

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

No. 18995

4. That on November 1, 1979, following a study made by Arthur Young & Company, the County merged the Traffic Department into the Sheriff's Department, resulting in the transfer of law enforcement personnel, among others, formerly employed in the Traffic Department to the newly created Patrol Division of the Sheriff's Department; that following said merger and transfer, Local 986B was chartered by AFSCME, AFL-CIO, for the purpose of representing law enforcement personnel in the employ of the County, which personnel had been previously represented separately by Local 986 and Local 986A; and that thereupon the County granted voluntary recognition to Local 986B as the exclusive collective bargaining representative of all non-supervisory law enforcement personnel employed in its Sheriff's Department.

5. That, during negotiations on the collective bargaining agreement to cover the wages, hours and working conditions of said law enforcement personnel for the year 1980, Local 986B proposed that said agreement include the provision set forth in para. 3, supra, and to be applicable to traffic officers employed in the Traffic Division; that the County, in response to said proposal, contended that it related to a non-mandatory subject of bargaining; that in order to resolve said issue Local 986B and the County entered into a Letter of Understanding providing for an interim agreement pending the issuance of a declaratory ruling by the Wisconsin Employment Relations Commission, to be initiated by the filing of a petition therefore by the County; and that the County thereupon initiated the instant proceeding.

6. That the County employs twenty-two traffic officers, three sergeants and three lieutenants in the Traffic Division, which maintains the following shifts:

4:00 a.m. to Noon
7:00 a.m. to 3:00 p.m.
10:00 a.m. to 7:00 p.m.
Noon to 8:00 p.m.
6:00 p.m. to 2:00 a.m. (Changes to 7:00 p.m. to
3:00 a.m. during Daylight Savings Time)
8:00 p.m. to 4:00 a.m.

7. That the Traffic Division operates two to four beats during any particular shift; that the number of beats depends, in part, on the manpower available; that traffic officers spend approximately 70% of their working time on patrol duty, and in said regard handle traffic enforcement, traffic accident investigations, direct traffic, and respond to calls involving tavern and domestic disturbances, which are often alcohol related; that traffic officers average from five to six calls per shift, two of which may involve a situation where the officer faces a threat of violence; that the number of calls are more numerous during the summer months, while the calls during the winter months are minimal per shift; and that Department procedures require that at least two officers respond to tavern and domestic disturbance calls, by a rendezvous between the officers manning a one-man squad car prior to arriving at the scene of the disturbance.

8. That departmental reports reflecting activities of the patrol officers in the employ of the Sheriff's Department of the County do not establish any significant difference in working conditions with respect to the safety of the patrol officers while performing their duties in two-men or one-man squads in the jurisdiction served by such patrol officers; that the evidence adduced in the instant matter does not establish that the conditions of employment of the County's patrol officers, when performing their duties from 6:00 p.m. or later, and extending throughout the hours of darkness, are any more hazardous than when such duties are performed during the "daylight" hours, nor has said evidence established that the assignment of two of said officers to a single squad car, whether on duty during the "daylight" or during the hours of "darkness", primarily relates to the working conditions of said officers; and that, to the contrary, the determination of the number of officers assigned to traffic patrol squad cars in the County primarily relates to the management of the Sheriff's Department and to the level of services provided by said department within the jurisdiction serviced by it.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

1. That the proposal of Local 986B, AFSCME, AFL-CIO, relating to the manning of squad cars by traffic patrol officers in the employ of the Sheriff's Department of Manitowoc County, by two-man squads during the evening and night hours, from 6:00 p.m. or later and extending at least two (2) hours into darkness, relates to a non-mandatory subject of bargaining within the meaning of Sections 111.70 (1)(d), 111.70(2), or 111.70(3)(a)4 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

DECLARATORY RULING

1. That Manitowoc County is not required to bargain with Local 986B, AFSCME, AFL-CIO with respect to the following provision proposed for inclusion in the 1980 collective bargaining agreement between said parties:

All working shifts starting at 6:00 p.m. or later and extending at least two (2) hours into darkness shall operate as a two (2) man squad.

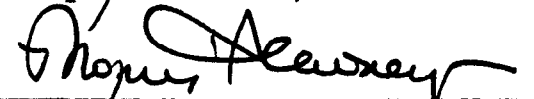
Given under our hands and seal at the City of Madison, Wisconsin this 25th day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

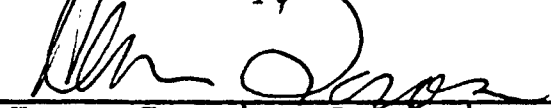
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

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

As indicated in the preface of the Commission's decision, the instant matter was initiated by the filing of a petition by the County seeking a declaratory ruling as to whether the provision proposed by Local 986B to be included in the 1980 collective bargaining agreement between the parties, as set forth in the Findings of Fact, constitutes a mandatory subject of bargaining. Hearing in the matter was conducted on behalf of the Commission by Sherwood Malamud, a member of the Commission's staff. During the hearing said Examiner ruled on various objections and motions. No exceptions have been taken with respect to said rulings, and they are deemed affirmed by the Commission.

The proposal in issue herein, as well as the facts material to the disposition of the ultimate issue to be determined by the Commission, have been previously set forth in the instant decision. The County contends that the proposal relates to a non-mandatory subject of bargaining, while Local 986B, to the contrary, contends that it primarily relates to working conditions, and therefore that the County must collectively bargain with Local 986B with respect to said proposal. Said Local premises its position on the contention that the proposal relates to the safety of the patrol officers while performing their duties during hours of "darkness".

Counsel for the parties filed extensive briefs and reply briefs in support of their respective positions. Both parties acknowledge the "bargainability" test established by our Supreme Court in Beloit Education Association, 1/ Unified School District of Racine County, 2/ and City of Brookfield, 3/ to the effect that proposals which primarily relate to wages, hours and working conditions constitute mandatory subjects of bargaining, while proposals which primarily relate to the exercise of municipal powers are deemed to relate to non-mandatory subjects of bargaining. The County argues that the proposal primarily relates to a manning issue rather than to the safety of the officers working during the shifts covered by the proposal. In addition to cases in other states, the County cites the Commission decision in City of Brookfield, 4/ wherein we determined that a proposal relating to the minimum daily manpower of the fire department related to a non-mandatory subject of bargaining, and not to the safety of the firefighters employed by the City. Further, the County contends that Local 986B's proposal relates to the County's managerial and governmental function in that it relates to the determination of the level of services which the County would provide to those within its jurisdiction. In support thereof it cites the Commission's decision in Blackhawk Vocational, Technical and Adult Education District, 5/ wherein the Commission determined that a proposal submitted by the bargaining representative seeking the right of teachers to remove disruptive students from the classroom went beyond the concern for teacher safety, and dealt with the management of the District.

Local 986B argues that the issue herein closely parallels the issue determined by the Commission in City of Wauwatosa, 6/ wherein the Commission concluded that the City was required to bargain with

1/ 73 Wis. 2nd 43 (1976)

2/ 81 Wis. 2nd 89 (1977)

3/ 87 Wis. 2nd 819 (1979)

4/ Decision No. 11489-B, 11500B, 4/75

5/ Decision No. 16640-A, 9/80; aff'd Rock Co. Cir. Ct. (8/81)

6/ Decision No. 10670-A, 12/71

respect to the size of the work crew assigned to trucks utilized in snow clearing and salting operations on the basis that the proposal regarding said subject related to working conditions. Inasmuch as the instant proposal relating to two-man squads also relates to working conditions, Local 986B asserts that it too is a mandatory subject of bargaining. The Local contends that its proposal relates to the safety of officers working during the night hours and that its proposal can be distinguished from the "manning" proposal involved in Brookfield. It asserts that the second officer in a squad car at such hours provides a measure of safety to both officers in the performance of their duties, including responding to tavern calls and domestic disturbances during night time hours. The Union disputes the testimony of the representative of Arthur Young & Company that when making its recommendation to the County to consolidate the Traffic Department into the Sheriff's Department, it also recommended that the County eliminate the operation of two-man squads during the night time hours, based on a study entitled Patrol Staffing in San Diego. 7/ Further, the Local argues that the County can determine the level of services it desires to provide other than by means of eliminating the two-man squads, e.g. increasing or decreasing the number of beats.

In order to determine that the proposal involved herein relates to a mandatory subject of bargaining, the Commission must be satisfied not only that it involves conditions of employment, but also that it primarily relates thereto, or within the context of the instant dispute, that it relates to a matter involving the safety of the officers performing their duties during the night time shifts. In City of Wauwatosa the Commission made no finding that the issue therein related to a matter of safety, but rather that it related to a condition of employment. That decision, issued in 1971, setting forth the test - "condition of employment" - is no longer the test to be applied in determining "mandatory-non mandatory" subjects of bargaining. For our Supreme Court, in the decisions referred to previously herein, has applied a more restrictive test than "relating to a condition of employment". A proposal now must relate "primarily to a condition of employment". If the record herein establishes that the proposal relates to the safety of the officers working the night shifts, then we shall be satisfied that it primarily relates to a condition of employment, and therefore it would relate to a mandatory subject of bargaining.

The testimony of witnesses, produced by both parties, as to the practice of other jurisdictions with respect to the number of officers in traffic and police squad cars on various shifts is not material to the issue of whether the safety of the officers in the employ of the instant Traffic Division, who work the night shifts, depends on the number of officers assigned to a single squad car. Law enforcement experiences in Manitowoc County are not identical to those experiences in the City of San Diego, the City of Milwaukee, Dane County, Menominee County, the least populated county in the State, or Milwaukee County, the most populated. Thus, it is the evidence regarding local conditions and experience which is determinative. Here, the record contains no evidence, statistical or otherwise, to establish that the duties of County traffic officers are more hazardous during the night than during the day. Furthermore, the record establishes that under departmental procedures, officers, regardless of their shift, are not expected to respond to situations which could endanger their safety, such as tavern or domestic disturbances, unless at least two officers are present. Therefore, even if one were to assume that certain situations to which officers must respond during the night are more dangerous or occur with greater frequency than those encountered during the day, the County's procedures arguably provide the same manpower presence as would exist with two man squads.

7/ Boyston, Sherry and Moetter, Police Foundation, Washington, D.C., 1977.

Thus, based on the record herein, we are not convinced that the instant proposal primarily relates to a condition of employment, but instead primarily relates to the County's right to manage its Traffic Division and determine the quality of service to be provided by the officers employed therein.

Dated at Madison, Wisconsin this 25th day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner