In the Matter of the Petition of	
TOMAH CITY POLICE, LOCAL 1947-C, WCCME, AFSCME, AFL-CIO	Case X No. 15567 ~~MA-106~~ MIA-1 Decision No. 11050
To Initiate Compulsory Final and Binding Arbitration between Said Petitioner and	
CITY OF TOMAH, WISCONSIN	FINAL AND BINDING ARBITRATION AWARD

Background

This proceeding commenced its long history when, on February 9, 1972, Locals 1947B and 1947C, AFSCME, AFL-CIO representing employees of the City of Tomah Public Works Department and the Police Department respectively, filed petitions for fact finding with the Wisconsin Employment Relations Commission. The WERC responded to both petitions by ordering fact finding and appointing Arlen Christenson of Madison, Wisconsin fact finder. While the fact finding proceedings were pending, Chapter 247, Laws of 1971 was passed by the Wisconsin Legislature and signed by the Governor giving the employees of the Police Department the right to petition for binding arbitration of their dispute. Such a petition was ultimately filed and following dismissal of the fact finding proceedings, the WERC, upon the agreement of the parties, issued an order on June 6, 1972 appointing Arlen Christenson of Madison, Wisconsin arbitrator for these proceedings.

An arbitration hearing was held in the City Hall at Tomah, Wisconsin on July 20, 1972. The arbitration procedure being of the type designated "form 2" pursuant to Wis. Stat. Sec. 111.77, the parties each presented their offer in effect at the time of the petition for final and binding arbitration. The parties had agreed to all of the terms of a collective bargaining agreement with the exception of eight issues on which each party submitted its position. Subsequent to the hearing the parties met to make sure they understood their respective positions and to resolve any issues that could be resolved. As a result of this meeting, one of the matters in dispute was resolved leaving seven matters for resolution by final and binding arbitration in this award.

Under the "form 2" procedure established by Wis. Stat. Sec. 11.77, the arbitrator must choose one of the two final offers submitted to him by the parties. He has no authority to amend or modify the offers but must pick one or the other just as it stands. Thus, the final disposition of the matter does not necessarily reflect the best judgment of the arbitrator on all the issues but only his choice between the two competing offers.

Positions of the Parties

The issues involved in this arbitration and the final offers of the parties are as follows:

1. Shall a "fair share" agreement requiring all employees in the bargaining unit to pay union dues be included in the collective bargaining agreement?

Union Position: Yes

City Position: No

2. What shall be the amount of the City's contribution to Hospital and Surgical care insurance premium?

Union Position: 100% of the premium for single coverage and 50% of the difference between single and family coverage for employees under the family plan.

City Position: 100% of the single coverage and 50% of the total cost of the family coverage.

3. Should the most senior patrolman on duty during the absence of the sergeant in charge or other higher ranking officer be paid at the sergeant's rate of pay for all such shifts worked?

Union Position: Yes

City Position: No

4. Should employees working the night shift receive ten cents ($.10) per hour shift premium pay?

Union Position: Yes

City Position: No

5. Should the annual uniform allowance be increased from $125.00 to $150.00?

Union Position: Yes

City Position: No

6. What shall be the amount of wage increase to the employees in the bargaining unit?

Union Position: Forty dollars ($40.00) per month for each employee.

City Position: Twelve cents ($.12) per hour for each employee.

7. What shall be the effective date of the collective bargaining agreement?

Union Position: January 1, 1972.

City Position: "The date of agreement or decision by the arbitrator."

Discussion

The final offers submitted by the parties indicate that collective bargaining has narrowed the scope of disagreement on most issues to the point where both offers are within the zone of reasonableness. The City's offer on wages, for example, amounts to a 3.6% increase over last year. The Union's proposal calculates out to about a 6.6% increase. In my judgment the former is somewhat low and the latter is on the high side and given a free choice, I would recommend a settlement somewhere between the two. I would not say, however, that either offer is unreasonable.

The difference between the parties on the issue of the city's contribution to hospital and surgical premiums boils down to a difference between paying one half the cost of family coverage (about $22.00 a month) or paying two thirds (about $29.00). The parties are $25.00 a year per man apart in their offers regarding uniform allowance and neither the night shift premium nor the payment of the senior patrolman at the sergeants rate of pay for the time designated are particularly large cost items. Finally, despite the legislative authorization of the fair share agreement in the recently concluded session, reasonable minds can differ over the advisability of such a provision in a given collective bargaining agreement.

There is a final issue, however, on which I find it impossible to accept the City's position. That is the issue of the effective date of the agreement. The City's offer before the arbitrator calls for the agreement to be effective as of "the date of agreement or the arbitrator's award." Assuming that the ambiguity inherent in that position is resolved in favor of taking the earliest of the two possible dates it still states a position which I cannot accept as fair and reasonable.

To date the employees in this bargaining unit have not been working under a collective bargaining agreement. They have, however, been covered by a May 11, 1971 action of the City Council taken after negotiations with the Union which established wages, hours and working conditions effective January 1, 1971. The record indicates that this was intended to be an arrangement covering calendar year 1971. Early negotiations between the parties contemplated a new agreement covering calendar year 1972. After negotiations stalled, however, the City took the position that the agreement should only take effect when reached and not be retroactive to January 1, 1972.

The consequences of making the agreement effective as of the date of this award would be to reduce the benefits received by the employees pro rata each day the parties have failed to reach an agreement and for each day the award is for any reason delayed. It would mean, for example, that to adopt the City's position on wages would result in 1972 earnings for a patrolman being only about 1% more than 1971. The City's argument in favor of this position is essentially that the delays and the failure to agree are the fault of the Union and the employees should, therefore, bear the cost. Such a conclusion is not supported by the record. Just as it takes two to reach an agreement, so there are two parties to a failure to agree. Moreover, any delays in the proceedings leading up to this agreement have multiple causes. Both parties, the Legislature, the WERC and the arbitrator have participated. To say that the consequences of all of this should be born by the employees is simply unfair. For this reason, although I am not wholly satisfied with the results, I conclude that the most reasonable course is to choose the Union's offer.

AWARD

It is my award that the Union's final offer outlined above and contained in the Union's brief of July 31, 1972 is selected pursuant to Wis. Stats. Sec. 111.77 and is hereby incorporated herein. The collective bargaining agreement between the parties shall consist of the terms agreed upon as represented by the draft agreement attached to the City's brief of July 31, 1972 together with the Union's final offer on the items in dispute.

Arlen C. Christenson
Arbitrator

DATED: