

STATE OF WISCONSIN  
Before the Interest Arbitrator

In the Matter of the Petition	)	
	)	
of	)	Case 100
	)	
Stevens Point Professional	)	No. 54623 MIA-2091
Police Association,	)	Decision No. 29068-A
WPPA/LEER	)	
	)	
For Final and Binding	)	
Arbitration Involving Law	)	
Enforcement Personnel in the	)	
Employ of	)	
	)	
City of Stevens Point	)	

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APPEARANCES

For the Union:

Richard Little, Bargaining Consultant  
Gary Wisbrocker, WPPA Business Agent

For the City:

Gerald Lang, City Negotiator  
Marge Malski, City Personnel Manager

PROCEEDINGS

On April 14, 1997 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 (3) of the Municipal Employment Relations Act, to

resolve an impasse existing between Stevens Point Professional Police Association, hereinafter referred to as the Union, and the City of Stevens Point, hereinafter referred to as the Employer.

The hearing was held on July 8, 1997 in Stevens Point, Wisconsin. The Parties did not request mediation services and the hearing proceeded. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on August 19, 1997 subsequent to receiving the final briefs.

#### ISSUES

The following are the issues still in dispute between the Union and the City:

<u>UNION</u>	<u>CITY</u>
<u>WAGES</u>	
January 1, 1997 - 3.5%	3%
January 1, 1998 - 3.5%	3%
Status quo	Article X, Sec. I Light duty; change 6 mos. to 3 mos.
Status quo	Add flexible medical spending account.

NOTE: While included in their final offers, the Parties reached agreement on Article X, Sick Leave, Section G and Article XIV, Health Insurance. The Parties also have agreed on the term of the agreement which is January 1, 1997 through December 31, 1998.

### ASSOCIATION POSITION

The following represents the arguments and contentions made on behalf of the Association:

The statute sets forth the criteria that the Arbitrator should consider in determining which offer is more reasonable. There was no argument raised by either Party that the Employer does not have the lawful authority to meet the Association's final offer. Neither the Employer's exhibits or testimony provided any indication that legal deficiencies exist.

The Parties have stipulated that agreement has been reached on all issues in dispute to the successor agreement except for those issues contained within the final offers (and noted above). It is the Union's position that these agreements are mostly in the nature of housekeeping and should have little or no effect on the Arbitrator's decision. Neither Party attached a specific cost or savings to individual issues that had been agreed upon during the course of negotiations. The Association noted that the Parties had submitted identical final offers with respect to health insurance. The net effect is an increase of the out-of-pocket expenses for health care for employees in the bargaining unit. This will affect each employee differently. The Parties,

therefore, did not attempt to cost this proposal, however, they should be considered by the Arbitrator.

Interest and Welfare of the Public - The Association asserts that its final offer best serves the citizens of Stevens Point by recognizing the needs to maintain the morale and health of its police officers and thereby retaining the best and most qualified officers. Working conditions must be desirable and reasonable. The most important element of maintaining desirable working conditions for the police is the comparison of wages and benefits paid to similar departments. The Police and Sheriff's Departments must provide law enforcement 24 hours a day, 365 days a year. This factor alone provides a clear distinction between law enforcement employees and other municipal employees. Prime levels have increased in the City of Stevens Point between 1990 and 1996. Only Wausau reports a higher level of violence and property crime offenses. Therefore, the maintenance of a high level of morale is imperative to the citizens of Stevens Point. The Employer offer will result in a slippage of this department in comparison to other departments in the area. Clearly, the morale of the unit will not be affected in a positive manner by the wage proposal of the Employer. Reason dictates that, therefore, the interest and welfare of the public will be similarly affected.

The Employer has the financial ability to meet the costs of the Association's final offer. This criterion has not been brought by the Parties as an issue. At no time did the Employer allege that it does not have the economic resources to fund either of the final offers. The Association, therefore, suggests that it is unwillingness rather than inability to provide a fair wage increase for law enforcement services.

Comparison of wage and hours and conditions of employees represented by the Association with the wages, hours and conditions of employment of other employees performing similar services in comparable communities - This criterion strongly favors the Association's position. The Parties have agreed as to which comparables should be used when the Arbitrator considers this criterion. The Association proposes a total of 7% increase over the term of the contract while the Employer proposes increases of 6%. The Association notes that even the Association's offer would maintain the Stevens Point 5th place placement with respect to comparable police departments. This is down from 3rd place in 1990. The wages in Stevens Point have steadily declined in the past 5 years. The Association offer does not attempt to obtain top pay, only prevent backward movement which will be the result under the Employer offer. The Association offer only serves to slow the fall of base wages when compared to the average of comparables. The Association notes that wage comparisons for 1998 are more difficult to analyze as

only two of the comparable departments are settled. However, even if the application of a 3% increase is utilized, the Association offer only serves to stabilize wage levels while the Employer's offer will cause further slippage.

In addition to the wage dispute, the Employer has proposed a change in the light duty provision of the Collective Bargaining Agreement. It is recognized by interest arbitrators in Wisconsin and indeed other states that the side which proposes a change has the burden of demonstrating that a legitimate problem exists and that the proposal would be reasonably designed to effectively address the problem. The Association contends the Employer failed to establish either. The Employer attempted to support its position through its Exhibit 15. The Employer states that light duty tends to create manpower and staffing problems. However, the Association would note that individuals assigned to light duty perform tasks as assigned by management, therefore, it would allow the use of officers for other functions which would aid rather than hinder the department's scheduling needs. The Union would state that the Employer has not proven a legitimate problem and even if so, has failed to show that its provision would address that problem and that any harm has come to the Employer.

The Employer has provided a number of internal comparables, and it is the Association's position that these should not be

considered primary comparables in these proceedings. Recent arbitral opinion has shown that internal comparables should be given limited weight and in fact uniform bargaining may not prove to be in the best interest of the Parties and the public. The Association would also note that the Employer provides no data on wage rates for the internal comparison. Also, the dispatch classification received a 20 cent per hour additional wage adjustment. There was no showing as to how those groups compared to external comparables. The record fails to establish that internal comparisons have served as the controlling consideration in establishing settlements with this bargaining unit. The Association would also note that the cost of the retirement program has been reduced by 2% over 2 years since 1966. While the Employer may have had to cover increased costs for other employees, this bargaining unit should not be made to bear this burden. The City seems to rely solely on internal settlements, therefore, negating the other criteria within the statutes. This is an inappropriate reading of the intent of this statute.

With respect to cost of living data, it is the Association's position that it is settlements within the comparable area that demonstrate the cost of living, not necessarily the consumer price index. Having said that, it is the Association's offer that most closely conforms with the cost



of living index when roll-ups are included. This is particularly true in light of the strong need for catchup.

Overall compensation presently received by the employees- the benefit levels of the patrol officer in Stevens Point is comparable to their counterparts in other locales. The Association would note that the City of Stevens Point is the only police department that does not provide a shift differential for undesirable hours.

Finally, there are no changes in the foregoing applicable to the facts of this case, therefore, this criterion should not be considered by Arbitrator.

The Association asked that, when applying the specified statutory criteria, the Association's offer must be considered more reasonable than the proposed offer of the Employer and, therefore, should be adopted by the Arbitrator.

#### CITY POSITION

The following represents the arguments and contentions made on behalf of the City:

The lawful authority of the Employer is not at issue in this case, and the Parties have agreed to the stipulations put forth in City Exhibit 4 and Organization Exhibit 5 including three areas that the Parties are in agreement although they remain in the final offers.

With respect to the interest and welfare of the public and the financial ability of the City to meet the cost of the settlement, it is the City's offer that best serves these criteria in that this offer will provide essential services at a reasonable and fair cost. The City has established and maintained a competent work force, but it must also maintain cost controls that provide compensation in a manner that does not needlessly raise taxes or escalate the wages of one bargaining group above workers in other bargaining groups. When workers are able to obtain through the arbitration process wage increases that are distinctly more than other workers, it sends a message to those other workers that they, too, should go to arbitration. The City does admit, however, that it does have the financial ability to meet the cost of either proposal through increased taxes.

With respect to the comparables, the Parties have agreed on a list of comparables for this case. The primary issue is the wages for police officer. In 1997 the City's final offer places police officers at \$17.08 while the Organization's final offer

places them at \$17.60. The rates reached after one year of employment are significantly higher than other comparables at one year of employment. The City of Wausau does not exceed Stevens Point until the 10th year of employment, Wisconsin Rapids in the 3rd year, Marathon County in the 12th year, and Wood County at 2 1/2 years. The City of Marshfield and Portage County never attained the rate of \$17.08. While the City of Stevens Point and Portage County have a one year wage schedule, it is important to note that the Organization did not request a wage schedule more than one year. In 1997 all of the comparables have voluntarily agreed to a 3% wage increase except the City of Marshfield which went to arbitration and was awarded a split 2/2, which will impact future years at 4%. The Organization's own exhibits reflect that the City's offer does not change the ranking of the hourly base of comparables. The 1997 offer much more closely mirrors the average increase of the comparables than does the Organization's offer. There is not enough 1998 settlement data to provide a meaningful comparison. The Organization Exhibit 36 shows that the City of Stevens Point and Portage County have given nearly identical percentage increases over the 7-year period between 1990 and 1997.

Organization Exhibit 37 and City Exhibit 14 reflect that the City's final offer of 3% is identical to all comparable settlements except the City of Marshfield. Organization Exhibit 39 identifies 57 law enforcement wage settlements with an average

lift of 3.53%, however, 27 of the settlements were 3% or less, and the more similar cities had settlements of 3% or 3 1/4%. The balance are settlements for cities, villages, towns and counties who are arguably no comparable to the City of Stevens Point. Organization Exhibit 44 reflects health insurance premium comparisons with the City of Stevens Point's plan costing nearly \$100 per month more than the comparable average, thus, the justification to incorporate a modest co-pay and to encourage the use of generic drugs is very clear. The City did offer a quid pro quo which is a flexible medical spending account which allows the employees to pay medical expenses with tax free dollars.

Regarding the internal comparables, the City has six bargaining units. Four of the bargaining units have reached voluntary settlements of 3% for 1997 and 1998 including the International Association of Firefighters. This is an internal comparison that arbitrators have found especially relevant. Both units are involved with public safety and can face significant risks. If the Organization's offer was selected, the clear message would be sent to City employees that it may not be in their interest to negotiate with the City in a far and expeditious manner and reach a voluntary settlement. With only two external comparables settled for 1998, the internal settlements by the City and its other bargaining units should be a very significant factor. Those external comparables which settled on a higher percentage basis are still favorably compared to the City of Stevens Point. Also note that in a case of Wood

County, their rate was much lower than their primary comparable, and that is the Wisconsin Rapids Police Department.

Regarding the average consumer price of goods and services known as cost of living, the annual increase is well below the City's offer of 3% and does not support the Organization's final wage offer.

With respect to overall compensation, the overall compensation for police officers in this unit finds two members with wages and benefits totaling over \$59,000 and several in the mid to high \$40,000 range. It is obvious that Organization members enjoy a large compensation package and this does not support the Organization's final offer.

There are no changes in the foregoing circumstances, therefore, this factor is not at issue in this case.

Such factor as not confined to the foregoing - The City's final offer reduces the period of time from six to three months. The City may consent to assign light duty to an employee who because of injury is temporarily incapable of performing his/her assigned capacity. It is the City's position that both sides would agree that employees should not be placed in a position that would subject them to undue risk. The management of the police department cannot totally protect the environment in which

its employees work to the extent that an officer on light duty would not be at risk. In the recent past, ill or injured police officers were assigned light duty in the dispatch center. However in 1997, the City authorized full staffing of the dispatch center, and these positions are no longer an option. The City would note that there are FMLA considerations in this particular area and three months coincides with the FMLA requirement.

Finally, the City applied all of the statutory criteria, and it believes that it has presented an analysis which shows that the City's final offer is more reasonable than the Organization's offer and requests that the Arbitrator find in favor of the City. The City's offer is fair, consistent with or exceeds comparable data and is in the best interest of the citizen's of Stevens Point. The Organization's offer is excessive by any standard.

#### DISCUSSION AND OPINION

Lawful authority is not at issue in this case, and the Parties have agreed to the stipulations that serve as a basis for this interest arbitration. The Arbitrator notes that the final offers contain three areas that the parties have agreed to, however remain in the final offers.

Regarding the interest and welfare of the public, it is obvious that under most circumstances the public's interest would be served by an economic cost of government. However, in this case the Parties' economic offers are relatively close and the Association has brought forth an argument with respect to morale which, the Arbitrator finds, has some merit. Because of the foregoing, the Arbitrator has determined that the interest and welfare of the public is not a determinative criterion in this matter.

With respect to the comparables, the City has brought forward a number of internal comparables which demonstrate consistency of bargaining in terms of percentage increases. The City has argued that to disturb this "pattern" would chill the negotiation process. If the Arbitrator finds a catch up situation this should not affect other bargaining units. However, the City has not provided any information as to the relative rankings of these internal bargaining units. In addition, this Arbitrator has found in numerous interest arbitrations involving police and firefighters that these are unique bargaining units, both in terms of working conditions and personal risk. The City has noted that its firefighter unit did settle for the 3%/3% wage settlement for a two-year contract. Again, however, there was no showing as to the relative rank of the firefighters as compared to other firefighters in comparable

communities. Therefore, the Arbitrator has no basis to determine whether or not the firefighter unit is truly comparable to the police unit. Given the above, the Arbitrator finds that the internal comparables somewhat favor the City's position.

The identity of the external comparables has been agreed upon by the Parties and are contained in the record. The Association argued that when comparing top rates to top rates, the police officers of the City of Stevens Point have fallen behind in terms of ranking and salary over the past several years. The City countered that the Stevens Point police officers reach the top rate relatively rapidly as compared to other communities. Both of these arguments are true and valid. However, there is no getting away from the fact that the City of Stevens Point police officers have lost ground and will likely continue to lose from the top average of the comparable communities despite the absence of hard 1998 data.

The City countered that it is offering the same percentage increase as these other communities. The nature of percentage increases is that they are dependent on the base rate on which they are calculated, and if a group of employees starts out behind, they will continue to fall further behind if they continue to utilize the same percentage increase. After a review of all the data presented, the Arbitrator finds that the external comparables favor the Association's position. Having made this



determination, however, the Arbitrator would suggest to the Parties that in future negotiations, they might want to consider negotiating step increases based on service. This is particularly appropriate for police and fire departments due to the training and experience factors which have a significant impact on performance.

The City also included in its final offer a change in the light duty provision of the Collective Bargaining Agreement. As in other decisions, the Party which wishes to deviate from the status quo of the previous Collective Bargaining Agreement must fully justify its position and provide strong reasons and a proven need. In the absence of such showing, the Party desiring the change must show that others have been able to achieve this provision without the proposed quid pro quo or that a quid pro quo was provided. This is a relatively minor provision but, in any event, the City has not met any of the above criteria for change. Therefore, this provision mitigates against the City's final offer.

The City also proposed a flexible medical spending account provision and characterized this as a quid pro quo for the change in insurance co-pays that has been agreed to by the Parties and is contained in each final offer. Unfortunately, there was no agreement on this provision. Flexible medical spending accounts are a wonderful opportunity for employers and represented

employees to engage in win/win bargaining in that this is a minimal cost item and provides the employee with significant tax benefits. Why these two insurance provisions were not tied together baffles this Arbitrator, but in any event were not.

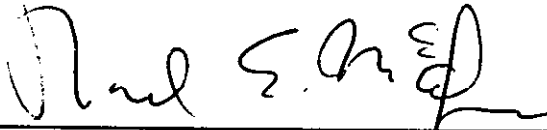
Regarding the consumer price index data, based on raw data the City's offer would be favored. However, this Arbitrator agrees with many other interest arbitrators in Wisconsin that external comparables are the best guide to the cost of living factor. In any event, neither deviates excessively from the cost of living statistics and, therefore, this factor does not significantly favor either Party's proposal. The overall compensation of employees with this bargaining unit compared to overall compensation of employees in comparable bargaining units again does not significantly favor either side's proposal. The Arbitrator has found that with respect to other externally comparable bargaining units, these employees are not poorly paid. What he has found is that this unit is behind other externally comparable bargaining units and will lose ground in 1997 and are likely to lose ground in 1998 if the city's offer is accepted and we have a classic catchup situation.

Given the above and in a very close call, the Arbitrator has determined that it is the Association's final offer that most closely meets the statutory criteria and an appropriate award will then issue.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the Stevens Point Professional Police Association is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the 1997-1998 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 19th day of September, 1997.

  
Raymond E. McAlpin, Arbitrator