

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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FOREST COUNTY DEPUTY SHERIFF'S	:	
ASSOCIATION	:	
	:	
For Final and Binding Arbitration	:	Case 29
Involving Law Enforcement	:	No. 33742 MIA-914
Personnel in the Employ of	:	Decision No. 22061-A
	:	
FOREST COUNTY (SHERIFF'S	:	
DEPARTMENT)	:	
	:	
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ORDER DENYING MOTION FOR SUBSTITUTION OF ARBITRATOR

On October 30, 1984, the Wisconsin Employment Relations Commission furnished Forest County (Sheriff's Department) and Forest County Deputy Sheriff's Association a panel of arbitrators from which they were to select an arbitrator to issue a final and binding arbitration award pursuant to Section 111.77, Stats., to resolve an impasse arising in collective bargaining between the parties on matters affecting wages, hours and conditions of employment of certain non-supervisory law enforcement personnel in the employ of Forest County (Sheriff's Department); and that prior to the parties' selection of an arbitrator, the County, by letter received on November 5, 1984, requested that a new panel be furnished inasmuch as one of the arbitrators on the panel had acted as an interest arbitrator in the previous year involving the same parties and that his decision and rationale therein prejudices the County's position in the instant case; that the Association responded by letter received on November 6, 1984, opposing the County's request on the basis that said request has no legal basis and that there is no authority for granting same; that on November 7, 1984, Herman Torosian, Chairman of the Wisconsin Employment Relations Commission, denied the County's request on the basis that the County's request did not meet the Commission's requirement that there exists extraordinary circumstances for the substitution of a panel of arbitrators; that on November 13, 1984, the County filed with the Commission a Motion for Substitution of Arbitrator, moving that the Commission enter an order for the substitution of a competent, impartial arbitrator in place of one of the arbitrators on the panel provided to the parties on the basis that said arbitrator arbitrated the parties' prior year's collective bargaining agreement and by his decision and rationale indicated an opinion that would be detrimental to the County's position in the instant case, and further, that his continued inclusion on the panel of arbitrators would provide the Association with an unreasonable advantage in that the Association would know in advance, to a reasonable degree of certainty, that the County would have to exercise one of its two strikes to remove said arbitrator from the panel; that by letter received November 19, 1984, the Association opposed the County's Motion for Substitution of Arbitrator; that pursuant to a schedule established by the Commission, the County filed a brief, postmarked December 7, 1984, in support of its motion, and the Association, by letter received on November 27, 1984, waived its right to make any further

arguments concerning the County's motion; and the Commission having considered the County's Motion for Substitution of Arbitrator and the parties' positions relevant thereto, has concluded that the motion should be denied;

NOW, THEREFORE, it is

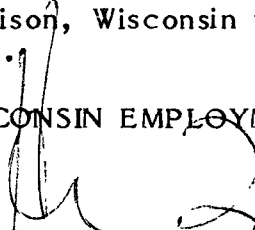
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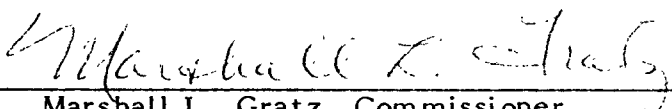
That the Motion for Substitution of Arbitrator is hereby denied.


Given under our hands and seal at the City of
Madison, Wisconsin this 14th day of December,
1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION FOR SUBSTITUTION OF ARBITRATOR

The parties, in receiving arbitration panels from the Commission, are entitled to panels consisting of competent, impartial arbitrators. Once such a panel is provided the Commission will not substitute arbitrators except in extraordinary circumstances.

The County argues that one of the arbitrators on the panel submitted to the parties issued an interest arbitration award in a case involving the same parties less than ten months ago. It is argued that in that decision the arbitrator stated an opinion that applied specifically to the parties and that he specifically rejected a fundamentally valid argument raised by the County on the issue of comparability. The County contends that it fully expects that it will again ask the selected arbitrator to compare the percentage increase of the total wage and fringe benefit package with settlement packages of other law enforcement agencies in public and private sector employers. Given his prior award and rationale therein the County argues that there is a substantial likelihood that the arbitrator in question would again refuse to give consideration to the County's argument. The County argues that the Commission has the statutory authority to rule on the challenge of impartiality and that the Commission should exercise its authority and conclude that said arbitrator is neither impartial nor neutral and therefore is not competent to be included on the panel. Lastly, the County suggests that a policy be established whereby panels would not include the name of any arbitrator who has served as the arbitrator between the same parties within the last five years unless specifically waived by the parties.

The Association's position is that the County has no legal basis for its motion, that there is no authority for granting same, and that the County can alleviate the problem by striking the arbitrator's name in the striking procedure for selecting the arbitrator.

In a prior case, City of Cudahy (Fire Department), 1/ the Commission was faced with a similar situation and refused to exercise its jurisdiction to substitute another arbitrator in that case. In that case the arbitrator had issued an MIA award selecting the final offer of the Union. The City subsequently petitioned the Circuit Court and was successful in vacating the arbitrator's award on the grounds that the arbitrator exceeded his power so that a mutual, final and definite award was not made. The Judge remanded the matter to the arbitrator for re-hearing of the issues involved in the case. The City filed a Motion for Substitution of Arbitrator with the Commission asserting that the arbitrator had demonstrated evident partiality and had exceeded his power so that a mutual, final and definite award had not been made and that the most expedient and proper way to proceed was to substitute said arbitrator with an impartial and disinterested party.

The Commission denied the City's motion stating that while it had the authority to do so, it would not exercise same under the circumstances of the case.

Here, like in Cudahy, the County seeks substitution of arbitrator on the basis of an arbitrator's prior award. In this case an arbitrator appearing on the parties' arbitration panel issued an interest arbitration award for the year 1983 involving the same parties. He stated, inter alia, that he "is of the opinion that the deputies' salaries should not be lower by a greater dollar disparity than exists in 1982, unless extraordinary circumstances can be demonstrated." Apparently, the County in this year's arbitration intends to again argue that in determining comparability it is the total package percentage increase rather than the dollar disparity that should be compared.

1/ Decision No. 19375-B, (WERC 10/83).

Contrary to the County's position the Commission is not persuaded that said arbitrator is now not competent or impartial because of his prior award or that the facts surrounding this case constitute extraordinary circumstances for his substitution. The situation here is really no different than that in many cases where one party, after researching the previous arbitration awards of panel members, discovers that one or more of the arbitrators has previously decided the same or similar issue in dispute to the detriment of its position. Clearly, in such a case the arbitrator would not be substituted on the basis that he/she is not competent or impartial or on the basis that the other party may know that such arbitrator would be stricken by the party affected. Rather, the matter is properly one that should be handled in the striking procedure involved in the selection of an arbitrator. The fact that the arbitrator in question in the instant case issued an interest arbitration award involving the same parties last year makes no difference; the arbitrator has not, by deciding and stating his position on an issue, lost his status as a competent, impartial arbitrator. Further, the facts herein do not constitute extraordinary circumstances entitling the County to a substitution of arbitrator. This is true whether or not the Association may reasonably conclude that the County will strike said arbitrator and the County will only have one "secret" strike. This again is a situation that is not uncommon in arbitration cases where, after a research of prior awards leads a party to reasonably conclude that one or more of the panel arbitrators will be stricken by the other party.

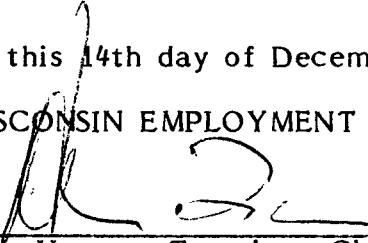
Finally, the Commission's experience in administering the submission of panels and the parties' selection therefrom leads us to conclude that a five year rule as suggested by the County is not warranted.

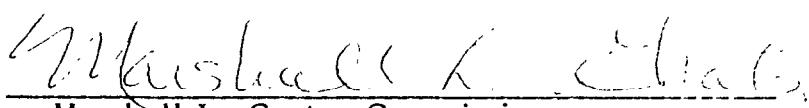
For reasons stated above, we deny the County's Motion for Substitution of Arbitrator.

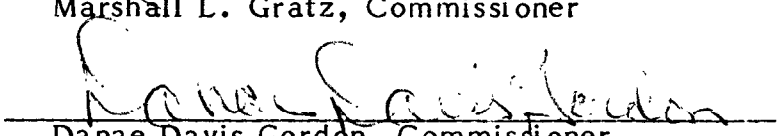
Dated at Madison, Wisconsin this 14th day of December, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner