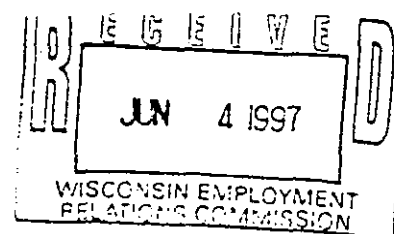


BEFORE THE ARBITRATOR



In the Matter of the Petition of

Case 186 No. 53613 MIA-2040
Decision No. 28826-A

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LEER DIVISION

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

Heard: 1/31/97
Record Closed: 4/25/97
Award Issued: 5/30/97

CITY OF MADISON

Sherwood Malamud
Arbitrator

APPEARANCES:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Gordon McQuillen, 20 N. Carroll Street, Madison, Wisconsin 53703, and Richard Little, Business Agent-WPPA, 7 N. Pinckney Street, Madison, Wisconsin 53703, appearing on behalf of the Madison Professional Police Officers Association.

Godfrey & Kahn, S.C., Attorneys at Law, by Jon E. Anderson, Suite 202, 131 W. Wilson St., Madison, Wisconsin 53701-1110, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

The Madison Professional Police Officer's Association (MPPOA), WPPA Leer Division, hereinafter the Association, and the City of Madison (Police Department), hereinafter the City or the Employer reached an impasse in their negotiation of a successor to the 1994-1995 Collective Bargaining Agreement. The City and the Association selected Sherwood Malamud to serve as the Interest Arbitrator. On September 19, 1996 the Wisconsin Employment Relations Commission appointed Sherwood Malamud to determine this dispute pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act. Hearing in the matter was held on January 31, 1997, in the Municipal building in Madison, Wisconsin. Post hearing briefs and reply briefs were exchanged through the Arbitrator by April 25, 1997, at which time the record in the matter was closed. This Award is issued pursuant to Sec. 111.77(4)(b) form 2 in that:

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

SUMMARY OF ISSUES IN DISPUTE

I. WAGES

Association Offer

A 3% increase effective the pay period that includes January 1, 1996. Effective July 1, 1996, an additional 1% across-the-board increase. An additional 3% across-the-board increase, effective the pay period that includes January 1, 1997.

City Offer

A 3% increase effective the pay period that includes January 1, 1996. A 3% increase effective the pay period that includes January 1, 1997.

II. HANDGUN REIMBURSEMENT

City Offer

On January 1, 1996, all members of the bargaining unit with at least ten years of service shall receive a \$500 payment. After January 1, 1996, members will receive \$500 on each tenth anniversary of employment.

Association Offer

No proposal.

III. UNIFORM ALLOWANCE

Both the Association and the City propose to increase the annual uniform allowance for members who are required to wear a uniform from \$400 to \$425 effective January 1, 1996. Effective January 1, 1997, both the Association and the City propose to increase the annual uniform expense for members required to wear a uniform to \$450.

A. The Uniform Allowance Issue For Officers Who Must Wear A Uniform.

Association Offer

The Association proposes to increase the maximum that an individual member may accumulate in a three year period in an individual uniform expense account from \$800 to \$850, effective January 1, 1996. The Association proposes to increase the maximum accumulation to \$900 effective January 1, 1997.

City Offer

The City proposes that for the duration of the Agreement, the maximum remain at \$800 that an individual member may accumulate in a three year period in an individual uniform expense account.

B. Uniform Allowance for Detectives

Association Offer

The Association proposes to increase the clothing allowance for those members who are not required to wear or maintain a uniform from \$45 to \$50 effective January 1, 1997.

City Offer

The City proposes to maintain the allowance for those members who are not required to wear or maintain a uniform at \$45, the amount set forth in the expired agreement. The City proposes to retain the status quo for the duration of the 1996-97 Agreement.

IV. EDUCATIONAL RESOURCE OFFICER

Association Offer

The Association proposes the creation of a selection criteria committee should the City decide to create an Educational Resource Officer position.

City Offer

The City makes no proposal on this subject.

V. ASSOCIATION LEAVE

Association Offer

The Association proposes that the City grant up to five days leave per year without pay for each member of the MPPOA Board of Directors to attend meetings and conferences related to their duties as Board members. The City would not be required to use premium pay to accommodate any such leave requests. The Association proposes to provide timely notification to facilitate the granting of such requests.

City Offer

The City makes no proposal on this subject.

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6) Wis. Stats., as follows:

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

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

BACKGROUND

Both the Association and the City propose a two year successor to the agreement that expired on December 31, 1995. Negotiations on a successor to the agreement for calendar years 1996 and 1997 are due to commence in October 1997.

The City of Madison, with a population of 199,518, is the second most populous city in the state of Wisconsin. It maintains a police department second only in size to that of the City of Milwaukee. There are 299 law enforcement personnel in the bargaining unit.

The Association and the City do not agree on a group of comparables. The Association proposes the nine most populous cities in addition to the City of Madison as the appropriate comparability grouping. The Association includes the City of Milwaukee in its comparability grouping. As of 1994, Milwaukee had a population of 629,296. As of calendar year 1995, Milwaukee maintains a police force of 2,086 personnel vested with the power of arrest.

The City proposes a comparability grouping of the ten most populous municipalities excluding the Cities of Milwaukee and Madison. The City proposes Green Bay with a population of 100,786 as of 1995 through LaCrosse with a population of 51,865 as comparables to Madison. The Association and the City comparability groupings differ over the inclusion of Milwaukee, Janesville and LaCrosse. They agree that the following communities should serve as comparables to Madison: Green Bay, Racine, Kenosha, Appleton, West Allis, Waukesha, Eau Claire and Oshkosh.

The City proposes Dane County Sheriffs' Department, both nonsupervisory and supervisory officers, as appropriate comparables, here. At the hearing, the Association did not object to Dane County serving as a comparable, in this case. However, the Dane County contract had not been resolved for 1996-97, as of the hearing in this matter. The parties did not refer to Dane County in the exhibits and arguments presented in this case.

During the hearing, the parties agreed that the Arbitrator need not establish in this Award the appropriate group of comparables. Accordingly, the Arbitrator combined the data provided by both the Association and the City with regard to the total of eleven communities suggested by both parties as comparables in this case. In light of the large number of comparables, the Arbitrator found in the course of his evaluation of the evidence, whether the three comparables in dispute were included made little difference in the analysis that follows.

POSITIONS OF THE PARTIES

The Association Argument

The Association argues that wages are the key issue in this case. In this regard, the Association reviews each of the statutory criteria to demonstrate that its final offer is the more reasonable. The Association notes that the statutory criteria: the lawful authority of the Employer, stipulations of the parties, overall compensation, changes in the foregoing, and such other factors do not serve as a basis for differentiation between the final offers of the City and the Association.

The Association argues that the criterion, the interest and welfare of the public, supports the selection of its final offer. The Association notes that police officers often work with officers of other police departments. The wage levels of the Madison Police Department are ninth out of ten comparables (inclusive of Madison). The Association notes that its exhibit #30 demonstrates that over the last five years, the wage levels of Madison police officers have declined relative to the wage levels paid by comparable municipalities to their law enforcement personnel. This decline in wage levels affects morale. The decline of morale is contrary to the interest and welfare of the public.

If an Employer raises an inability to pay argument, it does so under this criterion. The City acknowledged at the hearing that this is not an inability to pay case.

The external comparability criteria provide strong support for the adoption of the Association offer. In 1990, the base wage for a Top Patrol

Officer was \$91.76 below the average biweekly pay paid by the nine other comparables suggested by the Association. If the Employer's final offer is accepted, in 1996 the Top Patrol Officer biweekly base wage would be \$139.84¹ per pay period below the average paid by the comparable departments. The Association offer does nothing more than halt the further decline from the average in the wage level paid in Madison to its police officers.

The Association anticipates the Employer's argument that internal comparability dictates that the Employer's final offer be adopted. First, the Association notes that Arbitrator Bellman in Waushara County (Health Department), 26111-A (3/90) notes that uniformity of settlements does not serve to subordinate the public policy that justifies the creation of separate and independent bargaining units. This point by Arbitrator Bellman gains additional significance in interest arbitration disputes involving law enforcement personnel. Arbitrator Fleischli in Portage County (Sheriff's Department), (9/89), notes that there is a separate statutory procedure for law enforcement personnel. It is best to compare law enforcement personnel to other law enforcement personnel to establish appropriate wage levels and increases from year to year.

The Association acknowledges that the City has followed a percentage pattern of bargaining in the recent past. It argues that the City's 1996 offer of 3% may be appropriate for a group of employees who are at the top of the wage comparison. Police officers are not at that wage level. The Association challenges the notion that the Employer has followed a uniform pattern of settlement for its units in calendar year 1996. The City has negotiated wage increases based on necessity -- what it had to do in each unit. Those settlements are not based on uniformity. The Association maintains that unless the Employer can provide strong reason for uniform wage increases, internal comparability only serves to trivialize the other criteria.

The Association addresses the other matters in dispute. It argues that both the City and the Association recognize the need to increase the uniform allowance. It argues that the same economic forces that justify an increase

The Arbitrator rounds up the figures provided in the exhibits and in the calculations that he makes in this Award.

in the allowance also justify an increase in the uniform allowance bank over a three year period. Similarly, the Association argues that the \$5 per month increase in 1997 in the maintenance allowance for nonuniformed personnel attempts to meet the added expenses incurred by those employees.

The Association notes that its proposal to release members of the Board of Directors of the MPPOA to attend meetings that are directly related to their responsibilities as Board members simply memorializes a practice into the Agreement. The Association presented evidence to demonstrate that most of the comparables provide release time for its union officers. The comparables provide the release time on pay status. The Association emphasizes that it seeks, here, leave without pay.

The Association notes that its proposal for the establishment of a selection criterion committee in the event the City creates an Educational Resource Officer position is an innocuous request. The committee's recommendations would only be advisory to the Chief of Police.

The City proposes a handgun reimbursement stipend of \$500 for officers with 10 year seniority and payment of an additional \$500 at subsequent 10 year anniversaries in a department. The Association notes that, as a result of the initial cost of the handgun reimbursement proposal, in 1996 it brings the total package increase proposed by the City to 2.95%, slightly higher than the total cost of the Association's at 2.86%. The Association does not present what it views as a hypocritical argument that since its offer is lower in 1996, it should be adopted. Rather, the Association argues that its split wage increase for 1996 is the more reasonable.

The Association argues that the cost of living criterion should be measured by the level of voluntary settlements among comparable employers. In this regard, it argues that its exhibits 32 and 34 demonstrate that voluntary settlements more closely approximate the wage increases it seeks rather than those offered by the City. In addition, the Association notes that its exhibit #32, the CPI index for All Urban Consumers And Urban Wage Earners And Clerical Workers For The North Central Region for December 1994 to December 1996 totals 6.45%. The Association notes that it proposes a 6.5% increase over a two year period for 1996 and 1997. It

concludes, therefore, that the cost of living criterion supports the adoption of its proposal.

In its reply brief, the Association meets the Employer's arguments that certain issues such as its leave proposal for the Association officers are not proper subjects for an interest arbitration proceeding. The Association argues that the interest arbitration process is an integral part of the collective bargaining process for law enforcement personnel in Wisconsin. Adoption of the Employer position would only encourage a recalcitrant employer from ever agreeing to certain kinds of proposals.

In its Reply brief, the Association strenuously argues that internal consistency among the bargaining units does not serve to trump all other factors. Internal consistency ignores the different needs of the different bargaining units when they come to the bargaining table. The Association notes that in its previous bargain, the Association obtained an additional 1% for the unit. The City subsequently gave that 1% to other units that had previously settled without the 1%. The City conduct was not only paternalistic, but it deprived the Association of its ability to negotiate meaningful differences between itself and other bargaining units.

The Association comments on the City's argument that the Employer's final offer does not serve to change the relative rank of wage levels among the comparables. The Association asks "so what?" That notion hardly supports or should serve as the basis for the adoption of the City final offer.

The Association notes that the City's handgun reimbursement proposal fails to provide the resources for the purchase of a handgun at the very moment when such reimbursement would be useful. When officers are first hired, they are required to purchase their own handgun. Even with the City's assistance of purchasing the weapons at "fleet" prices, officers must repay the City over the first year of employment for the handgun purchased.

The Association notes that issues, other than wages, are indeed minor issues and are not deal breakers. The Association argues that the proposal for filling the Educational Resource Officer position is consistent with other existing procedures in the Department.

The Association notes that if the City required limitations on the number of Association officers who could take leave to the annual convention and regional meetings, the City should have made such proposals in bargaining. The City does not state why it failed to make such proposals. The Association concludes that its final offer is more reasonable and should be adopted by the Arbitrator.

The Employer Argument

The Employer argues that the Association asks for too much in its total final offer. The Association not only seeks a split year wage increase in the first year of the Agreement, 1996, but it also attempts to obtain an increase in benefit levels for uniform allowance, leave for Association officers, new language that impinges on a management prerogative should it create a new position of Educational Resource Officer. All this in addition to a wage proposal that exceeds the settlements reached with other units.

The Employer argues at length it has established a pattern of settlement of 3% for 1996 and 3% for 1997 with 11 of the 12 represented bargaining units. The MPPOA is a hold out unit. The City notes that arbitral authority provides great weight, if not determinative weight, to internal patterns of settlement, City of Green Bay (Water Utility), 28070-A (11/94), and of Arbitrator Gundermann in the City of Oshkosh, 26923-D (3/93).

The City notes that this Arbitrator in the City of Green Bay, supra, suggests that an award contrary to a pattern of settlement may issue in a case in which the wage rates of the classification of employees subject to the interest arbitration proceeding are substantially at variance from the rates of employees employed by comparable employers. Following this framework, the City notes that, from 1992 through 1997, the City has followed a bargaining strategy to achieve settlements that are internally consistent, the same percentage increase, among all its bargaining units.

The City deflects the Association's argument that the wage rates of police officers in the City of Madison are far below the average. The City notes that in place is the most generous longevity structure in effect among the comparables. It is a percentage based longevity system that tops out at 11% beginning with the 20th year of continuous employment. The City

notes that when longevity and the educational incentive program in effect for law enforcement personnel are taken together, the salary for Top Patrol Officer under the City's final offer is second only to Racine. Under the Association's final offer, it ranks first.

The educational incentive program, the City notes is percentage based. It provides up to 22% of base salary upon completion of a graduate degree. Only Eau Claire provides an educational incentive program that in any way approximates that provided by the City of Madison. The Eau Claire educational incentive plan provides 11.2% of base to officers who complete 188 or more credits. The City notes that its longevity schedule may add as much as \$3942 to base wages to eligible officers under its proposal for 1996. Since this is a percentage based benefit, it generates \$3981 in 1996 under the Association offer. The educational incentive which may generate as much as an additional 22% on an officer's base wage, generates up to \$7884 under the City's final offer, and since the incentive is percentage based, it generates up to \$7963 under the Association's final offer for 1996. When the educational incentives and longevity additions to salary are totaled, the City of Madison salary is no longer ninth but first or second. The City argues there is no need to provide police officers with an additional wage increase.

With regard to external comparability, the Employer argues that with its proposed wage increases for 1996 and 1997, the City maintains its same ranking.

The City emphasizes that Madison police officers enjoy the fewest number of hours worked in a year, 1950, then any of the comparables. It argues that a comparison of the hourly rates rather than biweekly or annual salaries paid best serves as the basis of comparison of wage levels between Madison and its comparables.

Whatever the rank of the wage levels for City of Madison police officers, those wage levels were achieved through voluntary collective bargaining. Arbitrator Daniel Nielsen in Algoma School District, 24447-A (11/87), observed that where parties have negotiated wage levels relative to the average, unless salaries are shown to be uncompetitive, the past agreements reached should not be open to relitigation through the assertion that catch-up is necessary.

The City argues that its proposal more closely approximates the level of wage increases provided by comparable employers. It takes the lift rate proposed by the Association, 4%, and together with the 1997 offer of 3% it totals 7%. The City's final offer is 3% in each year for a total of 6% over the term of the agreement. The average increase among the comparables it proposes is 3.3% in 1996. The City's 3% offer is closer to the average in the first year. In the second, the average increase for 1997 is 3.46%. Since both the City and Association propose 3% increases in 1997, both are below average by 0.46%. The City concludes that under the analysis established by this Arbitrator in the City of Green Bay, the internal settlement pattern should be followed. There is no basis in this record to refrain from following this settlement pattern.

The City argues that the handgun reimbursement program provides a new and unique benefit for police officers. It points to the testimony of Captain Masterson who noted that in the last 10 years the gun of choice in the Department has changed from the Smith & Wesson revolver to a semi-automatic Smith & Wesson. Within the last five years, the Glock semi-automatic, which is lighter and more reliable, has become the gun of choice. Officers must purchase their own handguns, and most officers purchase two. The City purchases the guns at a discount. It extends to officers the opportunity to repay the cost of the weapons, interest free, over the period of a year through payroll deductions.

The last occasion the Department purchased the Glock semi-automatic weapon, the bid price was \$430. The \$500 reimbursement covers the cost of the weapon. The reimbursement at 10 year intervals coincides with the useful life of the weapon. The Employer points to its Exhibit #71 which demonstrates that approximately half the external comparables provide some form of handgun reimbursement. The cities of Appleton and Racine provide an allowance for handguns out of the uniform and equipment allowance. The City of West Allis provides an annual \$300 payment for the maintenance of weapons. LaCrosse provides that purchases of new equipment must be submitted to the chief for approval. The City of Janesville replaces an officer's weapon; however, the weapon remains the property of the city. All the other comparables, Eau Claire, Green Bay, Kenosha, Oshkosh, and Waukesha make no provision for handgun reimbursement.

The Employer argues strenuously in its Original and Reply briefs that the Association has failed to substantiate the need for the changes it proposes in its final offer: 1. leave for Association officers; 2. the establishment of a selection criteria committee should the City create the position of Educational Resource Officer; or, 3. the increase in the uniform allowance bank and the \$5 addition to the allowance afforded detectives in second year of the Agreement. The City notes that the status quo/quid pro quo arbitral standard should be applied for each of the benefits requested by the Association in its final offer. In this regard, the City asks the Arbitrator to employ the status quo analysis described in particular detail by this Arbitrator in City of Verona (Police Department), 28066-A (12/94). The Association should be required to establish the need for the changes it proposes and identify the quid pro quo for the changes it proposes. The Association must establish the need and demonstrate a quid pro quo with clear and convincing evidence. The City argues that the Association has not presented compelling evidence of the need for an increase in the maximum accumulation for the uniform allowance bank, nor has it established the need for the \$5 per month increase in the allowance afforded to those officers who are not required to maintain a uniform.

The City notes, with regard to the Association proposal to grant leave of up to five days per year for each member of the MPPOA Board to attend meetings and the WPPA state annual convention, the Association has failed to provide any evidence of the need for this proposal. In unrebutted testimony, Captain Masterson stated that MPPOA Board members have been granted the opportunity to attend conventions. The City has required that Board members use their own time to cover their attendance at such conventions. The City notes that Association President Durkin testified that, at present, there are ten members on the MPPOA Board. He indicated that the purpose of the proposal was to ensure that all ten members of the Board would be able to attend the annual convention of three days and the quarterly meetings which run approximately one or two days.

The City argues that it will face staffing problems when all ten Board members seek time off to attend the annual convention or quarterly meetings. In addition, the Association proposal does not limit the number of individuals who may serve as Board members who are afforded up to five

days leave per year, nor does the proposal limit the number of Association officers who would be on leave at any one point in time.

With regard to the Educational Resource Officer proposal, the City notes that the Association has not included any evidence concerning the creation of a criterion committee in any of the exhibits submitted at the arbitration hearing. The City emphasizes that its wage proposal is consistent with the wage pattern it has settled with the eleven other bargaining units. There is no basis for providing police officers with wage increases that are inconsistent with those received by other City employees. The Association has failed to submit any evidence to establish the need for the other changes it proposes in its final offer. Accordingly, the City requests that the Arbitrator select its final offer for inclusion in the successor Agreement.

DISCUSSION

Introduction

In the analysis that follows, the Arbitrator describes the total package, as well as, wages only increases proposed by the Association and the City. The Arbitrator first determines what elements comprise the "wage." The Arbitrator then contrasts the wage levels enjoyed by Madison police officers to those paid to police officers in comparable municipal departments. The Arbitrator then turns to consider the wage increases proposed by the Association and the City for 1996 and 1997. The analysis concludes with the selection of the more reasonable wage offer for inclusion in the successor Agreement.

WAGES

Introduction

Both parties identify 1995 as the base year for costing purposes. Approximately 52 officers were at the initial hire through the 30th month step. The remainder of the patrol officers, 159, have been employed with the department for in excess of 42 months. There is one Detective Supervisor, 33 Sergeants, and 54 Special Investigators, Detective Is in this unit.

The total package cost of the Association final offer is 2.86%. It generates an increase in dollar expenditures in 1996 over 1995 that amounts to \$510,039. The Employer final offer generates a 2.95% increase. Due to the handgun reimbursement proposal of the City, the total package cost of its offer is greater than the Association's for 1996. The Association proposal for a 1% mid-year increase generates an increased cost of \$66,741. The percentage impact-- wages only-- costs 3.52%. It results in a 4% lift. As a result of the mid-year increase, the cost of the mid-year bump is reflected in the second year, as well. Consequently, the Association proposed 3% wage (wages only) increase for 1997 costs 3.52%. The total package cost of the Association proposal for 1997 is 4.04% with a dollar impact of \$741,050 increase in expenditure for wages and all benefits in 1997 over 1996. The total package cost of the Employer final offer is 3.01% in 1997. Its offer generates an increase in expenditure for wages and all other benefits that amounts to \$553,675.

There are two dimensions to a wage issue. The first dimension is the amount of change, the increase, each proposes over the term of the Agreement. The other dimension measures the wage levels against the wage levels paid by comparable employers to their law enforcement personnel.

Wage Levels

The Association argues that coming into the 1996-1997 Agreement, the wage levels of Madison police officers rank nine out of ten of the ten largest cities in the state of Wisconsin (inclusive of Madison). The wage levels of Madison officers have decreased relative to the average over the last five years, it argues.

The City argues that the Arbitrator must look at longevity and educational incentive when considering wage levels. When those two compensation factors are considered, Madison ranks first or second among any comparable identified by these parties.

The Association references in its exhibits the longevity schedules in Madison and in the comparables. Fifty-two employees move through the salary schedule from date of hire through the first 42 months. All other officers, including sergeants and detectives, receive some amount of

longevity. They are under the City's longevity program which begins after four years and tops out for employees after 20 years of service at 11%.

Under the Madison educational incentive program, an officer may receive an educational incentive that is equal to 18% of base salary for a Bachelor's degree and 22% of the Top Patrol salary for a Graduate degree. From the costing data submitted, it is apparent that educational incentive constitutes a significant portion of the compensation paid to police officers. For example, the total cost of wages only, excluding educational incentive and all other additional payments, totaled \$10,486,098 in the base year 1995. Wage costs in 1996 under the Association final offer totals \$10,854,668. The educational incentive which was \$1,351,658 in 1995 increases under the Association offer to \$1,399,167. The educational incentive payment is approximately double that of the longevity paid to members of this unit. In 1995 it totaled \$655,381. In 1996, as a result of the Association final offer, it would amount to \$678,417. Longevity and the educational incentive are significant elements of the compensation provided to Madison police officers, and these payments must be included in the analysis of the wage level issue.

