

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE FINAL AND BINDING ARBITRATION BETWEEN

CITY OF MANITOWOC

AND

MANITOWOC POLICE DEPARTMENT
PATROLMEN, LOCAL 731, AFSCME, AFL-CIO

CASE XX
No. 17501 MIA-81
Decision No. 12572-A

Appearances:

Mr. Paul D. Lawent, City Attorney, for the City.

Mr. Michael J. Wilson, District Representative, for the Unions.

ARBITRATION AWARD

Pursuant to a request jointly submitted by the City of Manitowoc, hereafter referred to as the City, and Manitowoc Police Department Patrolmen Local 731, AFSCME, AFL-CIO, referred to hereafter as the Union. The Wisconsin Employment Relations Commission, by an order issued on March 29, 1974 appointed Edward E. Hales, as an arbitrator to determine a dispute among said parties.

These proceedings are in accordance with final and binding arbitration provisions of the collective bargaining agreement between the parties.

A hearing was held in Manitowoc, Wisconsin on May 13, 1974, briefs were exchanged by the parties on June 17, 1974.

THE ISSUES:

The parties stipulated that the following issues were to be determined by the Arbitrator. (1) Whether or not members of the Manitowoc Police Department shall be required by the collective bargaining agreement to reside within the city limits of the City of Manitowoc; (2) Whether or not the pension contribution of the City of Manitowoc should be increased by \$10.00 per month.

DISCUSSION:

In deciding the issue of residency it appears as though the important question that must be answered is whether the duties of police officers of the City of Manitowoc are of such a special nature, that requiring them to live within the city is a reasonable and proper management objective.

The Wisconsin Employment Relations Commission has ruled that employee residency rules are conditions of employment and subject to collective bargaining.

In reviewing the evidence presented during the arbitration hearing it was revealed that the City of Manitowoc had a policy of requiring police officers to be city residents for many years. It appears from the evidence presented that the residency requirement for police officers was a policy that both parties operated under for many years.

The City presented evidence in support of the rule requiring police officers to live in the city. The argument that emergency services provided by the Police Department can be improved by requiring policemen to live closer to the place where they work has merit. The evidence presented by the City which indicated that the public interest and welfare would suffer from a residency restriction was not totally persuasive. Nevertheless, it is a management objective which may be reasonable in light of the evidence presented at this hearing.

The Union offered no testimony at the hearing which challenged the City's claim of "public interest and welfare" in requiring policemen to live in the city. The Unions position from reading their memorandum brief states the following. "The Union believes patrolmen should be free to locate their homes as they desire to their own advantage."

The Arbitrator questions this position in light of the fact that the duties and responsibilities of law enforcement personnel are much different than other city employees.

The Union further contends in its memorandum brief that; "To restrict a person from residing in the location of his choice would require proof in fact, no speculation, that the public interest and welfare would suffer from such freedoms." In determining whether a management position is unreasonable it is stated that "If the management determination is shown to have been made in haste, not based upon all pertinent facts, or if it involved an improper analysis of the facts, the Arbitrator will more often conclude that the determination was arbitrary than when it is shown to be based on a complete factual analysis and a detached review by higher management. Arbitrator Bert L. Luskin explained that the basis for a determination must be examined to ascertain whether the determination was arbitrary or not." Owen Fairweather, Practice and Procedure in Labor Arbitration P. 192 BNA, INC.

The City's analysis of the residency rule may not have been as in depth as the statement by Fairweather, but a reasonable management objective has been presented by the City in this arbitration to justify the regulation. It is the Arbitrators view that the record herein does not justify altering the City's management objective of requiring policemen to live in the city. The Union has not met the burden of showing the unreasonableness of the management determination.

The Arbitrator has reviewed the arbitration of City of Manitowoc and Local 731, AFSCME, AFL-CIO and The Manitowoc Police Patrolmen's Unit, decided on October 24, 1973. The award of arbitrator Howard S. Bellman states that residency was an arbitrable issue. The award by arbitrator Bellman does not conflict with the views of this Arbitrator relative to the arbitrability of that issue.

The City contends that its contribution to the pension fund should not be increased, but from reviewing the evidence presented the Unions request for a \$10.00 increase appears to be reasonable. The City's main objection to granting the \$10.00 increase is that it would put the patrolmen above any other city union and therefore be unfair to other city employees. The City fails to recognize that various occupations may require different benefits from the same employer because of job requirements.

The occupation of a police officer very often involves hazardous duty and constantly subjects them to the possibility of having to retire before the mandatory retirement age. As pointed out by the Union in its memorandum brief The State Retirement Program distinguishes between general employees and those in hazardous occupations. The important factor in determining pension contributions, it seems, should be based on the type of occupation, hazards involved, mandatory retirement age and other factors which may distinguish the nature of the positions.

The City reveals in its brief that a \$10.00 per month increase has been granted to the Detectives and Police Supervisors and the justification for the difference is that detectives salaries are much higher than patrolmen. A higher rank does justify a higher base pay, but patrolmen face the same basic occupational hazards as detectives and should receive comparable pension contribution.

The Arbitrator concludes that based on the evidence presented that the patrolmens request for a \$10.00 increase in the contribution to the pension fund is reasonable and no financial hardship will be placed upon the city in this request.

AWARD

It is the decision of the Arbitrator based on the whole record of these proceedings and all the evidence presented; (1) That requiring policemen of the City of Manitowoc to reside within the City of Manitowoc is a reasonable management objective in this arbitration, and a provision requiring policemen to live within the city shall be included in the 1974 Collective Bargaining Agreement. (2) That the request of the Union for a \$10.00 per month pension contribution is reasonable based on the evidence presented in this arbitration and shall be included in the 1974 Collective Bargaining Agreement. The \$10.00 pension contribution shall run concurrent with the 1974 Collective Bargaining Agreement.

Dated at Racine, Wisconsin June 24, 1974.

Edward E. Hales /s/
Edward E. Hales, Arbitrator

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AMENDED ARBITRATION AWARD

Pursuant to the stipulation of the parties dated June 28, 1974, requesting the Arbitrator to issue a final and binding award in conformity with Section 111.77 (4)(b) of the Wisconsin Statutes, the Arbitrator has again reviewed all of the evidence presented at the hearing on May 13, 1974, and the briefs submitted by the parties. The Arbitrator finds that the offers submitted by both parties are meritorious and has considered each offer with its potential effect on the public interest and welfare.

It is the Arbitrator's opinion that the public interest will be better served by the offer, which is the most reasonable in light of all the factors of this arbitration. The Arbitrator finds that the final offer of the Union is the most equitable offer weighing all the facts of this arbitration. The Union's final offer is within the financial ability of the City to meet the cost and will not adversely effect the public interest. The City's final offer may place an unreasonable burden on many police officers without necessarily aiding effective and efficient law enforcement. The mutual aid compact entered into by the City with other municipalities in times of emergencies greatly diminishes any burden the City may endure by police officers living outside the City of Manitowoc.

AWARD

It is the decision of the Arbitrator based on the whole record of these proceedings and all the evidence presented; (1) That police officers shall not be required to live within the City of Manitowoc. (2) That the pension contribution of the City of Manitowoc shall be increased by \$10.00 per month.

That this award shall run concurrent with the parties 1974 collective bargaining agreement.

Dated at Racine, Wisconsin this 8th day of July, 1974.

Edward E. Hales /s/

Edward E. Hales
Arbitrator