

ARBITRATION

Between

WEST ALLIS POLICEMEN'S PROTECTIVE ASSOCIATION

and

CITY OF WEST ALLIS

Case XIII  
No. 15721 M  
Decision No. 1

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ARBITRATOR'S OPINION AND AWARD

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On June 7, 1972, West Allis Policemen's Protective Association, representing a bargaining unit of certain employees employed in the positions of patrolmen, cycle riders, corporals, detectives and traffic investigators by the Police Department of the City of West Allis, Wisconsin, petitioned Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration under Section 111.77(3)(b) of the Municipal Employment Relations Act to resolve an impasse in collective bargaining between the Association and the City of West Allis.

On July 27, 1972, the Commission issued an Order Requiring Arbitration and on August 10, 1972, the parties selected the undersigned, Abner Brodie, of Madison, Wisconsin, and on August 15, 1972, the Commission appointed him Arbitrator to issue a final and binding award in this proceeding. Thereafter the Arbitrator held hearings. The testimony was stenographically reported and a transcript thereof was prepared; and the Association and the City have submitted written briefs to the Arbitrator. The parties have not agreed to proceedings under Section 111.77(4)(A) empowering the Arbitrator to determine all issues in dispute involving wages, hours and conditions of employment, therefore under Section 111.77(5), Section 111.74(4)(B) controls and the Arbitrator must select a final offer of one of the parties and issue an award incorporating that offer without modification.

The City's final offer was the following:

1. Six per cent (6%) general wage increase;
2. The reduction of report time from fifteen (15) minutes to ten (10) minutes;
3. Six (6) hours time account credit.

The Association's final offer was the following:

1. Six per cent (6%) general wage increase, retroactive to January 1, 1972;
2. Implementation of the three and one-half (3-1/2) additional

continue thereafter. The Association contends that this was an untimely amendment of the City's final offer because Section 111.77 limits the time for amending a final offer to five days before the arbitration hearing. Accordingly, the six hours time account credit must also be considered still in issue. The question of the reduction of report time and of the six hours time account credit are related and subsidiary to the question of the 3-1/2 holidays, which is the principal issue before the Arbitrator.

Section 2.075(1)(a) of the Revised Municipal Code of the City provides for 10-1/2 holidays for City officers and employees. But Section 2.075(4) provides:

In lieu of the holidays enumerated in paragraph 1(a) above, non-civilian (sworn) employees of the police and fire departments shall be entitled to and shall receive:

- (a) time off during the year as scheduled by the police and fire chief in accordance with the following schedule:

Police Department . . . 3-1/2 eight (8) hour days  
Fire Department . . . 3 twenty-four (24) hour days

- (b) payment in cash at time and one-half of their hourly rate in the salary schedule for the number of days listed in the following schedule, such payment to be made in the month of December by separate check:

Police Department . . . . . 7 eight (8) hour days  
Fire Department . . . 2 twenty-four (24) hour days

Credit for hours worked by non-civilian (sworn) employees of the police and fire departments for the holidays enumerated in paragraph 1(a) above shall be at straight time.

The Association seeks the time off for 3-1/2 days, in lieu of holidays, provided for in the City ordinance which it considers prima facie justification for its demand. The Association maintains, of course, that the bargaining unit employees have not been granted these days off.

The City asserts that the ordinance is not a relevant factor for the Arbitrator's consideration, and that the Arbitrator is without power to interpret and effectuate the ordinance. It seems to equate the ordinance with a labor contract and contends that Section 111.77 does not create "an obligation to submit labor contract interpretation disputes to final and binding arbitration" but only concerns "the settlement of negotiation disputes in collective bargaining units composed of law enforcement personnel."

The City also contends that the bargaining unit employees are not denied the 3-1/2 days off, as the Association claims. The City asserts that the operation of the police work-schedule provides the 3-1/2 days off to the bargaining unit employees. They work on a 5-2-4-2 schedule, that is, 5 days "on" and 2 "off", followed by 4 days on and 2 off, after which the schedule is repeated. The parties have stipulated that this "schedule results in an annual average of 253 working days and 112 off days which do not include such off time for, as an example, vacation entitlement, sick leave, injury, military leave and funeral leave." They stipulate further that the "average 253 annual working days . . . equals 2024 hours annually."

Bargaining unit employees are required to report for duty each day 15 minutes before their shift or tour of duty starts for roll call, inspection and instruction. This is a long-standing requirement, established July 22, 1954. The parties have stipulated that the report time totals 63 hours annually. The City does not consider the 15-minute report time, time worked, and maintains that the parties have "an understanding" to this effect. On the basis of 2024 hours annually, and excluding report time, the City contends that members of the bargaining unit work 56 hours fewer than the annual "work standard" of 2080 hours, or 52 weeks of 40 hours each. Adding the 3-1/2 holiday days, or 28 hours to the 2024 brings the total to 2052 hours, still 28 less, argues the City, than "the 2080 hour work standard." Therefore, the City claims, the 3-1/2 days which the Association maintains should be "off" days have in fact already been granted to the bargaining unit employees.

The City does not consider that its position is affected by considering report time as time worked. Although the City concedes that such a view of report time would add an annual average of 57.5 hours to the 2024 hours - why it should not be 63 hours is not explained\* - that would bring the total of average hours worked annually up to 2081.5, (2024 + 57.5) or 2087 (2024 + 63) plus 28 hours (3-1/2 X 8) or a total of 2109.5 or 2115 hours; it contends that there should be deducted a daily 20-minute paid lunch period for an average of 230 annual duty days or 76.7 hours, yielding a net annual total of 2032.8 hours worked, 47.2 hours less than the "2080 hours standard." On the basis of 253 annual working days, deducting lunch time leaves 2031 hours, or 49 less than 2080. The City maintains that this compares favorably with the "total work year" of similar employees of other Milwaukee-area municipalities, and that the City's final offer is even more attractive than the "package" referred to, because it is willing to decrease report time to 10 minutes, thus increasing the gap between the number of hours worked and "the 2080 hours standard", a gap which exists, according to the City, even if report time be viewed as work time.

The Association, of course, does not accept the City's view that the members of the bargaining unit have been granted the 3-1/2 holidays. It maintains that the City does not deny that under the City ordinance the days off are provided for these employees, and it considers the offer to reduce report time from 15 minutes to 10 and of the 6-hour time account credit, tantamount to an admission that they are entitled to the 3-1/2 days off. The Association asserts further that granting the 3-1/2 holidays is warranted as an offset against the 15-minute report time. The Association views it as "unfair" for the City not to compensate for that time which members of the bargaining unit must put in or suffer disciplinary action, and it considers the 3-1/2 holidays a fair compensation for it. Although the City looks upon the five-minute reduction in report time as, in some measure, an equivalence for the 3-1/2 holidays, the Association denies that it is, regardless of what it may amount to arithmetically, for 5 minutes per day can scarcely be effectively utilized as free time. Twenty-eight hours, doled out in 5-minute fragments, is worthless as leisure time and provides almost nothing beneficial to the employees who get it. But if the City's evidence is to be credited, the loss of 5 minutes report time will be significant to the City, for it needs the 15 minutes to prepare the employees for their tours of duty. But the fact that the loss of 5 minutes daily report time may be of significance to the City, does not mean that gaining it is significant to the employees as a substitute for an 8-hour day off.

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\*Despite the stipulation of 235 working days, the City assumed fewer days worked in computing report time at 57.5 hours annually.

The Association contends further that since the 6% wage rise to the employees barely covers higher living costs, and it has dropped on other demands, the 3-1/2 holidays should be granted as partial compensation for the increasing difficulties and hazards which policemen face on their jobs.

The City urges that the Police Department's work schedule and time-off policies do not permit it to grant the 3-1/2 holidays without adding personnel to the police force. The City asserts that the police force is now undermanned, that the City Council has not authorized a replacement for a policeman who was killed, although the Chief of Police has asked for funds for one in his budget requests for two years. Granting the Association's demand for 3-1/2 holidays will exacerbate manpower shortages, the City contends, and will make it necessary to hire additional men, which will create financial difficulties for the City. At the present time, according to the Chief, the City needs 9 additional patrolmen for the Police Department properly to discharge its responsibility, but the City Council denied his request for funds for them, and he has not renewed it because of "the alleged financial straits of the City." Also, according to the Chief, should the City be required to grant the 3-1/2 holidays to the bargaining unit employees, the Police Department would be obliged to curtail some of the services it renders, such as checking parkers, door checks and house checks during the absence of occupants, unless the City Council authorized more policemen. Three more men would be needed to make up the lost time, the Chief declared. The Chief acknowledged that by virtue of the power the ordinance confers on him to schedule the 3-1/2 holidays, it would be possible to schedule them during times when no employees were away without any greater shortage in manpower than occurs as a result of normal vacations. But this, he contended would depend upon no one's being on sick leave or requesting time due.