Under Article 8, Section I.3., employees are not eligible to participate in the educational pay program until they complete 42 months of employment as a commissioned member of the police department. To the extent that police officers have achieved additional educational "points" under the City's educational incentive program, payment of the incentive does not begin until the officer has completed 42 months of service. The 42 month rate, the base rate, in Madison is well below the average paid by the comparables. The rate is not effected by longevity or educational incentives for the first 3-1/2 years of employment in the Madison Police Department for educational incentive and 4 years for longevity.

The parties presented tables comparing the pay rates for the Top Patrol Officer in Madison and the comparables. In Madison, an officer reaches the top in 42 months. In Appleton, a police officer reaches the top in five years; in Eau Claire it is four years. In Green Bay, the schedule tops out at three years. In Janesville an officer reaches the regular base rate in 18 months. An officer obtains increases in addition to the across-the-board increase through longevity, if a longevity program is in place, or educational

After four years of employment, longevity generates an additional 55 cents per hour under the Employer's offer. If one rounds up, the hourly add-on for longevity amounts to 56 cents under the Association offer. After ten years, longevity adds \$1.11 to the average hourly rate.² The total compensation-- longevity and base salary-- generates a rate that is below average(\$19.67 v. \$20.10). However, it appears that with educational incentive an officer's pay may quickly approximate or exceed the average.³

The Arbitrator concludes from the above data that the Madison wage levels contrasted to those paid to police officers in comparable departments are substantially below the average during the initial years of employment. Then, as longevity and educational incentive pay become a significant percentage of compensation paid to the officer, the compensation level of a Madison officer progresses to rank first or second among the comparables. At 20 years of service, the compensation paid to a Madison officer, base plus longevity and educational incentive, ranks first or second rank among the comparables. If the Employer offer were adopted, the compensation level of base, longevity and educational incentive would rank second only to Racine.

The Association is partially correct when it argues that the compensation paid to the Top Patrol Officer is well below average. It is descriptive of the relative pay levels in the initial years of employment. However, compensation, base salary, educational incentive and longevity may quickly bring the Madison officer's pay level to, or well above, the average.

The level of compensation paid in Madison relative to the wage levels paid by comparable employers is the product of voluntary agreements reached by these parties over a substantial period of time. The establishment of a compensation schedule so heavily dependent on longevity and educational incentive was voluntarily agreed to by these parties. This Arbitrator agrees with the observation of Arbitrator Nielsen that unless there

²The Arbitrator multiplied the monthly longevity amount reflected in Association exhibits 40-42 by 12 and then divided by 1950, the annual hours worked by a Madison police officer.

³The average hourly rate of officers in comparable departments is 8.3% greater than the 18.56 Madison hourly rate.

incentive if that is in place. Of the comparables provided by the parties, Appleton and West Allis have no longevity plan. Madison begins the payment of longevity after four years of employment, earlier in an officer's career than any other comparable employer. Kenosha begins the payment of longevity at a rate of \$5 per month. In Madison, with a percentage based longevity program, under the Employer offer the lowest longevity payment would generate \$89.60 per month in calendar year 1996.

After 12 years of service, Eau Claire's longevity plan, which is percentage based, generates \$172.33 per month. In 1996, under the Employer offer longevity amounts to \$179.20 per month at twelve years of service. In Racine, a twelve year officer receives \$150.54 per month. In Green Bay, Kenosha, Milwaukee, Oshkosh, and Waukesha, the amount of longevity paid after 12 years of service does not exceed \$20.83, the amount paid in Milwaukee.

When police officers reach the top patrol base or regular rate at 3-5 years of service, Association exhibit 33 indicates that in 1996 under the City offer, the rate for Top Patrol is **\$163.93** per biweekly pay period **below** the average. Under the Association split increase offer, as measured against the end or lift rate, the pay for the Madison police officer is **\$150.15** biweekly **below** the average of the comparables inclusive of Milwaukee, excluding Eau Claire, Janesville and LaCrosse.

The disparity in wage rates for officers with little seniority may be approximated through the use of Employer exhibit 62, which sets out the annual hours worked by the comparables suggested by the Employer, and Association exhibit 33 described above. The average hourly rate among the comparables using the average number of annual hours worked by the comparables suggested by the Employer, 1995 hours, which taken as a divisor for the product of the average biweekly base wage multiplied by 26 pay periods yields an average hourly rate of \$20.10. In 1996, in Madison under the City's offer, the Top Patrol Officer hourly rate is \$18.38 (the annual hours worked in Madison total 1950 hours). Under the Association offer for 1996, the hourly (lift) rate for the top patrol officer at 3-1/2 years is \$18.56.

is some gross imbalance that must be adjusted, the wage levels established through voluntary negotiation over many years need not be adjusted in one particular bargain.

The Wage Increase

Such Other Factors-Internal Comparability

There is a second dimension to the wage issue. The percentage change from year to year for the duration of the agreement is the nub of this dispute. The Employer argues that its final offer conforms to the settlement pattern that is in place for calendar years 1996 and 1997. Of the 12 organized bargaining units in the City, only the police unit is unsettled for this period. In 1997, there is a settlement pattern of 3%. In fact, both the Association and the City propose a 3% increase in 1997. The dispute centers on 1996. The Employer describes the pattern of settlement that it achieves in 1996 at page 10 of its brief, as follows:

1996: In 1996, the prevailing settlement pattern was again 3.00%. Some units, such as Local 60 or Local 236, received a lesser across-the-board increase. The reason for these varying costs was because the bargaining units exchanged other monetary items for that 3.00% wages only adjustment. (ER-50) The adjustments noted were for improvements in the longevity pay plans, improvements in the classification (out-of-class) pay or increases in the sick leave payouts. (ER-53) Since the costs of these improvements varied from bargaining unit to bargaining unit, the across-the-board adjustments also varied.

In 1996, any of the remaining bargaining units also negotiated for the 1.00% adjustment that the Police, Local 236 and Fire Supervisors units received during the 1994-95 negotiations. The 1996 across-the-board increases for Local 60, Fire Fighters, Library Non-Professionals and Professionals, Public Health Workers, Police Supervisors and Building Trades bargaining units all included the additional 1.00% increase as a one-time adjustment to take place on 12/31/95. Thus, with the exception of the Teamsters, all of the City's bargaining units received a 1.00% adjustment either during the 1994-95

contract negotiations or during the 1996-97 contract negotiations.⁴

A settlement pattern is difficult to achieve. Here, the City offer of a 3% wage increase in 1996 conforms to the settlement pattern that the Employer achieved with its eleven other bargaining units. Ordinarily, this Arbitrator would accord the finding that a pattern of settlement exists substantial weight, City of Green Bay (Water Utility), supra.

In the above discussion, the Arbitrator describes the substantial disparity between the base salary (the 42 month rate) and the Top Patrol rate paid by the comparables. This disparity is the product of the structure of compensation for the Madison officer. Since both the longevity and educational incentive plans are percentage based, it necessitates that the base against which these percentages are taken be lower than what may otherwise be the case. However, the Arbitrator does not accord the settlement pattern finding determinative or even substantial weight in this case. The Arbitrator gives the finding that a pattern exists ordinary weight, because of the substantial disparity between the average rate of the Madison Top Patrol officer and the rate paid by the comparables.

Comparability

The determination of the wage issue is based on the application of the external comparability criterion, as well as, the other statutory criteria. At this juncture, it is important to note the full extent of the two wage proposals presented herein. The Association proposes an across-the-board 3% increase effective at the beginning of 1996 with a 1% mid-year bump. The Employer proposes an across-the-board 3% increase and the inclusion of a new benefit, a \$500 payment to officers with ten or more years of service with the Department. The handgun allowance is not subject to the percentage based rollups afforded by the parties' educational incentive and longevity plans. The Employer proposes to pay the \$500 at subsequent ten year anniversaries of employment with the City. The \$500 reimbursement

⁴The exhibits referenced in this quote are the Reports of the Settlements to the Madison Common Council. The reports cost any additional benefit with reference to the 3% pattern.

would be paid on an officer's 20th and 30th anniversary of employment as a police officer with the City. The Employer proposal does not provide for the payment of this allowance to officers in the first ten years of their employment.

As noted above in the introductory comments to the Discussion section of this Award, the total package cost of the Employer's final offer inclusive of the handgun reimbursement is slightly greater than the Association's proposed total package offer for the first year of this two year agreement. The Association eschews the argument that its offer should be accepted because it is the lower offer in the first year. It asserts that such an argument is hypocritical. The Arbitrator need not determine whether the argument is hypocritical. The more important question is "Which is the more reasonable offer?"

Using the comparables suggested both by the City and the Association inclusive of Eau Claire, the average percentage wages only lift increase for the comparables for calendar year 1996 is 3.3%. The City proposed increase at 3% is closer to the average than the Association's 4.03% lift increase for calendar year 1996.

Both the Association and the City final offers for 1997 call for a 3% increase. The increase in salary over the term of the two year agreement relative to those provided by the comparables is instructive. The Arbitrator employed Association exhibits #31-33 and Employer exhibit #64 to calculate the wages only increase in lift among the comparables for 1996 and 1997. At the time of the hearing in this matter, Eau Claire was not settled for 1997. In addition, the Eau Claire contract runs from July 1 through June 30. As of the hearing, LaCrosse had not settled. The lift increase for the comparables over the two year term of the proposed agreement, calendar years 1996 and 1997, is 6.81%. The City proposes a 6% lift. The Association proposes a 7% lift increase. The Association offer more closely approximates the percentage lift increases afforded by comparable employers for 1996 and 1997.

Conclusion: Comparability

The City final offer for 1996, the first year of the two year agreement, more closely approximates the lift increases provided by the comparables. However, over the term of the two year agreement, the Association offer more closely approximates the wage increase afforded by the comparables. The arbitrator accords more weight to the two year comparison. It establishes the wage level that the parties will use in bargaining their next contract. The Arbitrator concludes that the comparability criterion supports the inclusion of the Association offer in the successor agreement.

Overall Compensation

Police officers in the City of Madison enjoy a wide range of fringe benefits. Longevity and educational incentives are particularly important in this case. The Arbitrator has considered the impact of those benefits in his analysis of the wage level dimension of the wage issue. Upon review of the evidence presented, the Arbitrator concludes that this criterion does not serve to distinguish between the parties' final offers.

The Interest And Welfare Of The Public

The Association argues that the wage levels paid to Madison officers are well below the average paid by comparable departments to their police officers. The Association argues that police officers frequently work with officers from other departments. The disparity in wage levels impacts on morale. The Association attempts to address this issue through its final offer. The wage increase it proposes improves morale and, therefore, the interest and welfare of the public is served by the improvement in police morale.

In the above discussion, the Arbitrator rejects the premise on which the Association's argument is based. The wage levels in effect in Madison are the product of many voluntary agreements. The structure of compensation is affected substantially by Madison's percentage based longevity and educational incentive programs. The Arbitrator concludes that this criterion does not serve to differentiate between the offers of the parties.

Cost-of-Living

The Association correctly notes that many arbitrators, including this one, employ the level of wage increases provided by comparable employers as a measure of the increase in the cost of living. However, this Arbitrator also employs the percentage change in the Consumer Price Index as a measure of that increase. The level of increase provided by comparable employers is fully discussed and weighed under the comparability criterion. The focus of the cost of living criterion is the data generated by the change in the CPI for the year(s) preceding the year(s) at issue.

It is appropriate to look at the total package offer increases generated as a result of the increase/decrease in wages and all benefits over the term of the two year agreement. The market basket measure, the CPI, should be used to quantify the impact of total compensation, the total package afforded by each final offer.

The Association offer more closely approximates the increase in the cost-of-living as charted by the Consumer Price Index. From December 1994 through December 1995, the index for Urban Wage Earners And Clerical Workers registered a 2.5% increase. The lower Association offer more closely approximates that increase.

The Association proposes a total package increase in 1996 of 2.86% and 4.04% in 1997; the total package cost over the two years is 6.90%. The City's offer generates a total package cost increase of 2.95% in the first year and 3.01% in the second, for a total of 5.96%.

