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BEFORE THE ARBITRATOR

In the Matter of the Petition of

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LEER DIVISION

For Final and Binding Arbitration
Involving Law Enforcement Personnel
In the Employe of

Case 69
No. 52154 MIA-1968
Decision No. 28477-A

CITY OF ASHLAND

Appearances:

Richard Little, Bargaining Consultant, appearing on behalf of
the Association.

Clark & Clark, Attorneys at Law, by Scott W. Clark, appearing
on behalf of the Employer.

INTEREST ARBITRATION AWARD

Wisconsin Professional Police Association/LEER Division,
(herein "Association") having filed a petition to initiate interest
arbitration pursuant to Section 111.77, Wis. Stats., with the
Wisconsin Employment Relations Commission (herein "WERC"), with
respect to an impasse between it and City of Ashland (herein
"Employer"); and the WERC having appointed the Undersigned as
arbitrator to hear and decide the dispute specified below by order
dated August 23, 1995; and the Undersigned having held a hearing in
Ashland, Wisconsin, on October 26, 1995, 1992; and each party
having filed post hearing briefs, the last of which was received
December 6, 1995.

ISSUES

The parties final offers constitute the statement of the
issues. This dispute is with respect to the collective bargaining
agreement for their calendar 1995 and 1996 agreement. The
following is my summary of the issues in dispute.

1. Wages:

The Employer proposes to increase wages by:

3% effective 1/1/95

3% effective 1/1/96

The Association proposes to increases wages by;

2% effective 1/1/95, 2% effective 7/1/95
3% effective 1/1/96, 1% effective 12/31/96

POSITIONS OF THE PARTIES

The Employer takes the position that its offer is consistent with the its settlements with the city hall, fire department, public works and water utility units. It argues that historically, the parties have followed the same pattern as other city settlements. Further, it notes that its offer is consistent with settlements in the counties of Ashland, Bayfield and Sawyer sheriff's departments. It also notes that its offer is consistent with the public interest in that Ashland has one of the highest CDBG distress scores, 98.7 out of 100, more than 10 points higher than any of the comparisons used by the Association. Thus, the City of Ashland should not be held economically comparable to those municipalities and the Employer cannot reasonably be expected to meet the demands of the Association. The Employer also argues that the arbitrator should look at the total compensation received by unit employees because unit employees have a unique health insurance retirement benefit and a high longevity, shift differential, uniform allowance and vacation benefit. Finally, the Employer argues that the retirement health benefit is an extraordinary cost to the Employer. In 1996, it will cost 3.8% of wages. This cost should be offset against the total package received by the Association because the Association has not agreed to offset this benefit in exchange for higher wages.

The Association relies heavily upon external wage rate comparisons for its position. It notes that the work of police officers is unique from that of other workers and that, therefore, police officers' wage rates should be compared with those of other law enforcement officers. It relies upon the following comparison group: Douglas County, City of Superior, Ashland County, Sawyer County, Bayfield County, Burnett County, Iron County, and City of Hurley. It argues that other arbitrators have consistently used this set of comparables for the City of Ashland. It offers wage comparisons for top patrol officer, top sergeant, and top investigator. This unit is the lowest paid in all categories and either party's offer will keep them in that position. The Employer's offer will continue the wage erosion. At the end of this contract unit employees will be \$3,681 per year below the average wage. The Association argues that its offer represents the best interests of the public by recognizing the need to maintain morale and to retain the best qualified police officers. Law enforcement officers of Ashland work side by side with the law enforcement officers of comparable counties and cities. When they are underpaid, their morale is undermined and efficiency suffers. The Employer's offer jeopardizes this loss of morale by continuing the erosion of the wages in this unit as compared to other comparable police departments. The Association's stops this erosion. It takes the position that the Employer has the legal

authority and financial ability to meet its offer. The Employer's position is not one of inability to meet its offer, but unwillingness. The Employer has alleged that Ashland is a depressed area; however, the Association's offer has essentially maintained the same cost as the Employer's offer. Thus, inability to pay is not a factor to be considered. While the Employer is apparently relying upon an internal settlement pattern, that pattern should not be given weight in these proceedings because of the unique nature of law enforcement. Further, the Employer has failed to demonstrate that there has been a history of internal settlements being controlling here and has failed to show how other internal units compare vis' a vis' other similar units in comparable communities.

The Association argues that the cost of living should be given weight based upon the settlements other parties have reached based on the same information. Similarly, the Association argues that the total compensation criterion does not change the result in this case. Accordingly, the Association argues that its offer should be adopted as the most reasonable.

DISCUSSION

Section 111.77 requires the arbitrator to select the final offer of one party or the other without modification. The decision is to be based upon the following standards specified Section 111.77, Wis. Stats.:

- a. The lawful authority of the municipal 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 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 parties, in the public service or in private employment.

The weight to be given any specific issue or standard is left to the discretion of the arbitrator.

External Comparisons

The Association relied upon comparisons to Douglas County, City of Superior, Ashland County, Sawyer County, Bayfield County, Burnett County, Iron County, and City of Hurley. The parties agree that these communities are generally comparable, except the Employer asserts that the economy of the City of Ashland is substantially more depressed than the others. This comparison group was used by Arbitrator Rice in the award discussed more fully below and it is appropriate here. 32% of this unit is patrol officers, 25% corporals¹, 25% sergeants, 6% each of detectives and special investigators. A wage rate comparison to the comparable counties demonstrates that this unit is the lowest paid unit in all categories for which there are comparisons among the comparables. The evidence indicates this has been true since at least 1989. Comparisons for patrol officers are attached hereto as Appendix A. Both offers would leave the wage rates here in the same position, although the Employer's would continue the erosion of wages, while the Association's would tend to reduce the erosion.

The Employer correctly argues that total compensation should be considered when comparing this unit's compensation to that of comparable communities. Ashland has a longevity program which provides 1% of wage after 5 years, 2% after 10, 3% after 15 and 4% after 20. This is one of the better programs among the comparable communities' programs. Even including longevity, Ashland still has the lowest wage rates among the comparables. Total compensation evidence indicates that this unit pays the highest percentage of

¹The corporal position is unique position here. Employees are promoted to this position by a separate examination.

health insurance premium of all comparable units, and is tied for second last in total number of holidays. For experienced officers, the vacation here is equal to, or slightly better than it is elsewhere. There are some benefit levels which are higher than comparable. Ashland has the highest shift differential, \$.40 per hour whereas 3 comparables have none, 2 are less than \$.20 and the remainder range from \$.20 per hour to one at \$.35 per hour. Ashland's annual uniform allowance is \$425 whereas most other are between \$300 and \$375. Even considering the total compensation factor, the compensation of this unit is the lowest of the comparable communities.

A major factor in the Employer's argument is the fact that this unit enjoys a unique benefit for retirees for those who were hired prior to January 1, 1987: the Employer pays the full cost of single health insurance until the employee qualifies for medical care. The bargaining history (recited in arbitrator Vernon's 1984 award involving this unit) of this benefit is that prior to the 1982-3 contract, the police and fire units had essentially the same benefit structure. In the 1982, contract, the Association sought improvements in dental insurance, optical insurance, vacation, shift differential and payout of sick leave upon retirement. The firefighters obtained the health insurance benefit for retirees. The parties reached impasse for the 1984-5 contract year and submitted the dispute to Arbitrator Vernon. The Association sought a normal general wage increase and the health insurance benefit for retirees. Arbitrator Vernon's award recited that the Association argued that the benefit would have no cost impact at that time because no one was eligible for the benefit. It also argued that it was unlikely that the benefit would have a significant future impact because the unit experienced a high rate of turnover. The Employer argued that the proposed benefit was unique among comparable police departments and would have a high future cost impact. It also argued that there was no adequate quid pro quo for the benefit and should be the product of voluntary bargaining. The arbitrator concluded that the Employer's position on that issue was more reasonable at the time and that the Union's position as to wages was more reasonable. The arbitrator selected the Employer's final offer. It is also important to note that the wage increases in the other units in the city varied considerably from one another primarily because some units waived retroactive payments to receive a higher wage lift.

In 1987, this unit again sought the firefighters retirement health benefit. The Employer agreed to the benefit in exchange for a settlement with the police unit for one year and no wage increase. There is no direct evidence as to what the other units settled for, but the Association submitted an arbitration award rendered by Arbitrator Rice in December, 1987, Decision No. 24645-A, involving the Employer and the Courthouse unit. In that award, Arbitrator Rice adopted the Employer's proposal of 2.8% across-the-board for the AFSCME bargaining unit. He noted that the "estimated

cost of this benefit is equivalent to a 2.8% salary increase for the police" (supra, @p8). It noted that the sole increase in the firefighters wage rates for 1987, was that newly required under the Fair Labor Standards Act at the time. That was also estimated at 2.8% of salary. It is undisputed herein that the 1987 no-increase wage settlement was less than that afforded other units and that the exchange was a quid pro quo for the retirement benefit.

In successive negotiations, the Employer successfully limited this benefit to those hired prior to January 1, 1987, or those forced into retirement by disability. There is no evidence as to what the quid pro quo was for that settlement. Further, there is no evidence as to what the current benefit is in the fire department. As more police officers who qualify for the benefit retire, the cost of this benefit has risen. The annual cost of the benefit was \$4,369, which at current wage rates would be about 1% of the police officers' base wage rate. The annual cost has steadily risen and for 1995 and 1996, it is respectively, \$13,438 and \$15,948. As of 1996, it would constitute 3.58% of the police officers' base wage rate.

The cost of this benefit is not normally considered in the parties' method of costing. Assuming for the sake of argument that the Employer is correct that this benefit should be considered as part of the total package or as an offset to the Association's wage rate argument herein (as part of total compensation), the total compensation of this unit would still be significantly less than the lowest paid comparable department. First, the Employer's method of offsetting this benefit (offsetting this year's cost of the benefit against total cost) ignores the fact that for many years the Employer paid little or nothing for this benefit while it enjoyed the 2.8% savings in unit wage rates. The essential element of quid pro quo bargaining is that the parties exchange what they believe to be equivalent value items at the time of the exchange. The value should therefore be whatever the parties agreed were the equivalent values at the time of the exchange. This amount would be 2.8% of the wage rates in effect in 1987. For the highest paid patrol officers' that amount would be less than \$.30 per hour. Taking into account all factors attributable to total compensation, including, but not limited to, longevity and the unique insurance benefit, police officers in this unit are still paid substantially less than the lowest paid police department of the comparable communities, Ashland County.

The history submitted by the Association demonstrates that the gap between wage rates in this unit and those of the lowest comparable department has generally continued to widen over the years. This is not uncommon when parties tend to rely upon percentage figures for wage increases. The Employer's offer continues to widen the gap, while the Association's offer makes an adjustment to reduce the gap.

Internal Comparisons

All of the other city bargaining units have resolved their collective bargaining agreements. The city hall unit has settled for 3% in each year, together with a procedure for final resolution of mid-year reclassification disputes and a provision specifying that employees are not required to maintain residency in the city. The firefighters settled for 3% each year and a change in residency requirements to allow firefighters to reside within 10 miles of the city. The blue collar unit has settled for 3% in each year. The water utility settled for 3% in each year. The cost of the Association's offer is little different than the Employer's on a roll forward method. However, that method does omit the impact of delayed increases. This factor favors the Employer's position.²

Wage Increases in Comparable Communities

The comparables cities and counties have mostly settled for 1995, but few are settled for 1996. By average percentage increase, the 1995 settlements are essentially in the range of the Employer's offer; however, the large difference in wage rates makes this comparison somewhat misleading. Those settled for 1996, are settled at about 3%.

Public Interest and Difficulty in Paying

The Employer has the legal authority and financial ability to meet the Association's demands. The Wisconsin Department of Development administers a federal community development block grant program for rural areas. It uses a CDBG distress formula to compare the relative economic distress in various municipalities. The formula has a maximum of 100 points, with 100 points being the most distressed. It is based upon the net mill rate, per capita full value and median household income. The relative distress scores as of August 30, 1995, for the comparable communities are:

Douglas County	83.7
Superior	*
Burnett County	45.0
Bayfield County	52.5
Iron County	73.7

² These settlements took into account the cost of living increases and, therefore, these settlements are indicative of what an appropriate general wage increase would be for this unit taking into account the cost of living.

Sawyer County	45.0
Ashland County	82.5
Hurley	91.2
City of Ashland	98.7

*Urban areas are excluded by statute.

The City of Ashland has the third highest distress scores in the state. Ashland has one of the highest property tax rates when compared to cities of similar size. Further, the low incomes and high water and sewer utility rates in the area make those rates the highest, by percentage of per capita income, in the area. One of the reasons for the depressed status is that 20% of Ashland's residence are pensioners over 65. Another that it has relatively higher unemployment.

