

In the Matter of Binding Arbitration)
In the Bargaining Impasse)
Between)
BARGAINING UNIT OF THE)
BEAVER DAM POLICE DEPARTMENT)
and)
THE CITY OF BEAVER DAM)

Case V
No. 16700 MIA-46
Decision No. 11760-C

Introduction

On May 11, 1973 the Wisconsin Employment Relations Commission notified the undersigned that he was to act as impartial arbitrator to render a final and binding decision (Per Wisconsin Statute) resolving an impasse in negotiations that had developed between the parties.

The authority of the undersigned is restricted by Statute to selecting what he believes to be the most reasonable between the last offers of the parties.

The impartial arbitrator immediately communicated with the parties and suggested as a date for hearing May 31 or June 5 or 12. The City indicated it would take longer than that to prepare. Ultimately, a hearing was held in Beaver Dam on June 27, 1973. A court reporter was present who prepared a transcript of the proceedings which reached the impartial arbitrator on July 25, 1973. Appropriate exhibits were introduced at the hearing which brought before the arbitrator the kind of material which the Statute dictates should be considered in a case of this type.

The case for the City was presented under the direction of its city attorney, Herman D. Schact. Attorney James L. Everson assisted. The case for the Police Unit was introduced under the direction of Attorney Irvin L. Doepke, Beaver Dam, Wisconsin.

Background

The case came before the impartial arbitrator with the parties in agreement on all except two provisions relative to the 1973 Agreement.

At the hearing evidence on the resolved terms for 1973 indicated no change from 1972 except the grant of a \$50 increase for uniform allowance, a guarantee of 2 hours minimum of call in time pay and credit for a holiday on the vacation scheduled.

The impasse existed in the area of salary and contributions to the Wisconsin Retirement Fund.

The last offer of the City calculated to resolve the impasse on the retirement contribution was that the City would contribute 4.5% of the employees share (up to \$10,800) of the contribution to the Wisconsin Retirement Fund. The last offer of the Police Unit was that the employer should contribute 5.5% of the employees share of the contribution to the Wisconsin Retirement Fund.

In the salary area the City's last offer was \$1.00 a year across the board over the 1972 scale. In terms of actual dollars the City's last offer on base pay per month was:

	<u>STARTING</u>	<u>AFTER 1 YEAR</u>	<u>AFTER 2 YEARS</u>	<u>AFTER 3 YEARS</u>
PATROLMAN	\$730	\$753	\$775	\$800
SERGEANT				\$854
DETECTIVE				\$854

Just prior to its last offer, the City had proposed a salary increase of \$28.00 per month over 1972 and no contribution to the retirement fund.

The Police Unit last offer was an \$8.00 base salary increase per month across the board over 1972 and an employer contribution of 5.5% of the employees share of the contribution to the Wisconsin Retirement Fund. This would result in a pay schedule as follows:

	<u>STARTING</u>	<u>AFTER 1 YEAR</u>	<u>AFTER 2 YEARS</u>	<u>AFTER 3 YEARS</u>
PATROLMAN	\$737	\$760	\$782	\$807
SERGEANT				\$861
DETECTIVE				\$861

DISCUSSION AND OPINION

This is not a case in which the City claims that it does not have the financial ability to meet the demand of the Police Unit. Indeed the figures indicate that the difference in cost of the last proposal of the City and the last demand of the Police Unit is only about \$4,325 per year.

This situation caused the City Attorney to state on the record in respect to the \$4,325 figure:

If that were the only effect that would have, I doubt if we would be here today.

The Attorney for the City then made clear that the concern was with the "ripple effect or the possibility that all other (city) employees will come in militantly and demand the same or similar dollar increase that may be awarded the city police department".

The City stressed that all other city employees had accepted a \$28.00 across the board increase and the police were already being offered an increase of \$37.37.

I would not completely ignore a "ripple" effect argument. But neither can I conclude that just because certain city employees have accepted a certain increase employees in other bargaining units are automatically tied to the figure that was accepted by other city employees. Even the City has not espoused such an argument as witnessed by the fact that it has offered more than \$28.00 across the Board. But obviously the City does feel that a point can be reached which will trigger militant efforts on the part of city employees generally and that the cumulative request will present a financial problem to taxpayers.

Since the request of the Police cannot be rejected merely because they ask for a greater increase than other city employees, it becomes necessary to determine if the increase is out of line when compared with the contracts that are being negotiated with comparable communities for employees in law enforcement or, to put it another way, to determine if the City offer is fairly comparable.

As is usual in connection with such comparisons, each side selected somewhat different communities which they thought useful for the purpose. Also each side selected somewhat different factors which they felt significant. In such a situation the task of a fact finder is to closely analyse the differing sets of figures and make a determination as to what he feels are the most meaningful and significant for the task that confronts him.

In this case my analysis of the facts presented by both parties led me to the conclusion that neither party was making a proposal which could be termed clearly unreasonable. I agree with the City that there is no requirement that Beaver Dam had to rank number one in the list of contractual benefits offered. I also noted that if the City met the demand of the Police Unit it would not put Beaver Dam unreasonably ahead of other communities in the geographic area or population range. Further, I noted that quite a few of the communities used in the comparisons did make a 5.5% contribution toward the employees share of the contribution to the Wisconsin Retirement Fund.

In view of the state of the record just detailed, I felt that I could not be found in any real degree of error if I selected either one of the offers.

In this case, however, there is a somewhat unusual factor which assists me with the close decision on reasonableness which I must make.

On March 9, 1973 the parties met with a Mediator to see if they could resolve the impasse in negotiations which had developed. The mediation session culminated in 6 members of a 7 man personnel committee of the Common Council (one Commitman was absent) voting to offer 5.5% toward the employee's share of the contribution to the Wisconsin Retirement Fund and \$8.00 salary increase across the Board. The Police Unit bargaining committee accepted the offer. Present at the mediation session was the city attorney and comptroller and the record reveals that neither of them raised any objection to the offer for which the 6 committeemen voted.

This indicates to me that on March 9, 1973 eight city representatives thought the offer of 5.5% toward retirement and \$8.00 across the board wage increase was not unreasonable. I also assume that an experienced mediator would not have played a role in attempting to get acceptance of something he felt was unreasonable.

The record indicated that on April 2, 1973 the Common Council failed to support the position taken by the Personnel Committee at the Mediation session on March 9 and voted 7 to 6 against accepting what was agreed to on March 9. Among those voting against accepting were 4 members of the Personnel Committee who had previously been among the 6 that voted for the 5.5% contribution toward the retirement fund and the \$8.00 wage increase. The City argued at the hearing that the change in attitude of the 4 had been induced by sober reflection away from the pressure of the mediation scene.

Certainly something produced the change. But of one thing I feel certain. I do not feel that it is likely that anything transpired at the mediation session which put pressure upon the Personnel Committee members which induced them to agree to unreasonable terms. I have had considerable experience as a mediator in the area of public employment and I have yet to run into a situation where I felt that the employer was agreeing to any suggestion which was unreasonable. My experience has been that employer representatives at mediation sessions are very knowledgeable and very careful to not make unreasonable concessions. So I do not accept the argument that something happened after the mediation session which could have enlightened the 4 Personnel Committee members to the extent that they would see something significantly unreasonable about the proposal for which they voted favorably on March 9.

But there is still another fact which gives me confidence in believing that the offer of 5.5% contribution to the retirement fund and the \$8.00 across the board pay increase was a reasonable offer. At the Common Council meeting of April 2, 1973 the offer was rejected by only one vote (the vote was 7 to 6). This means that even if we accept the argument that some members of the Personnel Committee were under pressure at the mediation session, there were still, on April 2, 6 members of the Council who felt the offer reasonable and only 7 who did not.

The record of the vote at the mediation session and at the Common Council is such as to tip my own thinking (after reviewing the facts submitted by the parties) in favor of issuing an award which will be set forth in the next section.

Before proceeding to the Award Section, I think it appropriate to make clear the complete propriety of my taking cognizance of the attitude of City representatives at the mediation session of March 9, 1973 and the Common Council meeting of April 2, 1973.

In grievance disputes an arbitrator does not want to know anything about proposed settlements. This is because a party may be willing to wash out a particular grievance without surrendering on principle or binding itself in respect to positions taken in the future. This situation is entirely different when a party agrees to contract terms at a mediation session or council meeting. Such an agreement is pertinent in connection with evaluating the reasonableness of an offer. Of course, it is true that parties can change their minds and change their votes, but a change does not with certainty indicate that an offer is unreasonable unless it is established that new facts were presented which were not available at the time of a particular vote.

The Award

The City should accept the proposal of the Bargaining Unit of the Police Department on the only unresolved issues standing in the way of a written agreement for 1973. Specifically the City should contribute 5.5% of the employees share of contributions to the Wisconsin Retirement Fund and grant an \$8.00 per month increase in salary across the board.

The terms I have ordered and the contract signed should be retro-active to January 1, 1973.

DATE August 13, 1973

SIGNED Reynolds C. Seitz /s/
Reynolds C. Seitz
Impartial Fact Finder and
Arbitrator
1103 West Wisconsin Avenue
Milwaukee, WI 53233