

February 21, 1991

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Wisconsin Council 40,  
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Re: City of Waupun (Police Department)  
Case 39 No. 44518 MA-6323

Gentlemen:

This letter is written to confirm the "bench" decision rendered by the undersigned in the above-entitled matter on February 7, 1991, in the Waupun City Hall, Waupun, Wisconsin.

Pursuant to a request by Waupun Police Department, Local 1112-A, WCCME, AFSCME, AFL-CIO, herein the Union, and the subsequent concurrence by the City of Waupun, herein the City, the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below.

Hearing was held on February 7, 1991, as noted above. At hearing the parties stipulated that there were no procedural issues and that the instant dispute was before the Arbitrator for a final and binding decision on its merits. The parties also stipulated to, and the undersigned agreed to provide, a "bench" award, which is herein confirmed.

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The parties were unable to stipulate to an issue. The undersigned accepted the City's framing of the issue as follows:

Whether the City of Waupun Common Council violated the tentative agreement reached by the parties as a result of negotiations by refusing to allow the City of Waupun employees to take another vote to determine whether the employees wanted to participate in the income continuation insurance program?

The Union basically argued that the City's delay in coordinating the survey vote within a few weeks after the informational meeting resulted in confusion, misunderstanding, and a subsequent lack of the required sixty-five percent (65%) showing of interest. The Union also argued that its request that the City allow employees another vote on the matter of income continuation insurance was improperly turned down by the Council. The City takes the opposite position.

Based on the entire record and the arguments of the parties, the undersigned issued a "bench" decision and found that the answer to the issue as framed by the Arbitrator was NO, the City of Waupun did not violate the tentative agreement reached by the parties as a result of negotiations by refusing to allow the City of Waupun employees to take another vote to determine whether said employees wanted to participate in the income continuation insurance program. The undersigned therefore denied the grievance and dismissed the matter.

By terms of this letter I am confirming same and closing the file on the above case. As agreed, I am also providing additional written analysis and rationale in support of my "bench" decision as follows:

The aforesaid agreement reached in negotiations provides as follows:

The City of Waupun Negotiating Committee stated, as part of a total settlement, that it would recommend to the full City Council that a survey be conducted among all City of Waupun employees to determine whether the City of Waupun employees would be interested in participating in the State of Wisconsin Income Continuation Insurance Program. If the results of that survey

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demonstrate that at least 65% (as required by the plan) show interest, the City of Waupun would pass the necessary resolution to make the income continuation insurance available to City employees with the understanding that for the plan to be incorporated at least 65% of the City employees would have to participate, and provided that the plan would not commence until on or after January 1, 1990.

Should the City Council not accept the recommendation of the City of Waupun Negotiating Committee, the Union would have the right to request the City to return to the bargaining table for further negotiations.

(emphasis added)

Said agreement, on its face, provides for a single survey (or vote) not two or more as argued by the Union. The Union did not offer any persuasive evidence of bargaining history which would lead to a different result. To the contrary, better evidence of bargaining history exists to support the City's and Arbitrator's interpretation of the disputed language.

In addition to the language of the agreement itself, other evidence in the record supports the Arbitrator's decision. For example, the Arbitrator points out the lack of any persuasive record evidence that the City acted in a bad faith, arbitrary or capricious manner in scheduling the survey vote. To the contrary, the record indicates the Union and the City shared responsibility to coordinate a vote on the income continuation insurance program, and responsibility for the delay in same must be attributed to both.

Furthermore, there is no persuasive evidence in the record that the delay in the vote either helped or hurt the final outcome wherein City employees failed to approve the income continuation insurance program by at least 65 percent as required by the agreement.

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Finally, there is no allegation that the City of Waupun Negotiating Committee failed to recommend that a survey be conducted or that the Common Council did not accept the recommendation of the Negotiating Committee as required by the Agreement.

Based on all of the above, the record as a whole, and the arguments of the parties, the Arbitrator denies the grievance, and the matter is dismissed.

Very truly yours,

Dennis P. McGilligan /s/

Dennis P. McGilligan  
Arbitrator