Ordinarily, the fact the fact that an area is economically depressed must be balanced against the need to pay appropriate wages to employees. Wage levels may be affected by overall economic depression. On the other hand, public employees cannot be expected to shoulder the burden of providing public services out of their own pockets. Generally, it is better to reduce staffing to minimum levels to achieve needed budgetary relief. Staffing here has remained constant over the years and is about the same percentage of population as the comparison cities'. This factor, therefore does tend to favor the Employer's position.

Selection of Offer

The Employer has heavily relied upon the internal pattern of settlements for its position. There is no evidence as to the extent to which there has been a uniform historical pattern of settlements. There is also no evidence as to how the other city units compare vis a vis the wage rates for comparable work in comparable communities. Arbitrator Vernon's award indicates that in the distant past there were considerable variations in the settlements in the other city units. In some of those variations other city units used various techniques to increase their year-end wage rate by either delaying their increase or splitting their increase in the manner in which the Association is doing here for the first year. Thus, the preponderance of the evidence establishes that the Association's proposal is consistent with the nature of variations which have occurred between settlements among Ashland's various bargaining units.

Arbitrators have long relied upon internal patterns of settlements as a strong evidence of what an appropriate general wage increase would be under the same economic and other bargaining conditions. Further, arbitrators have recognized that preserving

internal consistency among the various bargaining units tends to encourage voluntary settlements and discourage the excessive use of the arbitration system. However, the internal pattern of settlements is not an appropriate indicator of what the appropriate wage rate should be for police officers. This is appropriately done by comparing police officers' wage rates with those in similar communities.

The facts establish that the parties have taken into account the economic distress suffered by the people of the City of Ashland by establishing lower wage rates for this unit than any of the comparable communities' police departments. This is true even considering all elements of total compensation and the unique health insurance benefit. However, having done that, these rates have continued to decline in comparison to the lowest rate. One of the reasons that these rates have continued to decline is that the use of percentage increases generally comparable to those in comparable external units in successive negotiations necessarily widens the gap. The Association's proposal here is appropriate and limited to that needed to offset this numeric effect and maintain minimum wage levels. Accordingly, the Association's offer is closer to appropriate.

AWARD

That the parties, 1995-1996, collective bargaining agreement contain the offer of the Association.

Dated at Milwaukee, Wisconsin, this 22nd day of January, 1996.


Stanley H. Michelstetter II
Arbitrator

	Appendix A -- Historical				
	1989	1990	1991	1992	1993
top patrol/deputy					
Douglas Co.	\$12.00	\$12.42	\$12.92	\$13.48	\$13.88
Superior	\$11.95	\$12.31	\$13.52	\$14.20	\$15.00
Burnett Co.	\$11.76	\$12.17	\$12.59	\$12.90	\$13.30
Bayfield Co.	\$11.66	\$12.04	\$12.64	\$13.19	\$14.49
Iron Co.	\$11.31	\$11.85	\$12.32	\$12.73	\$13.26
Sawyer Co.	\$11.03	\$11.47	\$11.81	\$12.16	\$12.64
Ashland Co.	\$10.80	\$11.12	\$11.57	\$12.04	\$12.52
Hurley	\$10.59	\$10.82	\$10.99	\$11.14	\$13.02
Average	\$11.39	\$11.78	\$12.30	\$12.73	\$13.51
Ashland	\$10.12	\$10.42	\$10.84	\$11.39	\$11.82
Difference	\$0.97	\$1.36	\$1.46	\$1.34	\$1.69
year--end maximum rates					

Wage Comparison Ashland

1994	1995 Er.	1995 Ass'n.	1996 Er.	1996 Ass'n.
\$14.30	14.65		\$15.07	
\$15.45	15.99		\$16.45	
\$13.77	14.07		\$14.44	
\$15.08	15.53		\$15.99	
\$13.66	14.03		\$14.38	
\$13.08	13.47		\$13.87	
\$13.02	13.41		\$13.81	
\$13.44	13.80		\$14.20	
\$13.98	\$14.37	\$14.37	\$14.78	\$14.78
\$12.26	12.63	12.76	\$13.01	13.27
\$1.72	\$1.74	\$1.61	\$1.77	\$1.51