BEFORE THE ARBITRATOR

In the Matter of the Petition of TOWN OF BELOIT (POLICE DEPARTMENT) For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of Town of Beloit and Represented By TEAMSTERS LOCAL UNION NO. 579	Case 40 No. 62268 MIA-2531 Dec. No. 30796-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Ms. Jill M. Hartley, on behalf of the Union.

Lindner & Marsack, S.C., by Mr. Alan M. Levy, on behalf of the Town.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "Town," selected the undersigned to issue a final and binding award pursuant to Section 111.77(3) of the Municipal Employment Relations Act ("MERA"). A hearing was held in the Town of Beloit, Wisconsin, on April 1, 2004. The hearing was not transcribed and the parties filed briefs which were received by April 24, 2004.

Based on the entire record and the arguments of the parties, I issue the following Award.

BACKGROUND

The Union represents for collective bargaining purposes a unit of law enforcement personnel employed by the Town of Beloit.

The parties have had a collective bargaining relationship for at least 20 or so years. Throughout that time, the parties have been signatories to various collective bargaining agreements which contained the identical language contained in Article 13 of the expired contract, entitled "Work Week," and which states:

. . .

> 13.01 The full-time employees standard work schedule shall consist of five (5) days on duty to be followed by two (2) days off, to be followed by five (5) days on duty and thence followed by three (3) days off duty and repeating in that sequence if possible. The duty day shall be eight hours in length with a one-half hour lunch break allowed and a fifteen (15) minute break during the first four hours and a second fifteen (15) minute break during the second four hours of each shift. Employees may exchange shifts by mutual agreement, provided that a properly completed form which shall be provided by the Town has been submitted to the Chief or his designee, 24 hours in advance. The form shall consist of a date for repayment of shift within 60 days and providing it will not involve overtime. (Joint Exhibit 1)

. . .

Officers under this language have been required for a number of years to report to work 30 minutes before their scheduled 7:00 a.m. – 3:00 p.m., 3:00 p.m. – 11:00 p.m., and 11:00 p.m. – 7:00 a.m. shifts, at which time they are briefed and prepared for the day's developments. After the meeting is over, they begin their eight-hour duty shifts.

Officers therefore put in an eight and one-half hour day. They receive a 30-minute lunch break and two 15-minute paid breaks, one in the morning and one in the afternoon. Officers throughout this time have been paid for eight hours work for a standard work day.

The parties engaged in collective bargaining negotiations for a successor contract and they met on January 8, 2003, and January 21, 2003, at which time they exchanged contract proposals. The Town then proposed to modify Section 13.01 of the contract because it was concerned about the Fair Labor Standards Act, ("FLSA"), and the Union made its proposal. In

addition, the Union on February 4, 2003, filed a grievance which claimed that officers should be receiving eight and a half hours pay under the contract, rather than the eight hours pay they have been receiving, (Joint Exhibit 2).

The parties eventually agreed to all other aspects of a successor contract except for this issue, which is the only issue in dispute.

The Town filed the instant interest arbitration petition on April 2, 2003, with the Wisconsin Employment Relations Commission ("WERC"). The WERC appointed Karen J. Mawhinney to serve as an investigator and to conduct an investigation. The investigation was closed on January 29, 2004, and the WERC on February 19, 2004, issued an Order appointing the undersigned to serve as the Arbitrator.

FINAL OFFERS

The Union has proposed the following final offer:

> 13.01 The full-time employee standard work schedule shall consist of five (5) days on duty to be followed by two (2) days off, to be followed by five (5) days on duty and thence followed by three (3) days off duty and repeating in that sequence if possible. The on-duty workday shall be eight and one-half (8 1/2) hours in length. Employees shall be permitted to take a one-half (1/2) hour lunch period in the middle of the eight and one-half (8 1/2) hour shift without loss of pay.

The Town has proposed the following final offer:

> 13.01 The full-time employee standard work schedule shall consist of five (5) days on duty to be followed by two (2) days off, to be followed by five (5) days on duty and thence followed by three (3) days off duty and repeating in that sequence if possible. The duty day shall be eight hours in length with a one-half hour unpaid lunch break allowed and fifteen (15) minute paid break during the first four hours and a second fifteen (15) minute paid break during the second four hours of each shift (a total of eight and one-half (8 1/2) hours).

POSITIONS OF THE PARTIES

The Union asserts that its offer should be selected because the current contract language "provides for a half hour paid lunch break," and because its offer "maintains the current contract language requiring a half hour paid lunch." It also contends that its offer "must be selected as the more reasonable and equitable" because it "does not create additional overtime costs," and because it is supported by external comparables.

The Town, in turn, maintains that its offer should be selected because the contract does not now provide for a paid lunch break; because the Union has not offered a quid pro quo in exchange for its proposal; and because the Union's offer provides about an extra 1% in wage increase to the wage proposal tentatively agreed upon. The Town adds that its language is needed to deal with overtime issues arising under Section 13.04 of the contract and the FLSA and to reconcile "the long standing practice with state and federal law," and that all but one of the Union's comparables involve "very specific language which has never been in the parties' labor contracts" and that such comparable language is therefore "minimized."

STATUTORY CRITERIA

The resolution of this matter turns on the application of Section 111.77(6), Wis. Stats., which states:

> (6) In reaching a decision, the arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the 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. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding 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 price for goods and services, commonly known as the cost of living.
>
> f. The overall compensation presently received by the 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.

DISCUSSION

Before addressing the issue in dispute, it is first necessary to point out what is not before me.

As related above, the Union on February 4, 2003, filed a grievance claiming that the Town has been violating the current contract language in Section 13.01 by not paying officers eight and a half hours pay, (Joint Exhibit 2). The parties have agreed to hold that grievance in abeyance pending the outcome of this proceeding.

This case centers on the separate question of whether that language should be changed and whose final offer should be selected. As a result, the discussion herein only centers on this latter issue and nothing herein is meant to suggest how the separate grievance is to be resolved.

As for this dispute, Officer Dave Dransfield stated here that the Town's prior Police Chief instructed officers to report a half hour before the start of their scheduled eight-hour shift for an unpaid briefing, a situation that may have contributed to the departure of certain Town officials, but which has been rectified because officers are now paid for that time.

This case therefore is unusual because it is not clear as to what constitutes the statue quo, and whether officers in the past always received an unpaid lunch break and a paid briefing, or a paid lunch break and an unpaid briefing.

It is within this context that we turn to the applicable statutory criteria set forth above.

There is no issue relating to the lawful authority of the employer and the stipulations of the parties do not favor either party.

In addition, the interests and welfare of the public and the financial ability of the Town to meet these costs are not in issue.

Factor f. above does not favor either party because there is no detailed explanation of whether the overall compensation and benefits received by the Town's law enforcement personnel do or do not match the overall compensation of law enforcement officers employed elsewhere.

Factors g and h above do not favor either party because there have been no changes during the pendency of this proceeding which affect either party's offer, and there are no "other factors" which should be considered.

As for the CPI, the parties have agreed to wage increases of 2% effective 1/1/03, 1% effective 7/1/03, 1% effective 1/1/04, 1% effective 12/1/04, a $250 one-time only signing bonus,

and added 15¢ per hour, 20¢ per hour, and 30¢ per hour increases to help cover the employee's share of higher health insurance premiums. Since there is no costing for these wage increases, it is difficult to determine the precise overall package costs of either party's offer.

The Town calculates that a paid lunch break would cost about $477.58 in overtime per police officer per year, for a total, combined overtime cost of $3,343.09 for the seven officers in the bargaining unit, (Town Exhibit 2). The Town states that overtime is mandatory under the FLSA and it estimates that this represents an extra 1% wage increase, (Town's Brief, p. 2). The Union claims that overtime will not have to be paid under the FLSA and that the Town's costs are exaggerated.

Since it is unnecessary to determine in this proceeding whether overtime must in fact be paid under the FLSA, the precise cost of the Union's proposal is unclear. Nonetheless, it appears that the total overall cost of the Town's proposal meets or exceeds the CPI when all of the wage increases are added together.

As for internal comparables, it appears that the Town's public works' employees are covered by a contract which does not provide for a paid lunch break. However, the situation of those employees is somewhat different from the situation here because officers must work around the clock in eight-hour shifts, thereby making it difficult for officers on the 11:00 p.m. – 7:00 a.m. shift to find a place to eat and enjoy their lunch break. In addition, Officer Dransfield stated that he would find it very difficult to have a duty-free lunch because once he is in uniform, he is expected to handle whatever situations arise. Given these circumstances, there is a valid basis for distinguishing between police officers and other Town employees for the purpose of determining whether officers should have a paid lunch break.

As for external comparables, the Union claims that its offer is supported by the comparable communities of the City of Beloit, Clinton, Evansville, Janesville, Milton, Whitewater, and Rock County, (Union Exhibit 3). The Town maintains that the City of Beloit, the City of Janesville, Rock County, and Whitewater are not comparable because their populations are much larger than the Town's population.

The City of Beloit's population is about seven times larger than the Town's; the City of Janesville's population is about ten times larger; Rock County's population is

about 30 times larger; and Whitewater's population is about twice as large, (Union Exhibit 3).

I find that the City of Beloit, the City of Janesville and Rock County are too large to be considered as comparable population communities. Whitewater represents a valid comparable because its population is about 12,636, thereby putting it in the same kind of small labor market as the Town which has a population of 5,397, (Union Exhibit 3).

I therefore conclude that Clinton, Evansville, Milton, and Whitewater all represent proper comparables. As to them, the record shows the following:

Clinton has 8¼ hour shifts which include a 30-minute paid lunch "during which time the employee will be on call," and two paid fifteen-minute breaks, (Union Exhibit 5).

Evansville has 8½ hour shifts which include a 30-minute paid lunch, (Union Exhibit 6).

Milton has 8½ hour shifts which consist of a 30-minute paid lunch break, (Union Exhibit 8).

Whitewater has work shifts of 8¼ hours and 8 hours, which include a 30-minute paid lunch and two 15-minute breaks, (Union Exhibit 9).

Every external comparable therefore provides for a paid 30-minute lunch break and thus supports the Union's position.

As the Town points out, however, the Union has failed to offer a quid pro quo in exchange for its proposal.

It, of course, is well established that a party seeking a change must establish that there is a need for a change; that its proposal properly addresses that need; and that it has offered a meaningful quid pro quo in exchange for its proposal. But, that is the general rule.

An exception to that rule exists when a party is trying to "catch up."

In those situations, it is unnecessary to insist upon a quid pro quo because any such requirement would mean that employees must give up something of value to obtain something of equal value. If they were required to do that, they would remain at about the same position as they did previously.

The policy expressed in Section 111.77(6)d. makes it clear that employees are to be compared with other employees to help determine whether the wages, hours and conditions of employment of the employees in dispute should be raised to those found elsewhere. That cannot be done if employees are required to offer a quid pro quo which lowers their own wages and/or benefits in order to obtain what is found elsewhere. I therefore find that no quid pro quo is needed when, as here, every external comparable provides for a 30-minute paid lunch break and when there is no proof in this record that the overall compensation benefits found here equals or exceeds what is found elsewhere.

I thus conclude that the Union's offer should be selected over the Town's offer even though that will push the Union's offer past the CPI because the need for catch up exceeds the additional costs the Union's offer will bring.

In this connection, the Union states that its proposed final offer does not refer to the currently provided-for two 15-minute breaks because it and the Town both agree that those breaks should continue, (Union Brief, p. 7, n. 1), and that is why it requested at the hearing that the specific language of its final offer not be included in the contract.

As related above, the Town's offer does, indeed, provide for a "fifteen (15) minute paid break during the first four hours and a second fifteen (15) minute paid break during the second four hours of each shift . . ." (Emphasis in original) Hence, this issue is not in dispute.

Nevertheless, the Union's proposal should have expressly spelled out that it wanted to retain the two paid 15-minute breaks because an arbitrator operating under Section 111.77(3), Wis. Stats., can only adopt one party's offer, as written, which means that the Union's final offer must be included in the contract the way it has been presented here.

In light of the above, it is my

AWARD

That the Union's offer is hereby selected and that its language must be included in the parties' contract.

Dated at Madison, Wisconsin, this 10th day of June, 2004.

Amedeo Greco /s/

Amedeo Greco, Arbitrator