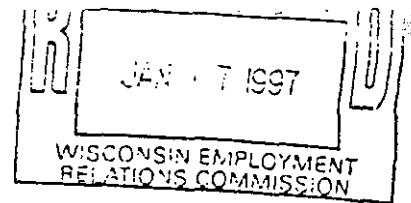


BEFORE THE ARBITRATOR



In the Matter of the Petition of :

the Wisconsin Professional Police Association/
Law Enforcement Employees Relation Division

for final and binding Arbitration of a dispute with:

the City of Whitewater

WERC Case 54

No. 53465

MIA-2015

Dec. No. 28710-A

Appearances:

Mr. James S. Clay, Attorney, of Lindner and Marsack, S.C., Milwaukee, WI., for the City of Whitewater. Mr. Richard T. Little and Mr. Robert Pechanach of the Wisconsin Professional Police Association/ Law Enforcement Employees Relation Division for the Association.

Background:

Representatives of the City of Whitewater (hereinafter referred to as the "City," or the "Employer") and the Wisconsin Professional Police Association/ Law Enforcement Employees Relation division, on behalf of the Whitewater Professional Police Association (hereinafter referred to as the "Association" or the "Employees") exchanged proposals on issues to be included in a successor agreement to the agreement which expired on Dec. 31, 1995. The Association represents all sworn law enforcement officers of the Whitewater Police Department excluding Supervisors, Confidential, and Managerial employees. The Parties met on several occasions and failed to reach an agreement. On December 6, 1995 the Association filed a petition with the Wisconsin Employment Relations Commission for final and binding interest arbitration pursuant to Section 111.77(3) Wis. Stats. Investigator Stuart Levitan, a member of the WERC staff, conducted an investigation on January 23, 1996 and then advised the Commission on April 12, 1996 that an impasse existed. The parties submitted final offers to the Commission, and on April 26, 1996 the Commission certified the parties' final offers and directed them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed on June 3, 1996. He conducted a hearing on the matter on August 29, 1996 at the Law Enforcement Center in Whitewater, Wisconsin. No transcript of the hearing was taken. Both parties had an opportunity to present exhibits and testimony and to outline their arguments in this dispute. They agreed to a schedule for submitting corrected and rebuttal exhibits and for exchanging briefs and reply briefs, the last of which was received by the Arbitrator on November 26, 1996.

The Issue(s)

The parties are agreed on all items for inclusion in the agreement for 1996 and 1997 except for one matter, wages. The Employer's offer includes Across the Board increases of 3.5% each year, effective Jan. 1, 1996 and Jan. 1, 1997 for a total "lift" of 7.12%. The Association's offer provides for 3% increases each Jan. 1 and also 2% increases each Dec. 31, for a total "lift" of almost 10.4%. The parties are also in dispute over the relevant comparison group; the City would include the cities of Beaver Dam, Burlington, Delavan, Elkhorn, Ft. Atkinson, Jefferson, Lake Geneva, Lake Mills, Watertown, and Waupun. The Association would include Watertown, Oconomowoc, and Ft. Atkinson nearby, and also other small university cities: Stevens Point, Menomonie, River Falls, and Platteville.

Cost

The Association (AX 36, 39, 41, and 43) costs the proposals as follows:

Cost Item	1996			1997		
	City. Offer	Assn. Offer	Difference	City. Offer	Assn. Offer	Difference
Wages	\$ 677,413	\$ 675,089	\$ 2,324	\$ 701,440	\$ 709,155	\$ 7,715
other	40,867	40,756	111	41,831	42,146	315
Longevity	16,019	16,000	-0-	17,079	17,101	22
Fringes	286,402	285,692	710	292,776	294,776	2,000
Total	\$ 1,021,102	\$1,017,536	\$ 3,566--	\$ 1,053,126	\$ 1,063,177	\$ 10,051+

The Association then calculated the following percentage increases:

	<u>1996</u>	<u>1997</u>	<u>Total</u>
Employer offer	3.24%	3.14%	6.38%
Association offer	2.88%	4.49%	7.37%

The Statutory Criteria

The parties have given evidence and made arguments in accord with the statutory criteria of Sec. 111.77 (6) Wis. Stats. which directs the Arbitrator to consider and give weight to certain factors when making his decision. Those factors are:

- 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 the costs of any settlement.
- d. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees 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 employees, 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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

Arguments of the Parties

The Employer

The Employer maintains that its offer provides percentage increases in wages which are consistent with the cost of living, its offers to other bargaining units, and with increases for other City workers. Its offer is reasonable in comparison with settlements of other, similar employees for 1996-97. It maintains that one of the crucial issues in this case is the issue of comparability. Its submitted list of comparable communities adheres most closely to the established arbitral basis of size, proximity, and valuation. In contrast, the Association's list of "comparables" includes communities which are quite distant and/or considerably different economically. The City's offer maintains the employees' economic position vis a'vis police officers in these comparable communities. If the Association claims that these employees require "catch-up", that claim cannot be supported, particularly if all compensation is taken into consideration. Finally, the total cost of its offer is more reasonable while the Association's offer incorporates an increase deferred into 1998 obfuscating its true, excessive cost.

The Employer recognizes that the issue of comparability has not been resolved; Arbitrator Muller (City of Whitewater, Dec. No. 25554-A, 3/89) "did not establish a definitive list" of comparables in rendering an award for another unit.¹ Whitewater is not part of a metropolitan area. Because of this, the City has selected as comparables similarly-sized

¹ Employer's Brief, p. 4.

municipalities in Dodge, Jefferson, and Walworth counties which are more than 20 miles from Milwaukee and Madison. These communities are Beaver Dam, Burlington, Delavan, Elkhorn, Ft. Atkinson, Jefferson, Lake Geneva, Lake Mills, Watertown, and Waupun. The Association has selected two comparison groups: Watertown, Oconomowoc, and Ft. Atkinson which are nearby, and then the other small university cities of Stevens Point, Menomonie, River Falls, and Platteville. Citing Arbitrator Raskin, comparability is based on population, geographic proximity, mean income, overall municipal budget, personnel, and their wages and fringe benefit levels.² Watertown and Stevens Point are considerably larger, while Lake Mills is admittedly small, but the remainder of the parties' selections are in the population range of 6-14,000, while Whitewater is 13,182.

The City's comparables better fit Arbitrator Raskin's criteria; they are within 7-55 miles of Whitewater and are considerably more proximate than are the Association's second set of comparables which are between 91 and 245 miles away (Platteville and River Falls, respectively). There is nothing "comparable" to Whitewater in this second set other than the fact that they each have a UW campus; they lack any "common contact."³ Certainly the labor market may be more broadly defined geographically for professionals than for certain occupations such as custodians, but support for defining the market for police as statewide cannot be found. Watertown and Ft. Atkinson are mutually agreeable comparables, but the City would exclude Oconomowoc; it is about 20 miles from Milwaukee and its wages are highly influenced by that metropolitan area. Moreover, its equalized value per capita is over three times greater than Whitewater's, and \$18,638 higher than the average of the city's comparables.

The Association's listing of crime statistics does not bolster its case that its selected cities are comparable. They are only "snapshots," and may reflect reporting variations rather than crime conditions. The property crime reports, moreover, show Whitewater to be different from the Association's comparables. The county violent crime rates similarly provide no evidence to support the Association's contention that River Falls, Menomonie, Stevens Point and Platteville are comparable to Whitewater for purposes of this case.

The City's wage offer more closely conforms to the Cost of Living than does the Association's offer, especially as one considers the impact of the end of the year lift. The

² City of Brookfield, Dec. No. 14395 (8/76).

³ Employer's Brief, p. 7.

City's offer increases wages a generous 3.5% in 1996 as compared to the Association's 3.16% increase. However, in 1997, the Employer's offer is again 3.5% while the Association's offer pays employees 4.85% and is 5% at the end of the year. This is clearly excessive. The CPI (All Urban Consumers) increased only 2.6% in 1994, 2.8% in 1995 while the July 1995-July 1996 rate was 3.0%. Since medical costs have tended to increase more than other goods and services, and since unit employees are shielded from paying these costs, the Employer's offer should be considered even more favorably.

The Employer's offer maintains unit employees' relative positions *viz* similar employees in comparable municipalities. The Whitewater Top Rate Patrol Officer (which the parties have used as the "benchmark" position) would rank 7th of the 11 Employer comparables in 1996; in 1997 they would be 8th. While the differential in pay between Whitewater and first-ranked Ft. Atkinson grows \$20 to \$156 between 1995 and 1996, the gap between it and 11th ranked Waupun rises \$4, indicating that Whitewater Patrol Officer will stay in the same relative position under the City's offer. The average increase in 1996 was 3.81%, or only .31% above the City's offer. The Association's offer provides an average monthly wage which increases the gap in pay between Whitewater and the top municipality and narrows it with the 11th ranked one; however, at the end of the year, it raises the ranking to 5th. When the 5 settlements for 1997 are compared to the parties' offers, the City's 3.5% offer is even more clearly seen as the most reasonable. These settlements averaged 3.52% or 1.5% less than the Association's offer. Additionally, the 2% increase on Dec. 31, 1997 called for under the Association's offer makes it even more unreasonable.

Other Whitewater municipal employees are receiving the same 3.5% increase as is offered these employees. The AFSCME unit voluntarily settled for 3.5% and the unrepresented employees will receive the same. Only one other unit (Teamsters) is unsettled. There is no evidence as to why Patrolmen should receive more than others; there is no evidence that their relative position is low when compared to other municipal employees such as is represented by AFSCME *viz* sworn personnel in comparable jurisdictions.

