

FREDERICK P. KESSLER
ARBITRATOR

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In the Matter of the Arbitration
between

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

and

VILLAGE OF WEST MILWAUKEE
POLICE DEPARTMENT

DECISION
Case 34, No. 52707
MIA-1988
Decision No. 28606-A

WISCONSIN CIVIL SERVICE
RELATIONS COMMISSION

A. INTRODUCTION

On December 28, 1995, this arbitrator was advised by the parties that he had been selected to hear the Interest Arbitration dispute between the Village of West Milwaukee (hereinafter referred to as "the Village") and the Wisconsin Professional Police Association/ Law Enforcement Employee Relations Division (hereinafter referred to as "the Association"). A hearing was scheduled for February 6, 1996, in the West Milwaukee Village Hall.

The hearing began at 9:00 a.m. and concluded at 10:55 a.m. Exhibits were submitted and one witness was called. The parties agreed that Briefs would be submitted to the arbitrator by March 8, 1996. Reply Briefs would be submitted one week after receipt of the initial brief. The Reply Brief of the Village was received on March 18th.

B. APPEARANCES

The Village appeared by Attorney Tom Tollickson, the Village Manager. He called Donald Villione, a Certified Public Accountant as his only witness.

The Association appear by Bob Pachanach, Business Agent, and Richard Little, Bargaining Consultant for the Association. Also present were bargaining Unit members Glen Sharp, Mike Dooley and John Malech.

C. PERTINENT STATUTES

Wisconsin Statute Sec. 111.77(3) of the Municipal Employment Relations Act relates to the procedures for arbitration in disputes involving law enforcement personnel. It provides as follows:

111.77 Settlement of disputes in collective bargaining units composed of law enforcement personnel and fire fighters. In fire departments and city and county law enforcement agencies municipal employers and employes have the duty to bargain collectively in good faith including the duty to refrain from strikes or lockouts and to comply with the procedures set forth below:

* * * *

(3) Where the parties have no procedures for disposition of a dispute and an impasse has been reached, either party may petition the commission to initiate compulsory, final and binding arbitration of the dispute....

* * * *

(4) There shall be 2 alternative forms of arbitration:

(a) Form 1. The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment.

(b) Form 2. The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advise shall also set forth the final offer of each party as it is known to the investigator at the time that the investigation is closed. Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

(5) The proceedings shall be pursuant to form 2 unless the parties shall agree prior to the hearing that form 1 shall control.

(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceedings 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 know as the cost of living.

(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

D. FINAL OFFERS

1. The Association

The final offer of the Association provides as follows:

1. Term of Agreement - One (1) year 1995.
2. Agree to the Village proposal to increase clothing allowance to \$400.00.
3. Agree to the Village body armor proposal.
4. 1/7/95 - three per cent (3%)
12/31/95 - two per cent (2%)

2. The Village

The Village's final offer provides as follows:

TERM OF AGREEMENT	One (1) year - 1995
WAGES	EFFECTIVE 01/07/95 3% increase Across the Board
	EFFECTIVE 12/31/95 1% Increase Across the Board

SALARY INCREASES ARE FOR ALL CLASSIFICATIONS AT ALL STEPS

CLOTHING ALLOWANCE: \$400.00 Annually, to be paid in the Last Pay Period of the Year.

HEALTH INSURANCE: For new Hires, the Village to pay the amount of lowest cost HMO over single or family coverage. Employee to pay difference if other plan chosen. For existing employees, contribution for Family Health Plan to be eliminated.

BODY ARMOR TENTATIVE AGREEMENT; Village to replace Body Armor per manufacturer's suggested replacement date commencing 01/01/96. Mandatory for Officers to wear Body Armor while on duty.

E. POSITION OF THE ASSOCIATION

The interest of the public will be best served when the Village is able to recruit and retain the best qualified officers. It will be able to do that if law enforcement officer morale is high. Employee morale is at it's maximum when working conditions are good. Police officers usually work closely with officers in neighboring departments, trying to solve mutual problems. When West Milwaukee officers compare their monthly salaries with the salaries paid in other departments, they find that they are receiving a salary that is \$217.20 per month below the average for officers from comparable departments. No justification exists for this disparity.

The Village's final offer will only enhance the wage disparity. The Association offer will narrow the disparity.

The only difference in the offers is the Association's has an additional 2% increase on the last day of the Agreement, while the Village's offer proposes 1% increase on that day. The Village has the financial ability to meet the Association's final offer. The amount in dispute is 1%. The "Expenditure Restraint Program" that has been created by the state does not justify the Village's low offer. The contention that the Village is depressed economically is not supported by the evidence, and it is not so depressed as to put it at risk over a 1% pay increase for law enforcement officers. Both parties agree to a 3% increase effective January 7, 1995.

Under the Association's proposed list of twenty-seven comparable communities, the Village ranks 16th in 1990 and 1991, for the salary paid to the top Patrol Officer. From 1992 to 1995 it ranked twenty-sixth out of twenty-seven. That low ranking would continue under either of the final offers.

The Village is using the Expenditure Restraint Program as an excuse to keep it's law enforcement officers from catching up to the wages paid to officers in comparable communities. The Village has intentionally structured it's budget so that the amount of money it has available for law enforcement appears small. The Village has already negotiated salaries with it's other bargaining units, identifying only limited money "left over" for the police department. Even with the financial constraints the Village claims, the Associations final offer will not jeopardize the Village's fiscal restraint. Other areas of municipal expenditures can be curtailed, if the Village chooses to do so.

The Village's health insurance provisions in the final offer was made without providing any information regarding comparable communities health insurance plans. No evidence supports adopting the limits for new employees. The Village has not shown a need for the changes in existing health insurance options that it has proposed. In order to justify these changes, the Village must first show that a legitimate problem exists, then that the proposal it puts forward will correct the problem, and, finally, that it has offered a *quid pro quo* to the Association for making those changes. None of these requirements have been met. The burden is on the Village to clearly convince the arbitrator of the existence of the problem and the impact of the suggested solution.

The Village proposal should be rejected. Health insurance is an area that should be left to bargaining between the parties. That has not happened here. Health Insurance revisions, such as these are not interest arbitration questions. Two tier fringe benefit proposals should be the result of an agreement based on good faith bargaining between the parties, they should not be imposed by arbitration.

The internal comparables the Village offered should not be considered. Law enforcement officers are different from other municipal employees because their work is more dangerous and more indispensable than that of other public employees. The legislature recognized this when it created a separate statutory procedure for the resolution of law enforcement labor disputes. Thus it is unfair to compare law enforcement wages to non-law enforcement wages.

The Consumer Price Index has consistently increased by over 3% per year since the beginning of 1995. Both final offers are below the CPI increase level. This will have a significant impact on the three officers who will have to pay \$73.77 per month to continue their current health insurance for which they did not previously pay.

When all the criteria are considered, the final offer of the Association better meets the goals of the statute. It should be adopted in the 1995 Labor Agreement.

F. POSITION OF THE VILLAGE

In 1995 the Expenditure Restraint Program limits the Village to a 3.5% budget and expenditure increase. Although the program is not mandatory for the Village, it provided the incentive of additional revenue from the State in the amount of \$274,272.00 in 1995. This is the equivalent of 11.35% of the Village tax levy. This amount is significant. The Village has the highest tax rate for municipal purposes in the state of Wisconsin. The Village tax rate is 25% higher than the next highest community. Loss of the Expenditure Restraint Program revenue would result in an even higher tax rate.

The communities that should be compared with West Milwaukee are Cudahy, Greendale, Greenfield, St. Francis, and South Milwaukee. All of those communities have a high tax rate; all have low property valuation per person; all have high property tax to income rates; and all declining or slowly growing tax bases.

The Village already has the highest tax rate for police services of any of the comparable communities. Any increase would only further exacerbate that difference.

