The City agrees to credit and pay for the "protective with Social Security" pension costs on the salary which is put into the Section #125 Plan. This payment does not include Social Security or the portion of pension costs of a protective pension without social security.

* * * * *

O Health Care Cost Containment Committee
The parties agree to establish a joint labor/management committee on health care cost containment during the term of the 1994-95 agreement. The committee will be made up of two members from the bargaining unit and two members from the City The Committee shall meet no less than six (6) times during 1994 & 1995 at a minimum of once per quarter, to study and explore methods to make recommendations for health care cost containment. The committee's recommendations will be provided to each representative's side no later than August of each year. Committee expenses up to $1,000 per year may be authorized by the Director of Personnel. The City agrees to provide an additional sum up to $3250 00 worth of health care cost containment initiatives for bargaining unit members during the term of this Agreement. Such funds to be allocated as determined by the Health Care Cost Containment Committee.

The City's final offer on health insurance reduces these benefits in ways that have been described. The Association's final offer on the health insurance issue is to maintain the language of the old agreement On the issue of health insurance the Association's final offer is preferable.

THE RESIDENCY REQUIREMENT

On the issue of residency the City's final offer was to maintain the language of the old agreement That language is reproduced below:

> Effective with the signing of this agreement for 1983, all new employees subject to this agreement shall become residents of the City of LaCrosse within six months of the completion of their probationary period, unless compliance with this provision imposes an unreasonable hardship on the employee. There is no residency requirement for any employee currently employed who began employment with the City of LaCrosse before the signing of this agreement for 1983.

The Association's final offer was to delete this residency requirement from the agreement.

Since the residency issue was not subject of Circuit Court or Appeals Court consideration, I will simply

repeat what was said in the earlier award on this subject

The Association's pictorial evidence on the scarcity of empty building lots for-sale was very effective Whereas the City listed 171 affordable vacant lots in the City of La Crosse on January 1, 1994, the Association demonstrated with a snapshot album exhibit that, at the time of the hearing, only a handful were for sale, affordable, or desirable for residential building The Association's evidence on the dearth of affordable houses for sale proved to be less impressive when the City demonstrated that about half the houses sold in the city are by their owners and therefore not included in the data presented by the Association's realtor witness Although the City's planning officer presented testimony purporting to show that more expansive housing opportunities are coming on the market this year (i e 1995), it appeared during cross examination that some of it was not affordable, some of it was not desirable for these officers because of architectural covenants, some of it was in developments still in the planning stage, and some of it, because of age or debility, was simply undesirable In sum, although the Association showed by its testimony that there is currently (i.e in 1995) a shortage of vacant lots available for building, it did not convince this arbitrator that there was anything like a similar shortage of existing residential housing for sale

The Association also presented convincing evidence and argument on the subject of officer participation in community activities In response to the City's position that residency promotes greater interest and participation in community activities by police officers, which redounds to the benefit of La Crosse, the Association presented witnesses and argument showing that much of the activity and participation that the City considers desirable takes place even though officers live outside the city and that many of the activities that are promoted and advantaged by police officer participation are functions that are county-wide or at least not restricted by city limits

The Association's evidence and argument were also convincing concerning the need for quick response in case of emergencies in that when extra officers are needed quickly, county personnel and officers from nearby communities can be called for duty more quickly than calling city officers who are off-duty

The City's evidence and argument about the fiscal effects of eliminating the residency requirement were more convincing than those of the Association Although the expert witness could not be precise about how many employees would move their residences out of the city or how fast they would depart if the residency requirement were lifted, his conclusions about the possible fiscal effects were carefully presented and were reasonable conclusions from his analysis. Although the Association argued that for every residence sale by a police officer who moved outside the city there would be a buyer who would pay the same taxes, it seems clear to this arbitrator that because of the stability of their income and employment, police officers are rightly considered very desirable residents and the City would not be fiscally advantaged by their departure to residences outside the city

The City also made a good argument that the residency requirement has not made it difficult to recruit There is very little turnover in the City's police force and there are substantial numbers of applications for openings from outside the city by individuals who are aware of the residency requirement.

The effectiveness of the Association's comparability arguments was somewhat diminished when it was shown that it had left out three cities with populations within 20,000 of La Crosse's population, two of which had residency requirements, although the comparisons still favor the Association's position by a margin of 8 to 3 Such comparisons are readily manipulated by the parties in proceedings like this one By choosing cities with populations between 50,000 and 65,000, the City was able to assert that three of five other comparable cities had residency requirements If this award turned on the issue of outside comparability, the Association's comparables would be very persuasive

It is on the issue of internal comparability that the City's main argument depends. Here there are five other units as well as a meet-and-confer group whose members are all required by their agreements to live in the city The City's argument that eliminating the residency requirement in this unit would result in pattern bargaining rings rather hollow in the sense that the present pattern is what its argument depends upon Nevertheless this arbitrator would be very reluctant to depart in this unit from a pattern that applies

to all other employees in the city

Although I have many misgivings about the advisability of residency requirements in general, there are two factors in this case that militate against a decision in favor of the Association's final offer· First, the residency requirement was freely negotiated by these parties in the 1983 agreement. If the requirement is to be eliminated, it would be more appropriate for the parties to do it and not have it imposed by an arbitrator Second, and more important, an arbitrator should not grant more favorable conditions to one unit, representing less than 20 percent of the City's organized employees, than those that have been negotiated for all the other employees There was no indication that the police in this proceeding are suffering in comparison with employees in the other units There is no question but that such an award would have a domino effect and cause employee flight from the city, as feared by the City Like other arbitrators, as quoted by the City in many cases in its brief, I am unwilling that this single arbitration proceeding should disturb a pattern of long standing that was freely negotiated by several unions and this City

In arriving at this decision I have given weight to and carefully consider the eight factors in Sec 111 77(6) of the Wisconsin Statutes as they apply to the final offers

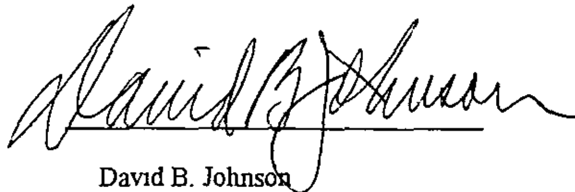
In addition to what I said in the earlier award and have repeated here on the residency issue I add only the following opinion The action by the courts vacating my earlier award now eliminates the positive weight that I gave to the City's final offer on the health insurance issue But it does not diminish nor eliminate the greater negative weight that was given in the May 24, 1995 award and must still be given to the Association's final offer on the residency requirement For the reasons that I have specified, I am convinced that the City's position should be favored over the position of the Association

AWARD

The final offer of the City is chosen as the award in this proceeding.

Dated May 30, 1998

at Madison, Wisconsin



David B. Johnson