

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

EAU CLAIRE COUNTY :

Requesting a Declaratory Ruling :
Pursuant to Section 111.70(4)(b), Wis. :
Stats. Involving a Dispute Between :
Said Petitioner and :

Case LIII
No. 22972 DR(M)-90
Decision No. 16354-A

GENERAL DRIVERS AND HELPERS UNION, :
LOCAL 662, a/w INTERNATIONAL BROTHER- :
HOOD OF TEAMSTERS, CHAUFFEURS, :
WAREHOUSEMEN AND HELPERS OF AMERICA :
- - - - -

FINDINGS OF FACT, CONCLUSION OF LAW
AND DECLARATORY RULING

Eau Claire County (County) having, on April 26, 1978, filed a petition with the Wisconsin Employment Relations Commission for a declaratory ruling pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act, wherein it sought a determination, inter alia, as to the scope of a reopener provision contained in a collective bargaining agreement existing between it and General Drivers and Helpers Union, Local 662, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Union); and that in said petition the County set forth its position with respect to the issue involved, and thereafter, upon request of the Commission, the County having forwarded a copy of the collective bargaining agreement involved; and further thereafter, the Union having filed a statement of its position in the matter; and the parties having agreed to waive hearing in the matter and further having agreed that the Commission should interpret the pertinent provisions of the collective bargaining agreement in reaching its decision; and the Commission having considered the matter and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That the County and Union are parties to a collective bargaining agreement covering wages, hours and working conditions of certain law enforcement personnel in the employ of the County, which agreement, by its terms, is effective from January 1, 1977 through December 31, 1978; that said agreement contains a provisions which provides that "this Agreement may be reopened by either party in writing on or before October 1, 1977 for the purpose of negotiating wages and the employees' share of Wisconsin Retirement to be paid by the Employer" for all employees covered by its terms 1/ and that each party "shall

1/ In an Appendix "B" which is applicable to cooks, matrons, and cook/matrons, the agreement contains a provision that "wages and scheduling" shall be subject to negotiations "in addition to the employees' share of Wisconsin Retirement to be paid by the Employer, as specified in Section 5 of Article XVI."

be permitted all legal or economic recourse to support their request for changes desired, notwithstanding anything to the contrary in this agreement."

2. That the parties entered into negotiations pursuant to said reopener clause, and, on February 28, 1978, the Union filed a petition, requesting final and binding arbitration under Section 111.77, of MERA, wherein it alleged that an impasse exists in said negotiations; 2/ that during the course of said negotiations and the investigation of said petition, a dispute has arisen concerning whether the County has a mandatory duty to bargain over the Union's proposal for longevity pay under the terms of its agreement; that the Union's proposal for longevity pay reads in context as follows:

"WAGES

All employees, 7% general increase plus Cooks, Matrons and Matron/Cooks to receive an additional 50¢ per hour for a wage adjustment.

In addition to the above, all employees to receive Longevity Pay based upon their bi-weekly straight time pay at the rate of 3% commencing after their eighth (8th) year of service and to be increased to 6% after their twelfth (12th) years of service."

3. That the County contends that the existing collective bargaining agreement does not currently contain any longevity pay provisions and that the Union's longevity pay proposal is outside the scope of the reopener provision and is therefore a permissive subject of bargaining at this time; that the Union contends that the current agreement contains a provision for longevity pay, and in any event, longevity pay is "wages" and therefore within the scope of the reopener provision and therefore is a mandatory subject of bargaining at this time.

4. That the agreement does not contain a provision providing for longevity pay and that the reopener provision does not require the County to bargain with respect to the Union's longevity pay proposal.

Based on the above and foregoing Findings of Fact, the Commission makes and enters the following

CONCLUSION OF LAW

That under the terms of its agreement with the Union, the County is not obligated to bargain collectively within the meaning of Section 111.70(3)(a)4 of the Municipal Employment Relations Act, with the Union concerning its longevity pay proposal.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and enters the following

DECLARATORY RULING

That the Union's longevity pay proposal set out in Finding of Fact No. 2, above, is not, at this time, a mandatory subject of bargaining.

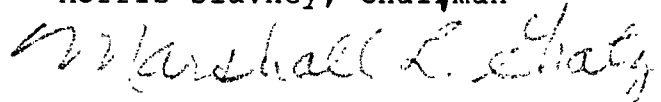
Given under our hands and seal at the
City of Madison, Wisconsin this 24th
day of May, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION
OF LAW AND DECLARATORY RULING

The essential issue in this case is whether the County and Union intended to agree to negotiate concerning the Union's longevity pay proposal when they agreed to reopen the agreement on matters referred to in the reopener provisions of their collective bargaining agreement. The determination of the parties' intent must be gleaned from the terms of the agreement. The following provisions of the agreement bear on this determination:

"ARTICLE 12

WAGES

Section 1. A wage rate schedule based on classification of work is attached covering the calendar year 1977 entitled 'Exhibit A'. Present positions held by present employees in the Investigation Department shall remain unchanged, however, when present personnel changes occur, the new bidding shall provide for positions of Lieutenant (Supervisory), Sergeant (Supervisory) and Detective. (Emphasis added.)

Section 2. All employees shall be entitled to a fifteen (15) minute coffee break in the forenoon and afternoon together with a thirty (30) minute lunch break.

Section 3. The Employer shall pay six (6%) percent of the employee's earnings into the Wisconsin Retirement Fund as the employee's share of contribution. Eau Claire County agrees that employees may continue employment under this Agreement until the end of the calendar year in which they reach age sixty (60). Present cooks and matrons shall not be required to retire prior to their 65th birthday, unless they are considered protective service employees, in which case they shall retire at the end of the calendar year in which they reach age sixty (60).

Section 4. The Employer agrees to pay to all employee [sic] except cooks, matrons and cook/matrons the following additional compensation:

A. Clothing Allowance:

Jail Personnel - \$12.50 per month for 1977 and
\$15.00/Mo. for 1978.

All Other Personnel - \$17.50 per month for 1977 and
\$20.00/Mo. for 1978.

B. All new jail personnel shall receive an advance sum of \$140 toward purchase of uniforms when employed. All other personnel to receive \$240 toward the purchase of wearing apparel when employed. This sum to be paid in lieu of Clothing Allowance for the first twelve (12) months of employment.

Any employee who has his uniform torn, damaged or ruined in the line of duty, shall upon approval of the Sheriff that same occurred in the line of duty, receive replacement cost of such damaged or torn uniform or any part of any uniform in addition to the above.

Range and school training shall not exceed sixteen (16) annual sessions and may be less as determined by the Law Enforcement Committee.

ARTICLE 16

DURATION AND EFFECT

Section 5. This Agreement may be reopened by either party in writing on or before October 1, 1977, for the purpose of negotiating wages and employee's share of Wisconsin Retirement to be paid by the Employer. Agreed changes shall become effective January 1, 1978. Either party shall be permitted all legal or economic recourse to support their request for changes desired notwithstanding anything to the contrary in this Agreement. (Emphasis added.)

APPENDIX 'A'

Section 1. The following salary schedule shall be in effect from January 1, 1977, through December 31, 1977.

Hourly rates are to be used only for payment of extra time and overtime.

<u>POSITION</u>	<u>STEP A</u> <u>-Start</u>	<u>STEP B</u> <u>Beginning</u> <u>6 Mos. Service</u>	<u>STEP C</u> <u>after completion of:</u> <u>2 Yrs. Service</u>	<u>STEP D</u> <u>4 Yrs. Service</u>
Sergeant				
Huber Officer				
Juvenile Officer				
Monthly	\$ 879.50	\$ 923.10	\$ 1015.33	\$ 1108.13
Bi-weekly	405.95	426.08	468.65	511.48
Hourly	5.0744	5.3260	5.8581	6.3935
Detective				
Monthly	843.71	883.00	969.21	1061.74
Bi-weekly	389.43	407.57	447.36	490.07
Hourly	4.8679	5.0946	5.5920	6.1259
Patrolman				
Jailer				
Monthly	807.93	842.90	923.10	1015.33
Bi-weekly	372.92	389.06	426.08	468.65
Hourly	4.6615	4.8633	5.3260	5.8581
Process Server-				
Bailiff				
Monthly	\$ 790.60	\$ 825.57	\$ 897.10	\$ 989.33
Bi-weekly	364.92	381.06	414.08	456.65
Hourly	4.5615	4.7633	5.1760	5.7081

SUPERVISORY UNIT

<u>POSITION</u>	STEP A -Start-	STEP B Beginning <u>6 Mos. Service</u>	STEP C after completion of: <u>2 Yrs. Service</u>	STEP D of: <u>4 Yrs. Service</u>	+STEP
<u>CAPTAIN</u>					
Monthly	\$1060.35	\$1100.86	\$ 1186.38	\$1279.36	\$1328.85
Bi-weekly	491.74	508.13	547.60	590.52	613.3
Hourly	6.1467	6.3516	6.8450	7.3815	7.667
<u>SR. LIEUTENANT</u>					
Monthly	\$ 983.84	\$1021.35	\$ 1100.86	\$1186.38	\$1231.36
Bi-weekly	454.11	471.43	508.13	547.60	568.3
Hourly	5.6764	5.8929	6.3516	6.8450	7.1045
<u>LIEUTENANT</u>					
Monthly	\$ 930.16	\$ 970.77	\$ 1056.85	\$1146.12	
Bi-weekly	429.34	448.08	487.81	529.02	
Hourly	5.3667	5.6010	6.0977	6.6127	
<u>SERGEANT</u>					
Monthly	\$ 879.50	\$ 923.10	\$ 1015.33	\$1108.13	
Bi-weekly	405.95	426.08	468.65	511.48	
Hourly	5.0744	5.3260	5.8581	6.3935	

APPENDIX B

. . .

