STATE OF WISCONSIN

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of	DISCUSSION & AWARD
COLUMBIA COUNTY SHERIFF'S DEPARTMENT	
and	Case XI No. 15809 MIA-10
DRIVERS, SALESMEN, WAREHOUSEMEN, MILK PROCESSORS, CANNERY, DAIRY EMPLOYEES AND HELPERS UNION LOCAL 695, I.B.T. C.W. & H. OF A.	Decision No. 11121-A

On the 28th day of July, 1972, the undersigned, Philip G. Marshall of Milwaukee, Wisconsin, was appointed by the Wisconsin Employment Relations Commission as impartial umpire to issue a final and binding award in the matter involving the parties in dispute.

The proceeding had come on before the Wisconsin Employment Relations Commission pursuant to the request by the Union that compulsory and binding arbitration be had pursuant to Section 111.77(3)(b) of the Municipal Employment Relations Act for the purpose of resolving an impasse arising in the collective bargaining between the petitioning Union and the Columbia County Sheriff's Department on matters affecting wages, hours and conditions of employment of law enforcement personnel in the employ of said municipal employer. Pursuant to said petition, the parties were furnished a panel of arbitrators from which they could select a sole arbitrator to issue a final and binding award in the matter and the undersigned was selected from said panel.

The applicable provisions of state law under which the arbitration proceedings are held are set forth in Section 111.77(4) of the Wisconsin Statutes, which in material part read as follows:

> "(4) ARBITRATION FORMS. There shall be 2 alternative forms of arbitration:
>
> (a) Form 1. The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment.
>
> (b) Form 2. Parties shall submit their final offer in effect at the time that the petition for final and binding arbitration was filed. Either party may amend its final offer within 5 days of the date of the hearing. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.
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> "(5) FORM USED. The proceedings shall be pursuant to form 2 unless the parties shall agree prior to the hearing that form 1 shall control.
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> "(6) FACTORS IN DECISION. 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 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."

It was agreed by the parties that the "Form 2" procedure establis by Section 111.77 of the Wisconsin Statutes above quoted would govern these proceedings. Consequently, the arbitrator must "select the fina offer of one of the parties and shall issue an award incorporating tha offer without modification." In other words, the final disposition of this matter does not necessarily reflect the judgment of the arbitrato on each of the individual issues involved but only his choice between the two competing final offers.

At the time of hearing, the following issues remained in dispute:

1. Should the collective bargaining agreement of the parties contain a "fair share agreement" (sometime referred to as an agency shop) which would require all members of the bargaining unit to have checked off a sum equal to union dues as their proportionate share of the cost of the collective bargaining process and contract administrat

2. Should the County be required to provide a hospital, surgical and medical insurance plan not only for its employees individually (which it now does) but should it also be required to extend such coverage without cost for the employees' dependents;

At the time of hearing several other minor issues were likewise in dispute but were settled to the satisfaction of the parties before final submission to the undersigned as arbitrator.

FAIR SHARE AGREEMENT

A fair share agreement, or what is sometimes referred to as an agency shop, is defined by Wisconsin law (Wis. Stats. 111.70(1)(h)) as follows:

> "'Fair-share agreement' means an agreement between a municipal employer and a labor organization under which all or any of the employes in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employes affected by said agreement and to pay the amount so deducted to the labor organization."

The Wisconsin Statute authorizing a "fair share agreement" in contracts covering municipal employees is of comparative recent origin. Consequently, very few such contracts are currently in existence.

Counsel for the County states his opposition to the inclusion of an agency shop provision in the collective bargaining agreement as follows:

> "In the area of Fair Share participation, Columbia County believes that since there is no check off by the employer, the application of the Fair Share Law does not apply. . . . It is also the County's position that since approximately 6% of the contracts held by Local 695 have check off provisions, Columbia County does not feel that this percentage warrants check off or fair share application at this time."

In addition to the classic arguments traditionally advanced by unions in favor of a contractual provision of this kind, counsel for the Union points out that Columbia County has already granted to members of the Highway Department (Columbia County contract with Local 995, AFSCME, AFL-CIO) a similar provision so that any argument that opposition to it is based upon "principle" must necessarily be discounted.

It is true, as pointed out by counsel for Columbia County, that there are few such contracts in existence covering municipal employees throughout the state, which is quite understandable in view of the recent enactment of enabling legislation which permits the negotiation of fair share agreements for Wisconsin municipalities.

I see little merit in the argument of counsel for Columbia County that because there is currently no check off provision in the prior existing collective bargaining agreement that therefore "the application of the Fair Share Law does not apply." There seems little doubt that the passage of the law goes a long way towards establishing fair share agreements as a matter of public policy. In addition, the existence of union shops and check-off provisions in private employment throughout the state is so widespread as to constitute an overwhelming employment practice.

INSURANCE

Columbia County now provides a hospital, surgical and major medical insurance plan for all its employees without cost for individual coverage. The Union requests that such coverage be extended without cost to the employees' dependents as well.

Counsel for the County objects to extending this cost-free protection to employee dependents because, "Family benefits are not the responsibility of an employer, and cannot be in order to be fair with all employees. Such benefits are the obligation of the family breadwinner, and should not be assumed by any other party."

In both public and private employment the trend is unmistakably toward the employer assuming the full payment of hospital and welfare plans not only for individual employees but for dependents as well. However, it is likewise true that through the process of collective bargaining one usually witnesses a gradual assumption of this responsibility by the employer, while here the Union is asking for a change from individual coverage to full family coverage at an additional cost to the County of $34.25 per month over and above the single premium rate in one jump.

RETIREMENT

The County currently pays 50% of the employees' share of contribution towards the state retirement plan. It is the Union's demand that the County pay the full share of the employees' contribution.

The County proposes no increase in its present share of the cost, and counsel for the County states its position as follows:

> "The County by ordinance now contributes 50% of the employees' share of retirement. The demand of the Union to pay all of the deputy's retirement would add 2.75% on the first $7,800.00 of the employee's earnings and 3.5% over that amount in the law enforcement department. Since the salaries in the department vary, it would be reasonable to conclude that the annual cost for the unit would be at least 2.7% of the 1971 labor cost of $237,559.71 or $6,414.00. Historically, Columbia County has followed a policy of fair labor practice by treating all of its employees alike and in applying the 2.7% to the total 1971 county payroll of $2,750,136.49 would result in an increased budget expense of $74,253.00."

Counsel for the Union summarizes his argument by stating:

> "The arguments that favor full municipal payment of Health and Welfare Insurance also favor full municipal payment of Retirement benefits."

There is little doubt that the assumption by municipal governments of the full cost of retirement benefits has sharply increased within the last several years to where it can now be referred to as constituting a "prevailing practice." This practice is even more convincingly established in the field of private employment.

ARBITRATION

The County objects to a provision calling for final and binding arbitration as a terminal point in the grievance procedure, and counsel for the County summarizes his position as follows:

> "The County takes the position that a Court of Record could more impartially settle matters of grievance and objects to any other method. Note is taken here that the Court was agreed upon in the 1971 contract. The Union's objection to the Court's busy schedule and lack of expertise in labor matters does not in our opinion offer a basis for change."

Union counsel points out that Columbia County here "denies to members of the Sheriff's Department what it has granted to members of the Highway Department (Columbia County Contract with Local 995, AFSCME). Normally, employers claim to oppose arbitration of contract disputes on principle. Obviously, this defense is not available to Columbia County."

Arbitration as a terminal point in the grievance procedure is now so overwhelmingly accepted both in private and public employment as to constitute a dominant employment practice. This, together with the fact that the Wisconsin Statutes now provide for final and binding arbitration of the substantive terms of the collective bargaining agreement in contracts involving police and fire departments within the state, would seem to make it preeminently reasonable to extend that principle to the grievance procedure.

* * * * *

In an arbitration proceeding involving the substantive terms of the collective bargaining agreement, it is most unusual to have the principal issue, i.e., that involving wage and salary levels, to be settled by the parties and hence removed from the arbitration process.

It is quite evident that both parties leaned over backwards to avoid a final confrontation in an arbitration proceeding. The use of Form 2 (111.77(4)(b) Wis. Stats.) undoubtedly had a temperizing effect on the position of the parties with respect to the outstanding issues.

The guidelines set forth for the arbitrator in electing to choose between the two conflicting proposals as set forth in Section 111.77(6) of the Wisconsin Statutes and referred to in that section as "Factors in Decision", is all inclusive and appears to be a codification of all of the criteria normally and customarily used by arbitrators in the private sector.

I can find none of the "Factors in Decision" which would individually or in sum rule out the proposal of either party in each of the four issues outstanding. It therefore becomes a question of judging the reasonableness of the whole of the proposals.

In two of the issues involved, i.e., the fair share agreement issue and the arbitration issue, the County has already granted similar demands to members of the Highway Department (Columbia County contract with Local 995, AFSCME). In view of the merits of these two issues discussed above, together with the concessions already made by Columbia County to the Highway Department, it would appear that these two issues are placed in balance in favor of the Union's proposal.

The remaining two issues, that involving insurance coverage for dependents, and the County's share of retirement benefits, are obviously economic in nature. In this regard, counsel for the County, in addition to the arguments set forth above in discussing these issues individually, observes that:

> "The economic impact of the Union demand would require an additional annual cost of nearly $18,000.00 over the County's offer i.e. $6,414.00 for the 2.7% retirement and $11,508.00 for dependent insurance coverage. Setting the pace for conformity in the County, the application of these two items alone would amount to an additional expenditure of $239,853.00 for all County employees. The impact of this amount would be highly inflationary and contrary to the spirit of Phase II."

It will thus be observed that the County's argument in principal is concerned with the dominoe effect of granting any such economic demands to the Sheriff's Department. While arbitrators cannot be oblivious to the cumulative effect of their awards, it is nonetheless true that each individual bargaining unit must be judged individually. The dominoe effect may or may not occur depending upon the identity of position within the several bargaining units. As an arbitrator, I have too frequently been convinced of distinctions which do exist, to be overly impressed with the alleged identity of interests (from one bargaining unit to another) without having evidence presented which demonstrates such identity. No such evidence was presented here.

There is only one issue in which an arbitrator might well decide contrary to the precise position taken by the Union. I refer to the issue regarding the payment by the County of the full cost of dependent coverage under the health and welfare program. However, it seems equally clear to the arbitrator that three of the issues: those involving the fair share agreement, the arbitration issue, and the pension issue, would all, if individually considered, be decided in favor of the position taken by the Union.

In sum, it is the opinion of the arbitrator that the position of the Union with respect to the four outstanding contractual issues involved would constitute a more fair and reasonable resolution of the issues than those proposed by the County.

It is the opinion of the arbitrator that if the right to strike existed - which it does not - it could reasonably be expected that the parties would resolve their outstanding differences in the manner suggested by the Union's proposal.

A W A R D

In conformance with Section 111.77(4)(b) Form 2 of the Wisconsin Statutes, the arbitrator selects the final offer of the Union and incorporates that offer as his award without modification.

Respectfully submitted,

Philip G. Marshall /s/
Philip G. Marshall

November 29, 1972