

STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition

of

**Village of Caledonia
and**

WPPA/ Law Enforcement Employee Relations Div.

**For Final and Binding
Arbitration Involving Law
Enforcement Personnel in the
Employ of**

Village of Caledonia

Case 96

**No. 67217 MIA-2798
Decision No. 32260-A**

**Raymond E. McAlpin
Arbitrator**

APPEARANCES

For the Association: David Hendrickson - Bargaining Consultant

For the City: Victor J. Long - Attorney

PROCEEDINGS

On March 10, 2008 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 (4) (b) of the Municipal Employment Relations Act, to resolve an impasse existing between Village of Caledonia and WPPA/LEER, hereinafter referred to as the Association, and the Village of Caledonia, hereinafter referred to as the Employer.

The hearing was held on May 15, 2008 in Caledonia, Wisconsin. The Parties did not request mediation services and the hearing proceeded. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on June 19, 2008 subsequent to receiving the final briefs.

ISSUES

The following are the issues still in dispute between the Union and the City:

The Parties have reached agreement on all outstanding issues except for the following:

ASSOCIATION

One time increase in the top rate
for the patrol officer, investigator
and shift commander - 1.27%

VILLAGE

Status quo

STATUTORY CRITERIA

Section 111.77(6), Wis. Stats., as follows:

- (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 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 prices 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.

ASSOCIATION POSITION

The following represents the arguments and contentions made on behalf of the Association:

The only item remaining between the Parties for this round of bargaining is the Association's request to add an additional 1.27% to the maximum rate for top patrol officer, investigator and shift commander. The Association would note that the Village has a bargaining unit of supervisory sergeants. This dispute arises from an internal comparison wherein the Village has provided new longevity pay to the sergeants which had previously been folded into the salary in 1992. The non-supervisor sworn employees believe that it is also appropriate to provide a similar benefit to them.

This matter only involves the appropriate wage level for the bargaining unit. The Association relies solely on the internal comparison with the sergeants. Neither Party has provided information on external comparables. The Village may argue that the sergeants have additional responsibilities which warrant the extra salary provided by the longevity, and the Association will rely on equity to support its final offer.

The situation with the sergeants is set forth in Association Exhibit 1 which is an award issued by the instant Arbitrator on June 16, 1999. That case involved overtime, but the Employer in that matter explained at some length the genesis of the sergeants' wages since organizing for collective bargaining in 1992 in its arguments before the Arbitrator. The rate differential at that time was 8%. As a result of the 1992 negotiations, a longevity and educational allowance was rolled into the rate along with an increase which resulted in a differential of 19.5%. This made the sergeants 20% higher than the top patrol officer at that time.

Effective January 1, 2005 the agreement with the sergeants was modified to bring back longevity and modified again in 2006 with increased longevity. The Association calculated this to be an overall increase of 1.27%. This should be applied to the maximum of the three job classifications to achieve equity with the sergeants.

Arbitrators are often faced with complicated decisions requiring them to make value determinations between internal and external comparables. In this case no such determination is necessary. Sergeants are sworn police officers as are patrol officers, investigators and shift commanders. The only difference between the two classifications is the supervisor/managerial responsibilities assigned to the sergeants. For this additional responsibility the sergeants have received a premium in pay of 19-20%. The non-supervisory employees are now asking for equity by attaching an increase to their top step of the salary schedule to retain the differential between the sergeants that has existed since 1972.

The Village presented some costing information, however, the Chief acknowledged that the census assumed that all officers were at maximum, which is not the case. The Chief also used 2080 hours, and the true number is 1947. The cost of the Association's final offer is quite small. The costing data is not appropriate to this case as it represents a hypothetical grouping assuming facts which are admittedly not accurate.

In the Village the sergeants are expected to carry out all duties of patrol. Police officers and sergeants work side by side to reach a positive result. This is not your standard relationship between worker and supervisor. The sergeants are also organized and bargained their employment terms, so when the Village decides to provide a benefit to the sergeants that is greater than that provided for patrol, it must be for a strong and clearly articulated reason not to produce resentment, frustration and a whole range of emotions that may lead to a breakdown in morale and teamwork. The Village has not presented the requisite justification for the disparate treatment. The Village may suggest that the job requirements of the sergeants justify the additional wage created by the addition of the longevity. There is, however, no demonstration that anything has changed regarding the sergeants' job requirements since 1992. There is no longitudinal data which demonstrates that anything has changed. For some unknown reason the Village has provided longevity as an extra compensation for the sergeants which had been denied to patrol officers.

With respect to the mandated statutory criteria (reproduced above), criteria A and B are not at issue. Criterion C, the interest and welfare of the public, is always served when public safety has the best well-trained officers possible. A competitive wage is also important. Police officers go to work everyday with the shadow of possible personal injury hanging over them. They are on the front lines of law enforcement. Equity of pay is one of the most important factors in good morale which is critical to a well functioning police department. Equity is best served by the Association's final offer. Criterion D - the only comparable that has been presented in this case is that of the sergeants. No external data or any private employment data have been provided. Criterion E - neither Party has submitted data on the cost of living and given the nature of this case, it is not determinative. Criterion F - the Association argued that the accelerated vacation schedule enjoyed by the sergeants and the increases recently gained argue for their position. Criterion G does not apply. Criterion H - the matter before the Arbitrator is a simple case of equity. The Association's final offer retains the long relationship between the supervisory and non-supervisory law enforcement personnel.

