

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration Between) Case 35
WISCONSIN PROFESSIONAL POLICE ASSOCIATION) No. 55617
LEER DIVISION) MIA-2137
and) OPINION and AWARD
FLORENCE COUNTY (SHERIFF'S DEPARTMENT))
* * * * *

Appearances: For the Association, Richard T. Little, WPPA, LEER
Division, Wauwatosa, WI.
For the County, Attorney Robert W. Burns, Green
Bay, WI.

On September 9, 1997, the Florence County Sheriff's Association (referred to as the Association) filed a petition with the Wisconsin Employment Relations Commission (WERC) pursuant to Section 111.77(3) of Wisconsin's Municipal Employment Relations Act (MERA) to initiate arbitration. The Association and Florence County (referred to as the Employer or County) had begun negotiations for a successor collective bargaining agreement but failed to reach agreement on all issues in dispute. On November 19, 1998, following an investigation by a WERC staff member, the WERC determined that an impasse existed and that arbitration should be initiated. On December 2, 1998, the undersigned, after having been selected by the parties, was appointed by the WERC as arbitrator to resolve the impasse. By agreement, she held an arbitration hearing on March 1, 1999 in Florence, Wisconsin, at which time the parties were provided with a full and fair opportunity to present evidence. Briefs were subsequently exchanged and filed.

ISSUES AT IMPASSE

The parties were unable to resolve the following issues:¹

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- ¹ Both parties' final offers contain the same wage provisions:
Effective 1/1/97, a 3% across-the-board increase.
Effective 1/1/98, a 3% across-the-board increase.
Effective 1/1/99, a 3% across-the-board increase.

The Association's final offer also proposes to amend Article XV (Grievance Procedure) by changing all references to weeks into the corresponding number of days. The Association views its proposal as a housekeeping one only stating that it should have no effect on the arbitrator's decision. Accordingly, the arbitrator has not considered this to be an issue in dispute.

1. Night shift differential;
2. Employer proposal relating to incentive pay for unused sick leave;
3. Union proposal relating to "Kelly Days"² ; and
4. Union proposal relating to compensatory time-off for overtime.

A copy of the County's final offer is annexed as Annex A and a copy of the Association's final offer is annexed as Annex B.

STATUTORY CRITERIA

In reaching a decision, the undersigned is required by Section 111.77(6) of MERA to consider and weigh the evidence and arguments presented by the parties as follows:

- (a) The lawful authority of the municipal employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) Comparisons of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 1. In public employment in comparable communities.
 2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the

² Prior to the parties' initial 1984-85 collective bargaining agreement, members worked a 12 hour shift on a cycle of 5 days on duty and 3 days off duty. This resulted in an annual work year of 2,737.5 hours while their hourly rate was based upon a work year of 2080 hours (40 hours per week times 52 weeks). A Memorandum of Understanding addressed this discrepancy by providing additional pay for the extra hours worked under the 5-3 schedule. Sometime in 1984-85, there was a change of the 12 hour shift to a cycle of 4 days on duty and 4 days off duty. This schedule produces annual working hours totalling 2,184 or 2,190. The Association's final offer specifies the present times of the twelve hour shifts and requires the County to provide each Deputy with either compensatory time-off or the cash equivalent of 110 hours per year as an "offset" for time worked in excess of 2080 hours per year. For reasons unknown, this offset/adjustment is known as "Kelly Days" or "Kelly Hours."

employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service or in private employment.

POSITIONS OF THE PARTIES

The Association

The Association begins by noting that the interests and welfare of the County's public is best served by maintaining its law enforcement officers' good morale by means of overall working conditions which are desirable and reasonable. It emphasizes that law enforcement officers function under unique circumstances such as being required to provide their community with vital and challenging services 24 hours per day, 365 days per year and their work is always subject to intense scrutiny by supervisors and the public. The Association believes that implementation of the Employer's final offer may jeopardize the bargaining unit's morale and thus ultimately adversely effect the interests and welfare of the public.

The Association argues that its final offer relating to each of the four issues in dispute - in contrast to the Employer's final offer - is supported by the external comparables. The Association first considers the County's sick leave incentive proposal to be insignificant because no bargaining unit member will benefit from it until some time after this agreement has expired. In addition, it believes that the Employer's proposal is nothing more than an "obscure and futile" attempt to placate employees for the loss of a benefit.

As for the parties' differences relating to the night shift differential, the Association points out that the Employer's offer not only exceeds the Association's offer but it also exceeds the night differentials in the majority of the comparables. In contrast, the Association believes that the appropriate comparables, particularly Forest County, support its night shift differential proposal.

Turning to its "Kelly Days" proposal, the Association acknowledges that in 1997 Arbitrator Fredric Dichter denied the

Association's grievance claim that the County violated the parties' collective bargaining agreement when the Sheriff directed night shift Deputies to patrol rather than "go-in" (go home for any period prior to their shift's end).³ The Association believes, however, that the comparability factor in Section 111.77(6) authorizes consideration of "Kelly Days" currently enjoyed by Forest County Deputies. The Association notes that its proposal mirrors the language found in Forest County's 1996-97 collective bargaining agreement. It then argues that the burden is on the County to justify the need for its 1997 change in the Deputies' hours of work and to provide an appropriate quid pro quo. The Association does not believe that the Employer's larger night shift differential and sick leave incentive are sufficient to provide fair compensation to employees who continue to be deprived of a valuable benefit by the County's 1997 unilateral change in working conditions.

Finally, the Association advocates for its proposal to "bank" up to 48 hours of accumulated compensatory time because it believes the proposed language merely restates current practice and is supported by the comparables.

Thus, the Association concludes that the statutory factors favor its final offer. This is particularly so because the parties' wage increases are consistently lower than the average of the comparables and there are no unusual compensatory benefits enjoyed by members of this bargaining unit to alleviate its low wage ranking.

The County

The Employer begins its arguments by turning directly to the Association's "Kelly Days" proposal. It contends that it should be rejected because such a fundamental change in work hours should be negotiated by the parties and not imposed by the arbitrator. The County believes that the Association has failed to make a persuasive case or provide a compelling reason for its proposal, particularly in light of the comparability data which, the County contends, do not support the Association's position. It notes that only Forest County Deputies enjoy the benefits of 110 "Kelly Hours" but they have less generous holiday and vacation pay than do Florence County Deputies. Some Langlade County Deputies work 12 hours per day on a 4 day on and 4 day off

³ In the 1997 grievance arbitration proceeding, the Association claimed that the County had breached the parties' collective bargaining agreement by unilaterally abolishing an established practice permitting night shift Deputies to go home at approximately 3 AM, subject to completing ongoing assignments and subject to call during the remainder of the shift.

work schedule but they do not receive any "Kelly Hours." In the remaining comparables, there are no other deputies working 12 hour shifts or 4 days on and 4 days off work schedules. Thus, the Employer believes there is no significant support in the comparables for the Association's proposal on this issue.

In addition, the County points out that the Association's proposed addition to Article XI which defines the hours for Shift "A" and Shift "B" interferes with management's right to direct the work force by setting the starting and ending times for shifts. It further objects to the Association's "Kelly Days" proposal because of its high costs and the scheduling problems which will be generated. It considers that, on this issue, the Association is attempting to obtain what it failed to receive in the prior grievance arbitration proceeding, during prior negotiations, or during the current round of negotiations when the Association agreed to a 3% across-the-board wage increase for each of the three contract years.

Anticipating an Association argument that "Kelly Days" are needed to balance low wages, the Employer acknowledges that wages of Florence County Deputies may be low in comparison to the comparables but it argues that Florence County Deputies deal with less violent crimes and less property offenses than deputies in comparable counties. It further points out that despite existing wage levels there is little personnel turnover in the bargaining unit and many applicants for an advertised opening.

Finally, the County notes that the Association has offered no quid pro quo for its proposals while the County offer includes a generous night shift differential and sick leave incentive pay.

For all these reasons and because its total package is greater than the increases in the cost of living, the County believes that its final offer should be selected over the Association's final offer which will burden County taxpayers and cause the public to suffer due to reduced law enforcement protection resulting from implementation of the Association's final offer.

DISCUSSION

Unlike many interest arbitration disputes, the parties in this proceeding are in agreement about wage increases for the contract period and concur about which are the appropriate comparable counties (Forest, Langlade, Marinette, Oconto, Oneida, and Vilas).

Of the four issues in dispute, two may be easily dealt with - although for different reasons. The Employer's proposal for

sick leave incentive pay is mostly moot because it appears that no bargaining unit member will be eligible ("at the maximum accumulation") to participate during the term of this agreement or for several years thereafter. Thus, the undersigned believes that neither of the parties' final offers on this issue in dispute is preferable. As for the Association's proposal to amend Article XIV relating to Compensatory Time Off/Overtime, it appears to be supported by the comparables, is not a fundamental change in policy, and was not explicitly opposed by the County. Accordingly, if this were the sole issue in dispute, the undersigned concludes that the Association's final offer is more reasonable.

The remaining two issues in dispute, night shift differential and the Association's "Kelly Days" proposal, are intertwined and more critical to resolve. The Association's proposal to amend Article XI by adding an "offset" based on "Kelly Days" (either time-off or cash) has produced the most heated and extensive controversy of this proceeding.

Although not explicitly stated by either party, it appears that the Association has proposed a modest night shift differential rate in light of its "Kelly Days" proposal while the County has proposed more generous night shift differentials because of its adamant opposition to "Kelly Days." Both final offers have some support in the comparables. Thus, the outcome of this proceeding depends upon how the "Kelly Days" issue is resolved.

Each party has argued that its position on this issue maintains the status quo on a critical working condition and that, in an interest arbitration proceeding, the party proposing a fundamental change from the status quo has the burden to demonstrate a compelling need for the change and must offer a sufficient quid pro quo in support of the change.

In the judgement of the undersigned, Arbitrator Dichter's 1997 grievance arbitration award upholding the County's management right to require all night shift Deputies to finish their shift hours patrolling instead of going home, subject to call, has established the existing status quo. Even though the Association obviously disagrees with that award, it cannot be relitigated in this proceeding. Accordingly, if the Association wishes to change the status quo established by Arbitrator Dichter's decision and increase the compensation package for Deputies, the Association must prove the need for such a costly basic change and offer a sufficient quid pro quo. The Association's reliance upon Forest County is insufficient to justify its "Kelly Days" proposal. Forest County's pattern is not found elsewhere among the comparables and the County has pointed out that other economic fringe benefits (sick leave and

vacations) enjoyed by Forest County Deputies are not as generous as those enjoyed by Florence County Deputies. Moreover, the costs of the Association's proposal is significant (both in financial and scheduling terms). The Association's modest night shift differential final offer is not a sufficient quid pro quo to support the changes required by its "Kelly Days" proposal.

The undersigned believes that the statutory factors that must be considered favor the County's position on "Kelly Days." Accordingly, this conclusion on the primary issue in dispute will necessarily determine the outcome of this final offer whole package proceeding. Association concerns about comparative low wage rates for bargaining unit members will be able to be explored thoroughly during negotiations for a success collective bargaining agreement.

AWARD

Based upon the statutory criteria, the evidence and arguments presented by the parties, and the discussion set forth above, the arbitrator selects the final offer of the County and directs that the County's final offer be incorporated into the parties' collective bargaining agreement for the years 1997, 1998, and 1999.

May 22, 1999
Madison, Wisconsin

June Miller Weisberger
Arbitrator