The City argues that evidence of its manpower shortage is found in its changed overtime policy for the Police Department. It claims that before 1971 compensatory time off was usual for overtime earned by policemen, but that in 1971 that policy was changed to require that cash payment be taken for some of the overtime earned.

The City also declares that it is financially unable to fund the additional manpower needed to provide the 3-1/2 holidays the Association seeks. It asserts that the value of the 3-1/2 days is \$16,372.72, but the added cost for three additional patrolmen to cover the loss of duty time will be \$39,578. Thus, the City argues, the cost to it of granting the Association's demand would be \$55,950.72, or 35.9% of the total Department 1972 base payroll of \$156,067.68, which it considers excessive. The City claims that its offer to reduce report time and grant 6 hours to the employees' time account will cost \$14,682.82, close to the \$16,372.72 value of the 3-1/2 days. Therefore, argues the City, since the financial value of its offer and the Association's demand are so close, and the public interest in not having the police protection impaired will be served, the scales are tipped in favor of its position. Moreover, it computes the value of its final offer, exclusive of the wage increase, as 9.4% of the total 1972 payroll, which it characterizes as fair and equitable.

Inspector Liska, with responsibilities for assignments, testified for the City on the operation of the 5-2-4-2 schedule which is prepared in advance for the entire year. Under it there are normally off duty 5 to 9 patrolmen, 1 to 4 detectives, and 1 to 4 traffic investigators, depending on the shift and day in the 13-day cycle. In addition three more patrolmen and another detective may be off on any day or shift for vacation or other leave without reducing the number on duty below minimum requirements. Liska agreed with the Chief that three more

patrolmen would be necessary to accommodate the 3-1/2 holidays, but conceded that they would provide more than the duty time lost by the holidays. According to Liska, the duty time lost equivalent of the 3-1/2 holidays would be one-half patrolman for each shift, but that would require hiring three. He also conceded that within the normal rotation of off duty days under the 5-2-4-2 schedule the 3-1/2 holidays could be accommodated if there were none other off duty than those normally scheduled off, but contended that that would limit the Department's flexibility in dealing with requests for leave. But he acknowledged that this was a matter for shift commanders, and also that a shortage on any shift could be dealt with by assigning men to work overtime, that is, on their off days.

According to the City Comptroller, the average time off per individual in the bargaining unit for sick leave, injury time, military leave and funeral leave in 1971 was 7-1/2 days annually; and the average number of vacation days for 1972 was 14-7/8. The Comptroller also explained the City's claim respecting the cost of the 3-1/2 holidays, assuming the addition of three new patrolmen to the Department. The additional outlay by the City would be their salaries and fringe benefits, amounting to \$39,578. The costs claimed over that would involve no additional outlays since the employees seeking the 3-1/2 holidays are on the payroll. The cost submitted represents the value the City places on 3-1/2 days. Therefore, if the City granted the 3-1/2 holidays and hired no additional patrolmen there would be no additional outlay. If only one new man was hired the outlay would be one-third the amount claimed for the three.

The City also presented considerable economic and census data purporting to compare the economic status and the working conditions of the bargaining unit employees with those of similar employees of other municipalities in the Milwaukee area, and the position of the City in relation to those municipalities. The data offered were based on information collected and analyzed by an economist retained by these municipalities, or many of them, to supply information to support their collective bargaining positions. According to these data an employee of the City with 10 years' seniority will work annually 23 hours more than the median number of hours worked by similar employees in the 18 municipalities considered, assuming 15 minutes report time, and 25 hours more than the average. On the basis of 10 minutes report time the hours will be 3.8 higher than the median and 5.8 higher than the average. On the basis of statistical data obtained by the City's Personnel Officer the same comparisons show that the City patrolmen will work 7.9 hours more than the median and 33 hours more than the average, assuming 15 minutes report time and 7.9 hours more than the median and 13.9 hours more than the average, assuming 10 minutes report time. As a City patrolman, his salary will be 100.46% of the average; as a City detective, 103.50% of the average. These same data show total labor cost for the City's patrolmen to be 101.12% of the average, and for the City's detectives to be 105.43%.

The City also claims, based upon its economist's data, that its "taxable capacity" is lower than any of the other municipalities' but Milwaukee's. The "taxable capacity" is based upon conclusions respecting household income.

The Association points out that the City's economist made no comparisons of taxable properties, even though West Allis is the home of large industrial and commercial enterprises, and did not consider the demands upon and hazards to members of the police force in the City, a highly industrialized, urban community, with a mixed population, and compare them with the demands and hazards of police work in middle and upper class suburban residential municipalities.

The Association also presents its own analysis to support its position that the City could provide the 3-1/2 holidays without adding any new employees. It points out that the Department's present policy permits 11 men (3 patrolmen from each of the three shifts and 2 detectives from the second and third shifts) to be off on any given day in addition to those regularly off through the operation of the 5-2-4-2 schedule, and that the additional time off thus permitted amounts to 4015 man-days annually. About 1600 days of the 4015 would go for vacations, and 755 more for sick leaves, funeral leaves, injury time and military leaves. For 1971, overtime work amounted to 7315 hours at time and one-half, or about 915 days, and if one assumes that about one-half the earned overtime days, or 500, will be taken as compensatory time off, there would still be left over 1100 man-days, from the 4015 permissible man-days off. These would readily accommodate the 371 man-days required to give each of the 106 men in the bargaining unit 3-1/2 days off. According to the Association, there is involved merely a matter of administration, especially as the ordinance gives the Chief of Police control over the scheduling of the 3-1/2 holidays, and no additional outlays by the City unless it decides to hire more policemen. In the latter event, contends the Association, the City has the taxing power to collect the additional revenues required.

#### DISCUSSION AND CONCLUSION

Wisconsin Statutes, Section 111.77(6) provides that "[i]n 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 proceedings 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."

The first question for the Arbitrator is raised by the City's argument that the members of the bargaining unit have in fact already been granted the 3-1/2 holidays by the operation of their 5-2-4-2 schedule. This argument rests upon the faulty premise that the standard work year is 2080 hours. There is nothing to support that premise but mere assertion. Whatever may be the hours of other City employees, the standard or normal work year of the members of the bargaining unit, with one exception, is defined by the 5-2-4-2 schedule, not a 5-day, 40-hour week schedule. Moreover, the entire course of these proceedings, so far as appears, rested on a contrary premise. The City's case assumed that the 3-1/2 holidays were not being and had not been granted, and was devoted to endeavoring to prove that that was justifiable and that it was neither administratively nor financially feasible to grant them. The Chief of Police, under the ordinance responsible for scheduling the time off, made no claim that the time off had been granted. Accordingly, it is the Arbitrator's opinion that the 3-1/2 holidays have not been and are not being granted to the employees in question.

The City's argument that the Arbitrator lacks authority to decide that the holiday ordinance entitles the bargaining unit employees to the 3-1/2 holidays is also not accepted. It expresses an untenable view of the Arbitrator's powers in this case. Although we are concerned with arbitration of interests, that is, arbitration to decide the terms of a collective bargain, and not contract interpretation, the basis for the employees' demands and the grounds of their claim that the employer should agree to provide certain benefits are of concern to the Arbitrator and among the factors he may consider. The statute under which this case proceeds includes, among the factors which the Arbitrator shall weigh, the employer's lawful authority. The Arbitrator should not render an award the City has no lawful authority to comply with. To determine and weigh the employer's lawful authority the Arbitrator must consider and evaluate the source of that authority. In the case of a municipal employer that source would be a statute or ordinance, and where authority is denied the Arbitrator will have to interpret that statute or ordinance.

The City's case that it is not administratively feasible to grant the 3-1/2 holidays without hiring three more patrolmen and that it is not financially feasible to hire the additional patrolmen is not persuasive. The Arbitrator is persuaded by the Association's analysis of the effects of the 5-2-4-2 work schedule that the 3-1/2 holidays, as Inspector Liska conceded and the Chief implied, present only an administrative problem of scheduling, that they can be accommodated without adding to the police force, and that in the light of past experience it is fair to conclude that there will be sufficient flexibility to deal with most emergency manpower needs. Extreme emergencies, if they arise, may perhaps require overtime work but that would be at a relatively low cost, certainly nowhere near the outlay required for three additional men.

Moreover, the Arbitrator finds that the cost of additional men, should the City decide to hire them, would amount to not more than about 3.2% of the total annual base payroll for 1972, and not 35.9%, as the City contends. The City's figures in this regard are manifestly erroneous. Thus, the expense of adding three men to a force of 106, an addition of about 2.8%, could not possibly be 35.9% of the cost of the 106 unless each of the new employees is to be paid more than 10 times as much as each of the present force, and that, of course, is an absurd assumption. Moreover, as already pointed out, the City's salary and fringe benefit outlays for new patrolmen will be \$39,578, not \$55,990.72. On the basis of the City's evidence (City Ex. 13,

column 8) the total annual base payroll for 1972, including holiday pay, was in the neighborhood of \$1,250,000. The outlay for three additional patrolmen, who would provide the City, according to Inspector Liska, with about twice the manpower that the 3-1/2 holidays would cost, would be about 3.2%. The City's estimate of the value of its final offer, \$14,682.82, which the City represents as 9.4% of the total 1972 base payroll, is in fact less than 1.2%, on the basis stated above. In view of the Arbitrator's calculations, the City's figures are inexplicable and cannot provide the grounds for a decision in favor of the City.

The statistical data submitted by the City support the Association's demand for the 3-1/2 holidays. As already indicated, the City's offer of a 5-minute reduction in report time is not an adequate substitute for the holidays. This is not time which can be effectively utilized. Based upon the 15-minute report time requirement, the City's bargaining unit employees are unfavorably situated in comparison to similar employees in neighboring municipalities. Indeed, the 3-1/2 holidays, if granted, will put them at about an average position. Their slightly favorable salary position does not militate against their demand's being granted. Even with nothing in the record the Arbitrator can conclude, on the basis of what are matters of general knowledge, that a policeman's lot in West Allis is harder, in terms of daily problems and hazards than a policeman's lot in the suburban communities included in the City's comparisons. But the record is not barren. There is evidence in the testimony of the City's Chief of Police that the problems of the police in West Allis have been growing more and more difficult in recent years. Indeed, this is offered as one of the reasons why the Association's 3-1/2 holiday demand should not be granted.

On the question of the City's ability to bear any further costs, for reasons already stated the Arbitrator does not believe that additional expenditures will be required. If they are, they may be kept to minimal proportions by requiring off-duty personnel to work in emergencies at overtime rates. Even at the worst eventuality suggested by the City, the hiring of three additional men will provide the City with about twice the duty time lost through the 3-1/2 holidays and entail an additional payroll expenditure of only slightly more than 3% of present expenditures or, if one discounts this by the increased service the City will receive from three more patrolmen, of about 1.6% of the present payroll. Although the City claims a lack of taxing capacity to raise additional revenue, it is noted that this claim is not based upon any information about taxable assets in the City but on figures respecting personal income which do not take account of the presence within the City of industrial and commercial properties.

The Arbitrator does not believe that any useful purpose will be served by comparing the police with civilian employees of the City. Civilian employees are employed on an entirely different basis and work under entirely different conditions, and comparisons are inept.

For the reasons stated the Arbitrator is of the opinion that the Association's demand for the 3-1/2 holidays should be granted.

There remains for consideration the questions relating to a reduction of report time and the 6-hour time credit. These have been suggested as alternatives to the 3-1/2 holidays; granting the latter moots questions about the former.

AWARD

The Arbitrator's award is that the parties shall include in their collective bargaining agreement covering the bargaining unit employees the final offer of the West Allis Policemen's Protective Association as follows: "Implementation of the 3-1/2 additional paid holidays now provided for by ordinance."

Madison, Wisconsin  
May 18, 1973

Abner Brodie /s/  
ABNER BRODIE  
Arbitrator