The Village health insurance proposal only impacts those new employees who elect to take a more expensive plan. If they choose to do so, they should carry the financial burden.

The Consumer Price Index in the Milwaukee Metropolitan area only increased by 3.1% in 1995. The Village is proposing a 4% increase in salary, while the Association is asking for a 5% increase. The Village's proposal is closer to the CPI and consistent with the community's ability to pay.

The Village already provides the most liberal personal allowance policy of the comparable communities by granting fifteen personal days per year. The Village proposal is identical with the settlements that it has made with the other bargaining units in West Milwaukee. Despite the Association's concerns and its challenges to the Village's motives for setting that pattern of settlements, the Village is merely trying to treat all its employees fairly under the budget restraints that it must live with. The fear that this will limit the ability to bargain with the law enforcement officers is not realistic.

The salaries submitted by the Association for the comparable communities are inaccurate because they do not reflect the 2% shift differential paid to second and third shift officers in the Village. An accurate portrayal would lower the gap between the Village and other communities.

The health insurance provisions in the Village's final offer will have a minimal impact on the police department personnel. Only newly hired officers would be restricted in their health insurance choices. All existing employees would continue to be covered by the current plan with its multiple high employer cost choices. An identical provision has been accepted by all of the other bargaining units in the Village. The fact that the balance of the bargaining units have accepted this provision is a valid internal comparison which should be considered by the arbitrator.

G. DETERMINATION OF COMPARABLE COMMUNITIES

In a 1986 decision involving the same parties, Arbitrator Frank P. Zeidler found that Cudahy, St. Francis, Greenfield, Greendale, Hales Corners, and West Allis were the appropriate comparable communities. The Village is seeking to use four of those communities, plus the City of South Milwaukee. The Association has submitted a listing of twenty-six communities, including all the suburban municipalities in Milwaukee County, and all the suburbs abutting Milwaukee County located in Waukesha, Washington, and Ozaukee County, plus the village of Grafton in Ozaukee County.

The Association's list of comparable communities contains too many villages and cities that are economically dissimilar from West Milwaukee. Even Greendale and Greenfield are growing faster, have a higher per family income, and are more white collar job oriented than West Milwaukee.

The major difficulty an arbitrator faces in determining comparable communities for a case involving the Village of West Milwaukee, is deciding whether to focus on geography or on demographics. If the choice is based on geography it is justified on the assumption that a potential police department recruit would choose among the more than forty police departments in the greater Milwaukee area. West Milwaukee must compete with those departments to secure good personnel. If the choice is based on demographics, it is justified on the assumption that smaller, older, similar industrial communities with relatively low crime rates, and a low tax base are competing with each other for these officers.

West Milwaukee is a unique community. It is an older industrial and residential suburb. At one time, it was regarded as an island of low property taxes. Unfortunately, many of the older factories that provided its tax base have closed. West Milwaukee has changed from a low tax haven, to the highest taxed municipality in the County. It is completely surrounded by the Cities of West Allis and Milwaukee. It does not have any undeveloped areas to which it can expand its boundaries.

The only other industrial communities that are similar in income, industrial mix, and are located in proximity to West Milwaukee and are in Milwaukee County are the Cities of South Milwaukee, Cudahy and St. Francis. Information has been submitted by the parties concerning those communities. The comparable budget and demographic information is as follows:

<u>City</u>	<u>1994 Pop.</u>	<u>Full Value Tax Rate</u>	<u>1993 Median Household Income</u>	<u>Percent Prop Tx to Inc.</u>	<u>Municipal Cost % Police</u>
Cudahy	18,809	\$36.70	\$34,622.00	8.75%	28.9%
St. Francis	9,320	35.30	33,745.00	7.70%	29.3%
S. Milwaukee	<u>21,191</u>	<u>29.76</u>	<u>36,854.00</u>	<u>7.39%</u>	<u>39.6%</u>
Ave.	16,440	33.92	35,073.67	7.95%	32.6%
W. Milwaukee	4,253	45.91	28,747.00	12.38%	39.6%

Number of officers

	<u>1985</u>	<u>1994</u>
Cudahy	34	34
St. Francis	18	19
S. Milwaukee	<u>32</u>	<u>31</u>
Ave.	28	28
W. Milwaukee	19	18

This comparable group includes only three other municipalities. All other cities and villages submitted by either side were considered but all other are too substantially different, either by geographic or demographic factors, to be fairly included here.