7. WAGES. Effective January 1, 1977, the following shall constitute the classifications and pay grades for employees covered by this Appendix:

<u>Pay Grade</u>	<u>Classification</u>	<u>Rate (Per Hour)</u>
1.	Matron	\$3.05
2.	Cook's Helper	\$3.05
3.	Cook	\$3.15
4.	Head Cook	\$3.25

8. REOPENER. For the year 1978, wages and scheduling shall be subject to negotiations, in addition to the employees share of Wisconsin Retirement to be paid by the Employer, as specified in Section 5, Article 16." (Emphasis added.)

COUNTY'S POSITION:

The County's position is set out in its petition and reads in relevant part as follows:

"Section 5 of Article 16 (copy enclosed) of the current labor agreement clearly states that the agreement may be reopened for the purpose of negotiating wages and the employees share of Wisconsin Retirement. The current agreement contains no provisions for longevity of any kind. Neither does it define 'wages'.

. . .

Eau Claire County's position on longevity is supported by the contract language of Article 16, Section 5, which provides for a wage reopener only. Lacking any reference to, or provision for, longevity in the current contract, this appears to us as a permissive subject for arbitration and outside the definition of wages."

UNION'S POSITION:

The Union contends that the provisions of Appendix "A" demonstrate that the parties' current agreement already encompasses longevity pay in its wage rates. Furthermore, the Union points out that Roberts Dictionary of Industrial Relations (BNA 1971) defines "longevity pay" as "wage adjustments based on the length of service or seniority" and argues that since such payments are reflected in an employee's paycheck it is appropriate to deem them to be "wages" within the meaning of the agreement. Finally, the Union argues that longevity pay is a common practice; states that there is a logical basis for granting employees longevity pay (i.e., as a reward for long service and an inducement to continue employment); and notes that the merits of the proposal are not here in issue.

DISCUSSION:

Contrary to the Union's contention, we do not believe that the parties' current agreement provides for longevity pay. While the "wage rate schedule" referred to in Section 1 of Article 12 and set out in Exhibit "A" does provide for progressive step increases after hire at a particular rank or promotion to a particular rank, such progression steps, which are common in collective bargaining agreements, are distinguishable from longevity

pay. Progression steps, such as those contained in the instant agreement, do not necessarily reflect an intent to reward long service or induce continued employment but, rather, are designed to reflect the agreed-to period of time which it takes an employee to function at the objective level. For this reason, we agree with the County that the Union's proposal for longevity pay constitutes the introduction of a new concept into the collective bargaining agreement.

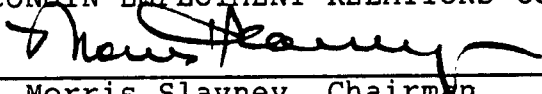
Turning to the Union's claim that longevity pay is generally included within the term "wages", we are of the opinion that the parties' intent in using the term "wages" in their agreement turns not so much on what that term may mean in general industrial usage as it does on the use of that term in their agreement. ^{3/} Of particular significance in this regard is the fact that the parties expressly agreed in Section 1 of Article 12 that the "wage rate schedule" contained in Appendix "A" was for "calendar year 1977." This statement, combined with the fact that retirement contributions are treated in a separate section of Article 12, convinces us that the parties meant the "wage rate schedule" contained in Appendix "A" (and in Section 6 of Appendix "B" in the case of cooks, matrons, and cook/matrons) when they agreed to reopen and negotiate on "wages".


Since the Union's longevity pay proposal set out in Finding of Fact No. 2 constitutes a proposal for a new concept not previously contained within the agreement and not within the intended meaning of the term "wages" in Section 5 of Article 16, we conclude that the County is not under a present obligation to bargain with the Union concerning said proposal, and therefore we have ruled that said proposal is not, at this time, a mandatory subject of bargaining.

Dated at Madison, Wisconsin this 24th day of May, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Marshall L. Gratz, Commissioner

^{3/} Cambria-Friesland Schools (16336) 4/78.