In support of its offer, the Association argues that Whitewater patrolmen have relatively low wages. It conveniently ignores the fact that when total compensation is considered, the Whitewater Top Patrol Officer (the benchmark on which the parties have focussed attention for comparison purposes) fare very well. Under the City's 1996 offer, the monthly wage is 8th of 11. However, its Vacation, Health Insurance, and Longevity pay are at the top. While the Whitewater monthly wage ranks 8th, wages and Health Insurance together rank 3rd, and wages and Longevity rank 4th. If all forms of compensation are compared, its \$4244

monthly compensation for the average (8 years) Top Patrolman is 3rd of the 11 comparables. the City should not be penalized because in past voluntary agreements the Association has placed higher priorities on these other forms of compensation and now is arguing that Patrolmen's wages are too low. Finally, while the 1996 total compensation costs of the Association's offer appears to be less than the City's offer, the hidden deferred costs of the 2% increase on Dec. 31 is unjustifiable. The total cost of the 1996-97 offers differ by only \$10,050.93. The effect of the "hidden" costs of the Association's offer can be seen by the fact that the parties' offers differ by \$13,616.47 in the second year, to which must be added the effect of the additional increase of 2% on Dec. 31, 1997.

The Association

The Association maintains that its offer is most reasonable under the criteria set forth under Sec. 111.77(6) Wisconsin Statutes. Wages are the sole issue herein; other items stipulated by the parties have no bearing on this matter. It asserts that the morale of the law enforcement employees will continue to suffer if the Employer's offer is selected because these employees work "side by side" with law enforcement officers in other, comparable communities and "compare their lot with (them)."⁴ Whitewater police must be both physically and mentally ready to provide law enforcement services which would be made more difficult when Top Patrol Officer recognize that they earn \$1600 below the average comparable department. They perceive that they earn little more than street department employees, creating a morale problem; it is in the interests and welfare of the public to address this problem through an award in favor of the Association.

The Employer has the financial ability to meet the costs of the Association's offer since the offers are very close and there has been no evidence presented that it cannot. The Employer's reliance on internal settlements should not be the primary consideration of the Arbitrator in this case. Citing Arbitrator Bellman, uniformity of bargaining is not necessarily in the best interests of the parties and the public as recognized by the fact that different units exist.⁵ Arbitrator Fleischli noted that there is a sound basis for comparing law enforcement personnel externally since the nature of the work is different and that they have a separate collective bargaining statute.⁶ Maintenance of uniform internal settlements is no

⁴ Association Brief, p.6, referring also to Elkouri and Elkouri, How Arbitration Works (3d) Washington, D.C.: BNA Books, 1973, p. 750.

⁵ Waushara County (Health Department) Dec. No. 26111-A, (3/90).

⁶ Portage County (Sheriff's Department), Dec. No. 41434, MIA-1366 (9/89).

compelling basis for selection of the Employer's offer.

The Cost of Living criterion favors the Association's offer to the extent that such consideration is subsumed in the pattern of voluntary settlements wherein the parties gave appropriate weight to this factor in arriving at those settlements. Those settlements have been in the range of the offers of the parties in this dispute. Little evidence has been presented in regards to overall compensation considerations which would diminish the conclusion that Whitewater Police Officers are paid significantly less than their counterparts and that the Association's offer is more reasonable, nor have there been any changes in the foregoing circumstances or other factors which would change this conclusion.

The Association contends that its construction of the comparable group is preferable. The City's list includes an "extremely wide range" of municipalities, some of which are less than half the size of Whitewater.⁷ Smaller communities have different costs and problems; on the other hand, the Association's list includes similarly sized communities and particularly ones having University communities within them which face similar types of problems. It recognizes that these municipalities having Universities are some distance from Whitewater but the presence of students comprising as much as half the population compels their consideration as comparables--particularly for purposes of law enforcement (as opposed to sewer and water services, streets, etc.).⁸ Further, the City Manager is on record as making comparison to Menomonie, River Falls, Stevens Point, and Platteville in his 9/18/93 presentation to the City Council (AX 62).

The Association contends that comparisons of wage levels with that of the comparables particularly favors its offer. Under either offer, Whitewater Top Patrolmen will earn the second lowest salaries among the comparables; the same conclusion applies to the Sergeant and Detective ranks. Through its offer, the Association is only trying to stem the "downward trend" in relative wages and catch up slightly to wages of law enforcement officers in these comparable communities. The City of Whitewater has one of the lowest property tax rates in the state, and can readily afford a slightly higher percentage increase in order to achieve this end.

⁷ Association Brief, p. 8.

⁸ Association Reply Brief, pp. 1-2.

Discussion and Opinion

The Statute requires the Arbitrator to consider the aforementioned criteria in making an award. The criteria cited by the Parties as most pertinent to this decision are the interests and welfare of the public 6(c), external 6(d)(1) and internal 6(d) comparisons, overall compensation 6(f), inflation 6(e), and implicitly, other factors 6(h). Each of these is considered below as the outstanding issues of this dispute have been analyzed by the Arbitrator. The outstanding issues are first noted, followed by the Arbitrator's analysis of wage levels and increases. Lastly, other factors and other issues are discussed.

Several issues are raised by the parties. First, the unresolved issue of external comparability needs to be addressed. Second, are the Whitewater police officers "underpaid"? Third, what is the relative weight to be given internal vs external comparisons? Fourth, how much weight is to be given to overall compensation and how can such be compared?

Public sector comparables

In applying the statutory criteria (d.), Arbitrators (including the Undersigned) have been guided by considerations of geographic proximity, similarity of size and other characteristics of the employer, and similarity of jobs. Similarity of jobs is further based on level of responsibility, the nature of the services provided, and the extensiveness of training and/or education required. The Undersigned notes some argument between the parties as regards inter-city differences in police department employees' duties. The Association contends that being a University community requires that police officers have somewhat different skills and perform somewhat different duties. While intuitively reasonable, evidence of that contention is lacking. However, the Association points out that in AX 62 that the City Manager directly compares Whitewater with the four other small cities containing UW campuses listed by the Association. This Undersigned notes that the report was prepared for the City Council from Wisconsin Taxpayer Alliance data so the Council would have an understanding of where the City "is positioned versus other communities," providing evidence on "some of the budget issues confronting .." governments.⁹ The data shows per capita expenditures for police, fire, streets, and general government, as well as 1992 populations and university enrollments. The data do not show that these 5 cities are different from other cities in these expenditures. They do not show that per capita police expenditures are directly or inversely related to the student/population ratios, nor do they show that police duties differ from non-university communities. Nevertheless, the Association has provided historical data on salaries for these university communities which the Arbitrator has found useful.

⁹ AX 62, p.2.

The parties have provided a limited amount of data in support of their selection of comparable communities, listed in Table 1 below. The Undersigned has determined the approximate distance of each of these from Whitewater. Proximity as a consideration generally favors selection of Watertown, Ft. Atkinson, Oconomowoc, Burlington, Delavan, Elkhorn, Jefferson, Lake Geneva, and Lake Mills as comparables being within 30 miles of Whitewater, a radius often used by some arbitrators for non-professional units. Two of the cities within this radius are mutually agreed upon as comparables: Ft. Atkinson and Watertown. The other comparably sized, proximate city is Oconomowoc. The Employer would exclude it because it is too close to and influenced by Milwaukee and has a per capita valuation over 3 times that of Whitewater. Watertown appears to be only 7 miles more distant from Milwaukee than Oconomowoc; Burlington (cited by the Employer as a comparable) is closer to Milwaukee than is Oconomowoc, though it is not on the I-94 route. Lake Geneva (also cited by the Employer as a comparable) is more distant from Whitewater than is Oconomowoc and is only about 6 miles more distant from Milwaukee (though it is 7 miles from the I-43 route). The Equalized Value Per Capita of Lake Geneva is \$76,298 vs. \$56,758 for Oconomowoc.

The population size of Burlington, Delavan, Elkhorn, Jefferson, Lake Geneva, and Lake Mills are considered too small by the Association to be comparables. Arbitrators, including the Undersigned consider a range of $\pm 1/3$ to $1/2$ as being reasonably close in size if there is not otherwise an adequate comparable pool from which to make comparisons. Burlington would be judged close enough in size; Lake Mills would not. Delavan, Elkhorn, Jefferson, and Lake Geneva are importantly proximate and for that reason the Undersigned would give them consideration. They are very equivalent in size to each other, but on the outside border of a generous exclusion zone from Whitewater. He notes that Whitewater has the highest UW-student/ population ratio of the municipalities cited by the Association. Were UW students excluded from the population counts, Whitewater would be more comparable in size to these cities. Of course, suggesting that a community would be smaller if it had fewer people is not a particularly insightful conclusion, but the Undersigned would still give these four cities consideration in making comparisons with Whitewater.

The UW cities selected by the Association appear equivalent in the ratio of the number of police officers per capita. Smaller communities selected by the Employer seem to have higher ratios, perhaps because of higher valuations per capita or because of some economies of scale in policing. Delavan and Lake Geneva would seem to fit the former presumption. Both appear a bit "out of range" in per capita police officers, though similar to Whitewater in terms of total staffing levels.

Table 1 : Proposed comparables' characteristics

City *Assn comp. + City comp.	approx. distance	1995 pop. ¹⁰	officers 1995 ¹¹	officers/ pop.	property offenses (/100) ¹²	Eq.Value (\$1000) ¹³	Eq.Val. (\$/cap.) ¹⁴
Watertown*+	30 mi.	20,382	36	.17%	850 (4.2)	643,524	31,573
Ft. Atkinson*+	10	10,267	18	.17	449 (4.4)	379,516	35,790
Oconomowc*	20	11,482	22	.19	371 (3.2)	651,699	56,758
Stevens Point*	140	24,066	42	.17	1524(6.4)	794,389	35,790
Menomonie*	240	14,055	27	.19	879 (6.3)	381,614	27,153
River Falls*	280	10,932	19	.17	537 (4.9)	276,228	25,268
Platteville*	100	9,949	19	.19	339 (3.4)	213,247	21,434
Whitewater	-	13,183	23	.17	406 (3.1)	240,034	18,209
Beaver Dam+	50	14,693	23**	.16		473,527	32,228
Burlington+	30	9,314	20**	.21		387,437	41,597
Delavan+	16	6,653	18**	.27		308,378	46,352
Elkhorn+	19	6,228	14**	.22		258,267	41,469
Jefferson+	16	6,400	14**	.22		220,654	34,477
Lake Geneva+	28	6,389	19**	.30		487,468	76,298
Lake Mills+	25	4,397	9**	.20		181,564	41,293
Waupun+	65	9,457	15**	.16		189,454	20,033

¹⁰ AX 4, EX 10

¹¹ AX6 (1995), EX10B (1996) is noted as **

¹² AX 12. Since there was considerable variability, the 1991 and 1995 property offenses data provided by the Association was averaged.

¹³ EX 10A. Employer Exhibit 10A indicated that the equalized value for Platteville was \$43,243,400 while the value per capita was \$21,434.

¹⁴ EX 10.

In objecting to the inclusion of Oconomowoc, the Employer raises an important concern regarding similarity of cities in terms of per capita valuations. This is often considered an important factor in interest arbitration as it indicates similarity of ability to pay or tax, and perhaps industrial or economic base. Table 1 indicates to the Arbitrator that this theory may not apply quite so well when non-taxed state institutions are present in a community. Waupun, Stevens Point, Menomonie, River Falls, Platteville, and Whitewater all have the lowest valuations per capita and all have large state institutions. Moreover in the case of the cities in which a UW campus is located, this variable is inversely related to the size of the student/population ratio; UW-SP is "small" compared to the population of Stevens Point, UW-W is "large" compared to the population of Whitewater. Rather than reflecting ability to pay, the Equalized Value/capita seems to indicate the "property taxability" of the economic base in these cases. The Undersigned notes in AX 62 that "there is state funding that comes Whitewater's way due to the presence of non-property taxpaying university students, (namely, Payments for Municipal Services, and the state Revenue Share disbursements)." He recognizes that Oconomowoc may thus appear "high" in valuation compared to Whitewater, but that sizeable difference is more apparent than real. Oconomowoc may indeed be a fundamentally different city, and there may be other basis for its exclusion as a comparable even though it is proximate and similarly sized, but such evidence has not been presented.

The following municipalities will be given primary consideration for comparison with Whitewater: Watertown, Ft. Atkinson, Oconomowoc, and Burlington. Delavan, Elkhorn, Jefferson, and Lake Geneva will also be given consideration. Insofar as salary trend data in the university communities cited by the Association gives useful insight, it will also be considered.

Wage comparisons

Comparisons of wage levels based on data available from the primary comparables tends to somewhat favor the Association's offer. Table 2 shows that in 1995 Whitewater's Top Patrolman earned \$128 per month less than the average of the four comparables primarily used by the Arbitrator or about 4.5% less. If indeed Oconomowoc is in a different labor market and were excluded from this consideration, then Whitewater officers would earn only \$39 less. Under the Employer's 1996 offer, the wage gap would grow to \$159 (\$53 excluding Oconomowoc). The gap is even greater under the Association's offer (\$172) until the Dec. 31, 1996 2% wage increase narrows the gap to \$117. Excluding Oconomowoc, that gap would be \$57 until Dec. 31, at which time Whitewater officers would earn \$11 less than average (vs. \$53 less under the Employer's offer).

Table 2 : Top Patrolman Monthly Wages and Wages Settlements¹⁵

City	1995	1996	%settle.	Lng'ty ¹⁶	Lng'ty	1997	%settle
Watertown	\$2738	\$2841	4%	\$ 15(8)	\$ 44(16)		
Ft. Atkinson	2833	2947	4%	13	25		
Oconomowoc	3090	3269	4.5%	0	0		
Burlington	2637	2716 2743	3%/4% (3.5%)	10	15		
ave.end rate	<u>2825</u>	<u>2950</u>	<u>4 (4.4)</u> ¹⁷	<u>10</u>	<u>21</u>		
Whitewater ER	2697	2791	3.5%	83	83	2889	
Assn offer1/1		2778	3%	83	83	2918	
Assn 12/31		2833	5%(3.1)			2976	
±	(4.5%)						
Whitewater ER	-128	-159	-.5(.9)	+73	+62		
Assn offer1/1		-172	-1(1.4)				
Assn 12/31		-117	+1(.6)	+73	+62		
Delavan	2642 2694	2775 2803	4.5%	56	98	2887 2916	4.1
Elkhorn	2701 2782	2838 2923	5%	0	0		
Jefferson	2733	2829	3.5%	0	0		
Lake Geneva	2742 2797	2880	3.8%	12	36		
ave.end rate	<u>2752</u>	<u>2859</u>	<u>4.2(3.9)</u>	<u>17</u>	<u>34</u>		
±	(-2%)						
Whitewater ER	-55	-68	-.4(.7)	+66	+49		
Assn offer1/1		-53					
Assn 12/31		+24	+1.1(.8)	+66	+49		

¹⁵AX 20, 21 Annual base rate for Top Patrol Officer in monthly rates. EX 17, 17A.

¹⁶AX 22, 44 and EX 25. Monthly longevity payment at 8 years is used. In the adjacent column, the 16 year rate is used.

¹⁷average percent settlement and percent increase of the average wage, respectively.

River Falls	3009	3106	3.3%	\$16	32		
Platteville	2452	2501 2551	2+2%	51	152	2628	3 %
Menomonie	2686	2817	4.9%	56	113		
Stevens Point	2777	2874	3.5%	15	36		
ave.end rate	2731	2837	3.9(3.9)	35	83		
±	(1.25%)						
Whitewater ER	-34	-47	-.4	+48	0		
Assn offer 1/1		-47	-.9				
Assn 12/31		+46	+1.1	+48	0		

How to treat longevity is under some contention in this dispute. Wisc. Stats. 111.77(6)(f.) requires the consideration of "overall compensation..." Often this is difficult to do, such as in the case of health insurance, time off, employment stability, etc. since these often involve "apples and oranges comparisons." Here, Whitewater pays about \$60/mo. more than the average for health and dental insurance for its employees. The City provides no dental coverage. It is unclear, however, whether the plans are equivalent or whether Whitewater employees get more benefits for this. The Association does indicate (AX 47) that Whitewater officers do not pay towards health coverage while half of the comparables it selected require employee contribution of about \$35-40/mo. The Employer implies (EX 18) that employees of most of the comparables it selected do not require employee contributions. If the health plans are equivalent, then it appears that what Whitewater police officers get is less than comparables get, but what the Employer pays is more.

Longevity pay in this case is relatively easily understood as an extension of the wage schedule. A difficulty making comparison remains because conclusions may vary depending on whether more- or less-senior employees are compared. The Employer asserts that the average Whitewater patrolman has 8 years longevity. Conveniently, the Whitewater longevity schedule "maxes out" at the 7th year, while in many other municipalities, longevity pay is only beginning to ascend (EX 22 and AX 45). Moreover, Employer Exhibit 6 (WPPA members) shows that there are two almost equally divided groups of Whitewater police department members, one with an average tenure of 4 ½ years and another of almost 22 years. These latter would be earning about \$40/mo. longevity pay in the cities which the Employer would use as comparables (including 3 which have no longevity plan). For this reason, longevity at 8 years and 16 years is included in Table 2 for making comparisons.

Percentage increase comparisons would seem to favor selection of the Employer's offer, absent any demonstration of "catchup" needs--but that is the Association's point. The four police departments provided an average 4% increase in 1996, closer to the Employer's 3.5% offer; the Association's nominal 5% increase by year's end is 1% higher, though its actual wage costs rise by only 3.1%. Average end rate wages in the 4 comparables rise by 4.4% in 1996, which favors the Association's offer. Since Whitewater Top Patrol Officers' wages are 4.5% (about 2.1% with longevity) below the average of these primary comparables a 10% lift in wages over the two years would not be unreasonable given these comparables' 4.4% average lift in 1996 and presuming a 3-4% lift in 1997. The Employer's offer would put them another 1/2% or more below.

No settlements are available for comparison of the parties' 1997 offers. Only two other settlements are reported, one by the Employer for Delavan (4.1%) with a Top Patrol Officer rate of \$34,986 or \$2916/mo. (vs. \$2889 or \$2976 under the Employer's or Association's offer), and the other by the Association for Platteville (3%) with a Top Patrol Officer rate of \$2628/mo., a city which is argued by the Employer to be in another labor market.

Consideration of the four smaller, but proximate municipalities' wages for Top Patrolmen shows again that Whitewater Patrolmen's wages seem to be "low." In 1995 they trailed Delavan, Elkhorn, Jefferson, and Lake Geneva by \$55/ month, or about 2% less. Longevity pay at 8 years in Whitewater was \$66 more, however, erasing that gap. The Whitewater officer with 16 years longevity earned \$49 more longevity pay and was therefore only \$6/month short. Under the Employer's offer, the gap would widen by \$13/ month, though a Whitewater officer with 8 years longevity would earn about the same as the average officer in this group while one with 16 years would earn \$19 less. Under the Association's offer, Whitewater Top Patrolmen would earn \$53 less than average until July 1, at which time the gap would rise to \$81 until the 2% increase is realized on Dec. 31, at which time they would earn \$26 less than average. With 8 years longevity, the gap would close by \$66, though only by \$49 for 16 years longevity. On Dec. 31, those with 8 and 16 years longevity would earn \$40 and \$23 more than average, respectively. Again, the Employer's offer would move Whitewater officers somewhat further from average while the Association's offer moves them towards, and then slightly surpassing the average. Considering wages alone, the Association's offer would put Whitewater employees more on par with these smaller communities' employees; comparing both wages and longevity changes this conclusion.

The average percentage settlement of this group was 4.2%, or nearly equidistant between the parties' offers. The average end rate percentage change was 3.9% which tends to favor the

Employer's offer, though the actual earnings of Whitewater officers would only rise about 3.1% under the Association's offer. Since Whitewater Top Patrol Officers' wages are 2% below (about even with longevity) the average of these secondary comparables, a 10% lift in wages over the two years would be on the high side (0 to 3% above average) given these comparables' 3.9% average lift in 1996 and presuming 3-4% lifts in 1997. The Employer's offer would place them another ½ % or so behind.

Comparisons with the four comparably sized but distant municipalities in which UW campuses are located show that Whitewater Top Patrolmen's wages also seem to be "low." In 1995 they trailed River Falls, Platteville, Menomonie, and Stevens Point very narrowly, \$34/ month on average, or about 1.25% less. Longevity pay at 8 years in Whitewater was \$48 more, however, implying that wages were \$14 higher. For a Whitewater Top Patrolman with 16 years longevity, the gap was \$34 since these four communities' average longevity pay at 16 years is the same (\$83) as at Whitewater, and at 24 years it is \$20 higher. Under the Employer's offer, the gap would also widen by \$13/ month, though a Whitewater officer with 8 years longevity would earn about the same as the average officer in this group while one with 16 years would earn \$47 less. Under the Association's offer, Whitewater Top Patrolmen would earn \$47 less than average until July 1, at which time the gap would rise to \$59 until the 2% increase at Whitewater is realized on Dec. 31, at which time they would earn \$4 less than average. With 8 years longevity, the gap would close by \$48, but would not change for an employee with 16 years longevity. On Dec. 31, those with 8 and 16 years longevity would earn \$44 more and \$4 less than average, respectively. Again, the Employer's offer would move Whitewater officers somewhat further from average (from \$34 below to \$47 below) while the Association's offer moves them somewhat further away, and then the "gap" to \$4/ month. Considering wages paid, the Association's offer would seem to be preferred; considering the "lift" in the wage and comparing both wages and longevity, the Employer's offer would be preferred for lower tenured patrol officers, though not for more senior officers. Officers with 16 years longevity would have a monthly wage level \$47 below average on Dec. 31, 1996 if the Employer's offer is selected; if the Association's offer is selected, it would be \$4 below--meanwhile over the course of the year they would have earned \$50+/mo. less.

The average percentage 1996 settlement of this group was 3.9%, as was the average end rate percentage change, which tends to favor the Employer's offer, though again the actual earnings of Whitewater officers would only rise about 3.1% under the Association's offer. Since Whitewater Top Patrol Officers' wages are 1.25% below (between \$12 above and \$34 below considering 8 to 16 years longevity) the average of these primary comparables, a

10% lift in wages over the two years would place Whitewater officers 1-2% above average given these comparables' 3.9% average lift in 1996 and presuming a 3-4% lift in 1997. The Employer's offer would roughly widen the narrow gap by \$12/month or .4% and would therefore tend to be preferred.

Other factors and issues

The Employer has argued for an award in its favor based on internal comparisons (d.). One unit (AFSCME) has settled on the same general terms as is included in its offer to the Police Department Employees. The Employer cites arbitral precedent for the maintenance of the internal pattern. The Arbitrator tends to agree, though he notes that the one settlement and an Employer-determined wage and salary adjustment does not make the strongest case for acceptance of the City's offer based on an "internal pattern". He also notes that the Teamster unit is also inclined to try to "buck the (one settlement) trend." If one unit is sufficiently out of line viz similar employees in comparable communities, then an adjustment will have to be made eventually whether by voluntary settlements, arbitration award, or in the absence of collective bargaining, market forces. Were this not so, a compelling case for single rather than multiple bargaining units would exist.

Similarly, the Employer's offer would appear be preferred based on comparisons with the recent rates of inflation (e.). Much can be said for the argument that this criteria was considered by the comparables' parties as they arrived at settlements. These tended to average more than that offered by the Employer, and about equal to what the Association has proposed in terms of dollars paid, though not in "lift." The Employer has indicated that the CPI-U rose 2.6% in 1994, 2.8% in 1995, and had risen 3% for the 12 month period to July, 1996. This would suggest that a slightly higher Whitewater settlement would be reasonable to the degree that this factor is subsumed in other, comparables' settlements.

The Association raises the issue of the interests and welfare of the public (c.) which favors its offer. The Arbitrator would agree that the morale of the unit's employees is an important consideration. The Employer contends that (c.) is not at issue in this matter, though implicitly contends that there would be a morale problem created if this unit were to be able "to wring from the City a pattern and level of wage increase which exceeds that voluntarily agreed to by the AFSCME. Either way, presumably someone's morale will suffer.

The parties' evidence and arguments have been examined according to the criteria of 111.77(6) Wisc. Stats. The interests and welfare of the Public and the financial ability of the City to meet the costs of the offers are found not to favor either party. Similar employees' wages in comparable communities tends to be a relative draw, particularly when overall compensation is considered. The Association's offer would be considered more reasonable with respect to the primary comparables selected by this Arbitrator. The Association's offer for wages would be considered more reasonable with respect to the secondary comparables selected by this Arbitrator; but not if consideration is given to "overall compensation." A conclusion regarding end of year wage levels for the more distant University communities is sensitive to which Whitewater employees are being compared; less senior employees may keep even under the Employer's offer during the contract when longevity pay is included while older ones will fall behind perhaps 2%. Under the Association's offer less-senior ones will earn perhaps 1.5% more than average while the less senior ones will earn about the same on Dec. 31, 1996. During 1997 they will keep these relative positions or lag slightly until Dec. 31, 1997. The Association's offer provides actual 1996-97 earnings for Whitewater officers which is the more reasonable offer.

Consideration of settlements with the City's other public employees would arguably favor the Employer's offer; one unit is settled at 3.5%/3.5% while the other unit has not agreed to this offer. Non-bargaining unit employees will receive 3.5% increases, so half of the City's employees will receive what constitutes the Employer's offer. Half may not. The issue therefore is to determine the relative weight to attach to internal vs external comparisons. On this, Arbitrator Gundermann opined:

..."As a general proposition, arbitrators are inclined to look toward internal comparables rather than external comparables where a clear pattern of voluntary settlements exist. The rationale most often given in support of using internal comparables is that internal settlements most accurately reflect what the parties would have agreed to if they reached a voluntary settlement. It is also asserted that by using internal comparables there is added stability to the bargaining process and less opportunity for dissension arising out of one unit receiving preferential treatment over another unit." City of Oshkosh, Dec. No. 26923-A (March 3, 1993)

Arbitrators often contend that a primary consideration in rendering an award is what in their opinion a voluntary settlement would have been. Unfortunately, a "clear pattern of (internal) voluntary settlements" does not exist in this case which would compell a

decision in the Employer's favor. There is some tendency for arbitrators to give greater consideration to external comparability in the case of professional employees than in the case of nonprofessional employees on the theory that the former are recruited and retained in a broader labor market. Arbitrator Vernon recognized a limit to relying on an internal pattern, were one to exist:

"...the internal pattern cannot control when adherence to that pattern would cause too much external market disparity. In this case, the general guidance gained from looking at other municipalities strongly suggests that the Employer's offer would perpetuate a great wage disparity." City of Monona (Fire Department) Dec. No. 26562-A (March, 1993)

The situation described above is argued by the Association to be relevant in the instant case. Its applicability would suggest an award in favor of the Association if wage levels of Whitewater Patrol Officers were significantly "out of line" with respect to comparable cities. The discussion above would suggest that particularly for less senior employees, evidence for such a conclusion exists but is not compelling. Finding favorable but not compelling evidence of internal comparisons for the Employer's offer and favorable but not compelling evidence of external comparisons of end wage rates for the Association's offer, the Undersigned has turned to consideration of actual 1996-97 earnings for Whitewater officers under the Association's offer which is the more reasonable offer in order to make the following

Award.

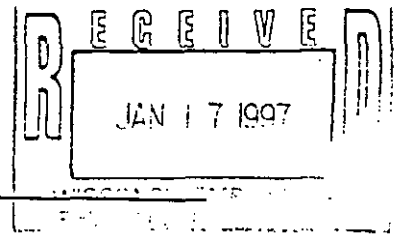
Having carefully considered all of the evidence and argument of the Parties set forth above as well as the arbitral criteria provided under Section 111.77 Wisc. Stats., it is the decision of the Undersigned that:

The final offer of the Wisconsin Professional Police Association/Law Enforcement Employees Relation Division, along with those items to which the parties are tentatively agreed is to be incorporated into the 1996-97 Collective Bargaining Agreement between the City of Whitewater and the Whitewater Professional Police Association .

Dated this 10th day of January, 1997.



Richard Tyson,
Arbitrator



CITY 2

**CITY OF WHITEWATER POLICE DEPARTMENT
ASSOCIATION'S FINAL OFFER**

The final offer of the Whitewater Professional Police Association, LEER/WPPA is as follows:

WAGES

- Effective January 1, 1996 - 3.0% across-the-board
- Effective December 1, 1996 - 2.0% across-the-board

- Effective January 1, 1997 - 3.0% across-the-board
- Effective December 1, 1997 - 2.0% across-the-board