H. WAGE OFFERS

Wis. Stats. Sec. 111.77(6) lists the criteria to be considered in evaluating the final offers. The most significant statutory criteria are (1) the impact of inflation on wages, as measured by the Consumer Price Index, (2) the comparison of the wages and salaries paid to law enforcement officers in West Milwaukee and other municipalities, (3) the interest of the public, and (4) the ability of the Village to pay the cost of the final offers. Each of these will be separately discussed.

1. Consumer Price Index

The Consumer Price Index for 1995 shows that the cost of living in the United States rose by only 2.5%. In the Milwaukee area, it rose by 3.6% for urban wage earners and clerical workers, and 3.9% for all urban consumers. The Milwaukee area rate of inflation exceeded the inflation rate in the rest of the country.

The Consumer Price Index, both local and national, supports the final offer of the Village, which is closer to the CPI than the Association's final offer.

2. Comparison of Wages with Other Employees in Comparable Communities.

The wage and salaries paid to police officers in other communities is also a major consideration in determining which of the final offers should be chosen. West Milwaukee's rank for each of those years must also be noted. The three comparable cities have paid their top patrol officers as follows over the prior five years:

<u>Monthly Base Rate</u> <u>Top Patrol Office</u>			
	<u>1990</u>	<u>1991</u>	<u>1992</u>
Cudahy	\$2696.12	\$2803.96	\$2992.28
St. Francis	2637.12	2753.15	2890.18
S. Milwaukee	<u>2593.33</u>	<u>2746.03</u>	<u>2958.89</u>
Average	2642.19	2767.71	2947.12
W. Milwaukee	2718.20	2827.73	2856.01
Rank	1	1	4
	<u>1993</u>	<u>1994</u>	<u>1995</u>
Cudahy	\$3112.08	\$3236.55	\$3367.30
St. Francis	3035.35	3181.76	3309.03
S. Milwaukee	<u>3084.64</u>	<u>3215.75</u>	<u>3341.15</u>
Ave.	3077.36	3211.35	3339.16
W. Milwaukee	2856.01	3013.09	
Rank	4	4	
Association			\$3165.55
Village			\$3134.51

In 1990, the Village paid the highest wage rate. It continued to do so until 1992. At the end of five years, it paid the lowest rate of the comparable municipalities. The drop in ranking was particularly dramatic in 1992.

If either of the final offers is chosen, the village will still rank at the bottom of the list of comparable municipalities. It will pay between \$200 and \$175 below the average of the comparables. Neither of the offers would alter the ranking of the Village.

When wage comparison data is evaluated, it supports the final offer of the Association. West Milwaukee ranks at the bottom among the comparable municipalities, but the Association offer reduces the disparity.

3. Financial Ability of the Village

A strong argument was made on behalf of the Village final offer, urging that the Village cannot afford to pay the increased cost of the Association Offer. In most cases, that argument would be summarily rejected, especially under circumstances in which the salary rate of the employees in question was declining relative to comparable salaries for similar employees.

However, those concerns must be seriously considered in this case. It is clear that West Milwaukee is in a difficult financial situation. It has changed from being a tax haven, to having the highest municipal tax burden in Milwaukee County. It has the second highest rates in the State of Wisconsin. The Village officials are under tremendous pressure to minimize public spending in order to receive substantial financial benefits under the ERP program. Money received from the State under that program has a significant impact on the Village. The Village full value tax rate is considerably higher than comparable communities. West Milwaukee also spends a high proportion of it's budget for police services than other comparable cities or villages.

4. Public Interest

The public interest is not served if the ability to pay is not seriously considered in municipalities which have had the substantial financial difficulties experienced by West Milwaukee. When the public interest is considered in this context, the final offer of the Village is preferred.

5. Conclusion

This is a very close case. Two compelling arguments suggest opposite conclusions. I conclude that, on balance, the Association's final offer will not change the salary ranking of the Village as compared with other municipalities. It will still be in last place among the comparable communities, but the gap will not be as great. While the Village does have financial constraints, it also has the ability to adjust other items if it wishes to do so, to pay the 1% difference and to retain the State funds under the Expenditure Restraint Program. Therefore the final offer of the Association will be preferred as to the salary and wage portions of the proposal.

I. HEALTH INSURANCE

The Village's proposal to limit employer contributions for health insurance premiums for new hires initially has a minimal fiscal impact. However, it has significant ramifications on costs over the longer term. All employees would still have the option of an employer fully funded health plan, for both single and family plans, but their choices among plans will be considerably diminished. Current employees will continue with their choice of options.

The changes in the health insurance provisions in the Village and Association's retention of the current plan, in their final offers, both compare favorably with the health insurance provisions in the comparable communities. The health insurance policies for the law enforcement agencies in the comparable communities provide as follows:

Health Insurance Premium Comparison

1995 Family Plan

<u>Department</u>	<u>Health Plan</u>	<u>Monthly Premium</u>	<u>Employer Contrib.</u>	<u>Employee Contrib.</u>
Cudahy	Central Benefits	\$696.24	\$696.24	\$ 0.00
St. Francis	Family Health	508.55	508.55	0.00
	Prime Care	542.49	542.49	0.00
S. Milwaukee	Managed Health	456.30	399.80	56.80
	Family Health	380.76	380.76	0.00
	Standard	655.04	399.80	255.24
	Prime Care	492.22	399.80	92.42
	WHO	486.10	399.80	86.30
W. Milwaukee	Compcare	567.24	547.24	20.00
Asso.	Family Health	456.31	456.31	0.00
(Compcare rate only for new hires)				
W. Milwaukee	Compcare	567.24	456.31	110.93
Village	Family Health	456.31	456.31	0.00

Health Insurance Premium Comparison

1995 Single Plan

<u>Department</u>	<u>Health Plan</u>	<u>Monthly Premium</u>	<u>Employer Contrib.</u>	<u>Employee Contrib.</u>
Cudahy	PPO	\$326.10	\$326.10	\$ 0.00
St. Francis	Family Health	185.75	185.75	0.00
	Prime Care	197.31	197.31	0.00
S. Milwaukee	Managed Health	183.22	160.65	22.57
	Family Health	153.00	153.00	0.00
	Standard	268.44	160.65	107.79
	Compcare	214.30	160.65	53.65
	Prime Care	197.58	160.65	36.93
	WHO	195.14	160.65	34.49
W. Milwaukee	Compcare	218.15	208.15	10.00
Asso.	Family Health	175.56	175.56	0.00
(Compcare rate only for new hires)				
W. Milwaukee	Compcare	218.15	175.56	42.59
Village	Family Health	175.56	175.56	0.00

The increasing costs of health insurance is placing a substantial financial burden on communities. Efforts to control those costs are reasonable. Here, the proposal appears to be designed to achieve the purpose sought. However, in order for it to be justified, a quid pro quo is required. The final offer of the Village does not contain any provision that could be reasonably construed as such. Consequently, I must conclude that the final offer of the Association contains the preferred provision.

J. SUMMARY AND AWARD

For all of the reasons described above, I find that the final offer of the Association more closely conforms to more of the statutory criteria. Therefore, the final offer of the Association will be incorporated in the Contract for 1995.

Dated at Milwaukee, Wisconsin, this 6th
day of May, 1996



FREDERICK P. KESSLER
ARBITRATOR