The Association also had an opportunity to respond to the Village's brief in this matter and its arguments are as follows:

The Village seems confused about the significance of the 1999 arbitration award. It is true that the issue was overtime and the Association did not introduce that award because of that issue. The significance of the award is the background regarding the relationship between

the sergeants and patrol officers. The salary differential was 19+%. This was established by folding several benefits including longevity into the sergeants' base rate. This relationship was maintained through the 1999 arbitration award and until this past sergeant contract negotiation when the Village added longevity to the sergeants' wage.

The Village has relied on the argument of equity to support the extra raise for the sergeants. The Village, however, has not submitted any data to show that the responsibilities of the sergeants have changed in the past 15 years. The Village has asked that the Arbitrator upset a longstanding wage relationship between front line supervisors and those they supervise with absolutely no evidence to provide that anything has changed to justify the increase, therefore, equity is really on the side of patrol officers.

The Village has stated it will rely on internal comparables, however, the most significant internal comparable is that of organized police supervisors and the longstanding percentage differential on wages. The Village has argued that the cost of the Association offer could produce staff reductions. This is bit extreme considering that the Village by its own admission inflated the actual cost. Therefore, based on the long term relationship and wages between the two units and the lack of any longitudinal evidence showing that job duties have changed, the Association requests that the Arbitrator order the implementation of the equivalent percentage increase as calculated from the sergeants' longevity by selecting the final offer of the Association.

VILLAGE POSITION

The following represents the arguments and contentions made on behalf of the Village:

It is the Association's position that the Police Association is entitled to the incremental pay differential because of pay enhancements granted to the sergeants' bargaining unit. Longevity has now been reestablished for the sergeants and the Association argued that they are entitled to a pay differential because of this reestablishment.

It is the Village's position that the positions of sergeant and police officer are significantly different. Therefore, the reestablishment of longevity pay is entirely independent of what a police officer may be entitled to. Longevity involved an equity issue that was raised by the sergeants. The sergeants have more responsibility than a patrol officer. It is, therefore, inappropriate to compare the pay of the two positions. The Association has no substantive argument that the pay of the police officers should somehow directly relate to the pay of a sergeant. The wage package offered to the police officers was exactly the same as that of all other bargaining units with the exception of the firefighters who opted for a two-year agreement.

The decision of the Arbitrator should be based on internal comparables. The Village provided a number of areas wherein the sergeants' position differentiates from that of police officers.

In addition to the above the Chief testified that the cost differential of \$23,300 is not budgeted and that, when factoring in the increased cost of fuel, the Association offer would probably require a cut in staffing levels.

The Association argued that a prior arbitration award supports its position. It is the Village's position that this award offers no concrete support to the Association.

There is no basis for the Association's position of wage comparability between police officer and sergeant. The Association argued that the granting of a benefit to sergeants, which is already enjoyed by its members, justifies the granting of a pay differential. In addition this differential is not budgeted and would create a funding problem for the department. There is nothing in the Collective Bargaining Agreement between the Parties that establishes any kind of connection between the wages paid to sergeants and patrol officers. There is no established bargaining history regarding any agreement on such differential.

The Village also had the opportunity of responding to the Association's initial brief:

Patrol officers working a 5/2-5/3 schedule work approximately 1947 hours, however, per the Collective Bargaining Agreement at Section 12.13, they are paid for 2080 hours. In addition despite the Association's argument patrol officers in the Village already have longevity pay at Section 14.02, which established that longevity payments to sergeants are identical to payments made to Association members, therefore, there is no equity argument.

Based on the above the Village asked that its final offer be found to be the more reasonable proposal.

DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Wisconsin legislature determined that it would be in the best interest of the citizens of the State of Wisconsin to substitute compulsory interest arbitration for a potential strike. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must pick in all areas of disagreement the total last best offer of one side over the other. The Arbitrator must find for all open issues which side has the most equitable position. We use the term “most equitable” because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of factors contained within the Wisconsin revised statute (and reproduced above). It is these factors that will drive the Arbitrator’s decision in this matter.

Prior to analyzing the open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

In this matter it is the Association that wishes to deviate from the status quo. This is a very difficult case in that the statutory criteria provide little value or guidance to the Arbitrator with the exception of internal comparables. This Arbitrator has found in numerous interest arbitrations that comparing police units with other internal comparables, with the possible exception of fire fighters, is difficult at best. The internal comparable that is argued by the Association is solely and only that of the sergeants, and it is true that it would provide the most appropriate internal comparable, however, the other internal comparables in the Village support the status quo.

There is no question in this Arbitrator's mind that there should be a differential between the police officers, which would include patrol, investigation and shift supervisors, and the sergeants. The question is, what is the appropriate differential? The Arbitrator would note that a significant portion of the previous differential was due to folding other benefits, including longevity, into the rate. The positions of sergeant and police officer, investigator and shift supervisor, while sharing components, are significantly different. In addition to the above there are no external comparables to provide guidance to the Arbitrator. Likewise, there was no showing of a morale problem within the Village of Caledonia's Police Department.

The sergeants' pay is a done deal. The question is the relationship. The facts are that the police unit currently enjoys a longevity pay, and the sergeants also now enjoy longevity pay. Based on the fact that the burden is on the Association to justify a deviation from the status quo and based on the above, the Arbitrator finds that the Association simply has not met its burden in this matter and, therefore, the status quo will remain.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of Village is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the January 1, 2007 through December 31, 2009 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 7th day of July, 2008.

Raymond E. McAlpin, Arbitrator