
In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO
For Final and Binding Arbitration
Involving Law Enforcement Personnel
in the Employ of
MARINETTE COUNTY (SHERIFF'S DEPARTMENT)

Case XV
No. 15663 MIA-7
Decision No. 11090-A
ARBITRATOR'S AWARD

Background

In response to a petition of the Wisconsin Council of County and Municipal Employees filed on May 23, 1972, the Wisconsin Employment Relations Commission, on July 3, 1972, issued its order appointing Arlen Christenson of Madison, Wisconsin, arbitrator in the above matter. Following the appointment of the arbitrator the parties resumed negotiations in an attempt to reach an agreement but failed in the attempt. An arbitration hearing was then held in the County Courthouse in Marinette on September 29, 1972.

This is a "final offer" proceeding under Wis. Stat. Sec. 111.77(4)(b). The parties, under this procedure are required to submit their final offers in effect as of the filing of the petition for arbitration and the arbitrator is required to choose between the two offers. The arbitrator has no authority to modify these offers in any way but the parties may amend the offers "within five days of the date of the hearing". The parties stipulated at the hearing that the amendment provision would be construed, for the purposes of this proceeding, to permit amendment within five days after the hearing. Subsequent to the hearing and within the five days thereafter the County did amend its offer and its offer as so amended is before the arbitrator at this time. The effect of the County's amendment of its offer was to remove one of the issues, payment for overtime, from the dispute. There remains for resolution in this arbitration the choice between the positions of the parties as set forth in the next section.

Positions of the Parties

The issues in dispute are economic. The Union has proposed the following changes in the collective bargaining agreement which are not acceptable to the County:

1. A 5.5% across-the-board wage increase.
2. An increase in the meal allowance from \$1.25 to \$1.75.
3. A night shift differential of \$7.50 a month for any member of the bargaining unit working a night shift during the month.
4. All improvements retroactive to January 1, 1972.

The County's proposal calls for the following:

1. A 4% across-the-board wage increase retroactive to January 1, 1972 with an optional additional 4.5% effective January 1, 1973 to July 1, 1973.

2. No change in the meal allowance.
3. No night shift differential.
4. An extra 1/2 day holiday.

Discussion

The statute under which this proceeding is conducted prescribes the factors relevant to a resolution of the dispute. Wis. Stat. Sec. 111.77 (6) provides 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 the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes 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 employes, 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 facts, 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."

We need not be concerned in this matter with the lawful authority of the employer as no issue has been raised in this respect. There have been no relevant stipulations of the parties nor any changes in circumstances during the proceeding. Thus, our consideration should focus on the following statutorily defined issues as paraphrased for brevity.

1. The County's ability to pay.
2. Wages and benefits in comparable public and private employment.
3. Cost of living.
4. Overall compensation and benefits.
5. Any other relevant factors.

These issues will be discussed in order.

1. The County's ability to pay.

The County argues that it is financially unable to stand the cost of the Union's proposal. It cites the property tax squeeze and the lack of tax base in Marinette County as grounds for this conclusion. There is no evidence, however, that Marinette County differs substantially from other comparable public employers in this respect. The lack of ability to pay is an objectively provable fact. If it is alleged as a basis for an arbitrator's decision, the party alleging it, whether or not it has the burden of proof on the issue, has the burden of coming forward with some evidence to support its allegation. No such evidence has been produced in this proceeding and there is, therefore, no basis for concluding that Marinette County's ability to pay differs sufficiently from that of other comparable employers to justify making a distinction in employee benefits.

2. Wages and benefits in comparable public and private employment.

Union Exhibit #1 shows the wages paid Deputy Sheriffs in 21 Wisconsin counties as of January 1, 1972 in addition to Marinette as well as wages paid patrolmen employed by the City of Marinette. The median monthly salary paid by the departments represented in this sample is between \$685 and \$695. The average monthly salary is \$728. The comparable salary for Deputies at the top of the range in the Marinette County Sheriff's Department is \$594 a month. The Union does not indicate how this sample was chosen. It includes only a relatively small portion of the total number of sheriffs' departments in Wisconsin and does not seem to follow a geographic or population pattern. The sample is, therefore, of limited usefulness in resolving the issues in this proceeding.

To supplement information on comparable public and private employment made available by the parties, I have referred to the Summary Tabulation of Salaries and Fringe Benefits for Selected County Law Enforcement Positions (1972) prepared by the State Bureau of Personnel. This publication, using data supplied by County Clerks in response to a salary survey questionnaire, shows the salaries and fringe benefits of Deputy Sheriffs in all of the counties responding as of January 1, 1972. Data are included in the publication for 45 counties. For all of the counties responding to the questionnaire, the median salary paid to deputies who have reached the top of the range is between \$650 and \$657. The average is \$672 a month. To get a sample of comparable counties that took into consideration the geographic factor, I also compared salaries paid in the two tiers of counties immediately adjacent to Marinette County which paid their deputies on a monthly basis. (Two counties, Oconto and Kewaunee, which would be included in this sample were excluded because the data show that they employ only hourly paid deputies.) These nearby counties, Door, Langlade, Forest, Shawano, Brown, Oneida, and Outagamie, paid an average salary of \$673 with the median falling between \$625 and \$650 a month.

Under the County's proposal the salary paid deputies in Marinette County after reaching the top of the range in 18 months, would be \$617.76 a month. The Union's proposal would bring the top of the range to \$626.67. The County's proposal would place salaries for Marinette County deputies below the median of each of the samples described above and at least \$54 a month below the average of the surrounding counties and the statewide average. The Union's proposal would place the Marinette County average right near the median of the surrounding counties and still below the statewide median. Salaries would reach a level about \$45 below the statewide and area average.

The County argues that the Union proposal for a night shift differential of \$7.50 a month is actually a proposal for an additional across-the-board salary increase because it would be paid to almost everyone in the bargaining unit each month. If it were considered as part of the salary increase proposal it would bring the monthly salary up to about the median in both the statewide and surrounding county samples while leaving the salary about \$38 below the average in both samples. To make an appropriate comparison with other counties, however, the night shift differential should probably be treated as it is in the Bureau of Personnel survey publication; as a fringe benefit. The survey shows it to be a fringe benefit enjoyed by 12 of the 45 counties reporting, including Brown and Door counties from the surrounding county sample.

The deputies in this bargaining unit seem to fare reasonably well in comparison with other counties on other fringe benefits. Vacation, sick leave and overtime policy is typical; health and hospitalization is provided at 100% employer cost; no life insurance is provided but the employer picks up the cost of retirement. In summary, the fringe benefits under either proposal would continue to be at least average and perhaps a little above average.

3. Cost of Living.

It hardly needs recounting here that the cost of living continued to rise during the last year. According to Union Exhibit #5, the Bureau of Labor Statistics Consumers' Price Index - National Series (September 22, 1972), the consumer price index rose from 138.6% of the 1957-59 level in January 1971 to 143.1% in December 1972, or a gain of 4.6% during calendar 1971. Between September 1971 and August 1972 the gain was 4.1%. Regardless of the measurement used the increase in the cost of living since the last wage increase for the employees exceeds the proposed 4% increase contained in the County's last offer.

4. Overall compensation and benefits, and 5. Other relevant factors.

Matters which might be relevant under these headings have been discussed in previous sections.

Conclusions

The County's last offer provides for a salary increase which would be less than the increase in the cost of living during calendar year 1971. The County's proposal would also leave the salary level in the bargaining unit below the median and the average of the sample of surrounding counties and statewide. The County has not introduced persuasive evidence that its ability to pay differs substantially from other public employers providing better employee benefits. There is no discernible difference between the other benefits provided Marinette County deputies and those enjoyed in other comparable bargaining units. As between the two final offers, although not what I would have found given a free choice, the Union's final offer is preferable.

AWARD

It is my award that the Union's final offer described above is selected pursuant to Wis. Stat. Section 111.77 and is hereby incorporated herein. The collective bargaining agreement between the parties shall consist of the terms agreed upon, including those changes described at the hearing in this matter together with the additional terms of the Union's final offer.

Arlen C. Christenson /s/
Arlen C. Christenson
Arbitrator

DATED: November 9, 1972