The percentage change in the CPI in the second year, December 1995 through December 1996, in the same index as above is 3.8%. The total change in the CPI, December 1994 through December 1996, is 6.3%. The Association offer is .6% higher than the increase in the CPI over this period of time. The City's offer is 34% lower than the increase in the CPI. Over the term of the two year agreement, the City's offer more closely approximates the increase in the cost-of-living. The Association's proposal for the first year of the agreement more closely approximates the CPI in 1996. The Arbitrator accords greater weight to the two year comparison.

Therefore, the Arbitrator concludes that the cost-of-living criterion supports the inclusion of the City's offer in the successor agreement.

Handgun Reimbursement

The City proposes a handgun reimbursement payment of \$500 to police officers with ten or more years of service, as of January 1996. In the first year of the Agreement, the City offer impacts 162 officers at a total cost of \$81,000. In the second year of the Agreement, 15 officers would receive the \$500 reimbursement at a total cost of \$7,500. The Association makes no proposal on this issue. Instead, it proposes the mid-year 1% increase on the wage rate.

The wage level analysis, above, demonstrates that the wage rates for officers during the first years of employment in the Department, depending on the extent to which an officer qualifies for educational incentive, are below average. Madison requires officers to purchase their weapon when they join the force. The City purchases the weapons at a group discount rate. It advances the cost of the weapon to the employee. The officer repays the cost of the weapon through payroll deduction in the first year of employment.

The City offer does not offer the handgun reimbursement to the very officers most in need of this payment. The salary schedule relative to the level of compensation afforded by other comparable employers is the lowest during these early years of employment. On the other hand, the compensation level for officers with ten years of seniority approximate or are well above the average (again, depending on the amount of the educational incentive). Officers with 20 years of seniority, enjoy compensation levels well above average.

The Arbitrator can find nothing to support the handgun reimbursement proposal other than it consumes \$81,000 in the computation of the total package cost of the Employer's first year offer. Most comparables do not pay a handgun reimbursement. If they do, they do so under a uniform and equipment allowance. This City proposal is without merit. The Association does not ask the City to spend its limited resources

in this manner. This Employer proposal has a substantial negative impact on the Arbitrator's analysis of the Employer's final offer.

Summary: The Wage Issue

In the above discussion, the Arbitrator concludes that the comparability criterion supports the Association offer. The cost-of-living criterion provides support for the Employer offer. Such other factor-the internal settlement pattern supports the selection of the Employer offer. The handgun reimbursement proposal acts as a substantial negative weight on the Employer's offer. The Arbitrator considered the remaining criteria. The balance of the statutory criteria provide no basis for differentiating between the final offers of the parties. The Arbitrator concludes that if wages were the only issue in dispute, the Association offer is narrowly preferred.

UNIFORM ALLOWANCE

The parties agree that the uniform allowance should increase from \$400 in 1995 to \$425 in 1996. They agree that the allowance should increase to \$450 in 1997. They differ on the amount that may accumulate in the uniform allowance bank over a three year period. The City proposes to keep the total accumulation at \$800 as it is in the expired agreement. The Association proposes to increase it to \$850 in 1996 and \$900 in 1997.

The Arbitrator discerns a pattern between the level of the annual uniform allowance and the size of the uniform allowance bank for patrol officers. The amount of the bank accumulation was double the amount of the annual uniform allowance. In 1994, when the allowance was \$375, the bank could accumulate to \$750. In 1995 when the allowance increased to \$400, the allowance bank increased to \$800. The Association offer continues this relationship of annual allowance to maximum accumulation. The Arbitrator agrees with the Association argument that if there is justification for increasing the allowance, it follows that an increase in the amount that may accumulate is appropriate in light of the increasing expense of uniforms. The Arbitrator finds that the continuation of the pattern of increase is justified by the agreement of the parties to increase the amount of the

annual allowance. The such other factor criterion, the internal logic of the proposal, supports the adoption of this portion of the Association final offer.

The comparability criterion provides some support to the City's position. The annual allowance among the comparables is less than that afforded in Madison.

The Association proposes to increase the monthly stipend from \$45 to \$50 effective January 1, 1997 for those officers who are not required to maintain a uniform. Under the expired agreement, the monthly stipend was raised from \$40 to \$45 effective January 1, 1995.

The City proposes to retain the monthly stipend at \$45 per month.

The City argues that the Association did not provide any justification for this change. The Association responds in its reply brief that detectives who receive this monthly stipend have experienced increased costs. There is no evidence in this record to substantiate that claim. There is no evidence that the \$45 stipend does not adequately compensate those members who are not required to maintain a uniform for their expenses. The Arbitrator concludes that the record evidence does not support this Association demand.

Summary

The statutory criteria and evidence supports the Association proposal to increase the uniform allowance bank to double the amount of the annual uniform allowance; in this case from \$800 to \$850 in 1996 and \$900 in 1997. The Association did not substantiate its demand for an increase of \$5 in the clothing allowance in the second year of the Agreement for those officers not required to maintain a uniform. This is not a critical issue in this case. The parties' proposals on the uniform allowance issue offset one another. The determination of the uniform allowance proposals will be based on the outcome of the determination of the other matters in dispute.

EDUCATIONAL RESOURCE OFFICER

The Association proposes the creation of a committee to identify selection criteria. The committee shall serve in an advisory capacity to the Chief of Police should the City create the Educational Resource position. There is no evidence in this record to support the establishment of the committee.

The expired agreement contains an extensive promotional procedure. Neither the record nor the parties' arguments provide any insight as to the need for the committee. The City argues that the adoption of this demand will impinge on its management prerogative. The Association argues that it only seeks appropriate input into the establishment of the criteria for selection in the event the City creates this new position.

The Association provided insufficient evidence to establish the basis for granting this demand. As in the case of the increase in the monthly stipend for detectives, such other factors criterion requires that the party that proposes a change to an existing benefit or the inclusion of new language into the agreement provide some justification for its demand.⁵ The City attempts to elevate the importance of this issue.

The demand is not supported by the evidence. The presence of this demand acts as a negative force in the determination of the preferred final offer for inclusion in the successor Agreement.

ASSOCIATION LEAVE

The Association proposes that the City provide each member of the MPPOA Board of Directors up to five days' leave without pay to attend "meetings and conferences related to their duties as Board members." The City emphasizes that the Association does not specify the number of Board members who would be entitled to the leave. The City notes that at present there are ten Board members. Association President Durkin testified that the intent of the proposal is to insure that all Board members are able to

⁵This line of analysis is fully developed in the discussion of the Association proposal on Association leave, infra.

attend local, and quarterly meetings which may run for 1 to 2 days and/or the 3-day annual State convention.

Association President Durkin testified at the hearing that most members of the Board are in patrol. Patrol officers cannot use comp time more than 30 days in advance. He did not represent that Board members were unable to use some form of leave to attend State Association meetings and conventions.

The City makes no proposal on this subject. It argues that the Association failed to demonstrate a need for the proposal. The Association offers nothing in exchange to obtain this proposal. The proposal itself, the City argues, is flawed. There is no cap on the number of officers who may take the leave. The City acknowledges that the majority of the comparables do provide Board members with the opportunity to attend conventions and conferences. However, the language adopted by comparable employers limits the number of officers who may attend such meetings and conventions. The City's witness Captain Masterson testified that the leave proposal would create scheduling problems for the City. However, the City failed to establish through hard evidence the impact that this proposal would have on scheduling.

The Association emphasizes that unlike the benefit that is found in the agreements of most of the comparables, the Association, here, proposes that the leave is **without pay**.

The Arbitrator finds that the Association proposal is seriously flawed. The proposal itself contains no limitation on the number of Board members who may attend conventions. If the intent of the proposal is to conform to the number of Board members established by the MPPOA by-laws, then the record does not suggest why the Association did not simply specify that the ten Board members should be permitted leave without pay to attend the conventions and quarterly meetings. The Association, in its Reply Brief, argues that if the City wanted such a limitation, it should have proposed one.

Without limiting the number of Board members who may benefit from the proposal, in a sense, the Association does not limit the total number of leave days that may be taken under this proposal. The provisions extant in

the agreements of comparable departments do set a limit on the number of officers who may take advantage of the leave proposal and/or place a limit on the total amount of leave time that may be taken to attend conventions and regional meetings.

The parties provide such limitations in the very section of the expired Agreement that the Association proposes to add this language. Article IV, Section A of the expired Agreement specifies the number of Association representatives who may attend negotiations in pay status. It limits the number of Association representatives who may attend City meetings that pertain to the welfare of members of the Association. The parties have negotiated Association leave provisions that specify the number of Association representatives who may take a particular form of leave.

The City strenuously argues that the Association attempts to get something for nothing. Consequently, this proposal, as well as, its proposal for an Educational Resource Officer selection criteria committee and improvements in uniform allowance⁶ violate the status quo/quid pro quo analytical framework frequently articulated by this Arbitrator.

Under the status quo analysis, the proponent of change must demonstrate a need for the change. It must offer a quid pro quo for the change. Here, the Association proposes to fix "what ain't broke." There is no evidence that any Board member was unable to attend the convention or quarterly meeting. The status quo/quid pro quo analytical framework that this Arbitrator applies under the such other factors statutory criterion should dissuade parties from proceeding to arbitration without culling from their offers those proposals that are flawed, not fully developed or for which there is no demonstrable need. Furthermore, in this case in which the cost of the Association proposal on wages only in 1996 exceeds that of any other unit by half a percent does not contain any quid pro quo for the leave proposal it makes here.

⁶The Arbitrator questions, without deciding, whether the uniform allowance issue should be subject to the status quo/quid pro quo analytical framework. The Association proposals on uniform allowance simply attempt to maintain the level of benefit in the face of rising costs. The Association attempts to include a new benefit in its proposal on Association leave.

Summary

The Association presents a flawed proposal. It failed to demonstrate any need for the proposal. This proposal has a substantial negative impact on the Association's final offer.

SELECTION OF THE FINAL OFFER

The Association proposal on the wage and handgun reimbursement issue is slightly preferred. The proposal of the parties on the uniform allowance issue offset one another. The Association proposal on the increase in the accumulation bank is preferred. However, the Association presented no evidence to substantiate its demand for an increase in the second year of the agreement in the allowance for those members who are not required to maintain a uniform.

The Association proposal to establish an advisory committee should the City create an Educational Resource Officer is an issue that may be significant. However, neither party presented evidence on this subject. The Association failed to establish why the adoption of this proposal was necessary. There is no evidence in the record to suggest that present procedures would prevent the Association from presenting its input concerning the selection criteria should the City create the new position. As a result, the Arbitrator concludes that this proposal has a negative impact on the Association's final offer.

It is the Association leave proposal that has the greatest negative impact on the Association's final offer. The proposal is flawed. The Association has failed to establish the need for this additional leave for all its Board members.

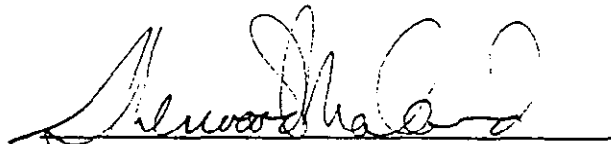
In the final analysis, the margin by which the Association prevailed on wages is sufficiently narrow so that the negative impact of its proposal on Association leave and to a far lesser extent on the Educational Resource selection criteria committee results in the Arbitrator's conclusion that the City's total package final offer is preferred and should be included in the successor agreement for calendar years 1996 and 1997.

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

AWARD

Under the statutory criteria at Sec. 111.77(6), Wis. Stats., and for the reasons discussed above, the Arbitrator selects the final offer of the City of Madison, which together with the stipulations of the parties are to be included in the Collective Bargaining Agreement between the City of Madison and the Madison Professional Police Officers Association for calendar years 1996 and 1997.

Dated at Madison, Wisconsin, this 30th day of May, 1997.

A handwritten signature in cursive script, appearing to read "Sherwood Malamud", written over a horizontal line.

Sherwood Malamud
Arbitrator