

OPINION IN
FINAL AND BINDING ARBITRATION

CITY OF DE PERE, WISCONSIN

-vs-

DE PERE POLICE BENEVOLENT ASSOCIATION

Case VII
No. 18631 MIA-135
Decision No. 13270-A

ISSUES: The determination of the provisions of the 1975 Agreement in respect to:
1) Salaries; 2) Employer contribution to the Wisconsin Retirement Fund; 3) Holiday Pay; 4) Compensatory time off for Holidays; and 5) Method of final determination of grievances.

ARBITRATION PROCEEDINGS

By "Order" dated February 4, 1975, the Wisconsin Employment Relations Commission appointed the undersigned, H. Herman Rauch, to resolve, through compulsory final and binding arbitration (pursuant to Section 111.77(3)(b) of the Municipal Employment Relations Act) the impasse which the Commission found to exist in the resolution of certain issues involved in the negotiations for the 1975 collective bargaining Agreement between the parties. By agreement of all concerned, the arbitration hearing was held on March 6, 1975 in a meeting room in the De Pere City Hall. The arbitrator made a record of the proceedings by means of his tape-recorder. A copy of that tape was subsequently produced for each of the parties, at their request.

The arbitrator exchanged the post-hearing briefs on March 25, 1975.

PRESENT FOR THE PARTIES

For the City of DePere: Richard J. Dietz City Attorney
Jerome J. Smits City Administrator [Witness]

For the Association: Patrolman John Hooper President [Witness]
Patrolman Keith Orde Vice-President
Patrolman Mark Peters Secretary-Treasurer [Witness]
Sheriff Norbert R. Froelich Sheriff of Brown County [Witness]
Thomas J. Parins [Crooks & Parins, S.C., Green Bay, Wis.] Attorney
Vivi L. Dilweg " " " " " "

BACKGROUND TO ISSUE

The City of De Pere (population 14,800) is located a few miles from the City of Green Bay (population 89,000) and within the boundaries of Brown County in the State of Wisconsin. The population of Brown County (not including the cities named) is 64,500.

The De Pere Police Benevolent Association is the recognized collective bargaining agent for the personnel of the De Pere Police Department. Currently, 19 of the 21 people in that Department are in the Association's bargaining unit.

This arbitration is conducted pursuant to Section 111.77(3)(b) of the Municipal Employment Relations Act, Wisconsin Statutes. Among its provisions is the following:

"The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification."
[111.77(4)(b)]

"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." [111.77(6)]

Among the issues which remained unresolved at the time of the hearing was the Association's February 27, 1975 "final offer" proposal [Association's Exhibit 1.]:

"That the present contract be amended so that it provides for seniority being the basis for vacation and shift assignment selection, all reflecting present practice in the Police Department." [Item #7.]

At the time of the hearing, the Association introduced specific language to implement the cited proposal. That language provided as follows [Assoc. Exhibit 1.]:

"Seniority Provision:

(A) Shift assignments, layoffs, and rehiring shall be made on the basis of seniority in the respective ranks held, and shift selections shall be made annually during the month of December, and additionally as may be needed during the year because of the death, resignation, discharge, retirement or promotion of any member or members of the Department.

(B) Vacation selections shall be made on the basis of seniority in the Department. Vacation schedules shall be posted each year as soon as practicable after the beginning of the year. Vacations shall be taken pursuant to procedures established by the Chief of Police to insure available personnel to perform the necessary duties of the Department."

In a letter to the arbitrator dated March 23, 1975, Counsel for the Association stated that the parties "...have agreed that [the proposed language cited above] reflects the present practice...and...is agreeable to both parties." The post-hearing Brief of the City also indicates that this issue was mutually agreed upon on that basis. Consequently, this matter ceases to be an issue in this case.

RE: SALARIES -- FINDINGS

The 1974 Agreement presented, in "Schedule 'A'", thirty "Range" numbers and the five-step "progression" schedule applicable to each.

Range No. 19 represented the Patrolmen. It showed the following, in respect to the salary payable to that classification:

| <u>Pay Basis</u> | <u>Step A</u> | <u>Step B</u> | <u>Step C</u> | <u>Step D</u> | <u>Step E</u> |
|------------------|---------------|---------------|---------------|---------------|---------------|
| Annual | 8,406.47 | 8,742.73 | 9,092.44 | 9,456.14 | 9,834.39 |
| Monthly | 700.54 | 728.56 | 757.70 | 788.01 | 819.53 |
| Biweekly | 323.33 | 336.26 | 349.71 | 363.70 | 378.25 |
| Hourly | 4.04 | 4.20 | 4.37 | 4.55 | 4.73 |

Article X of the 1974 Agreement named the employees and established the "Range & Step" which would apply to each. In effect, it provided as follows:

| <u>Employees</u> | <u>Range & Step</u> | <u>Salary [Annual]</u> |
|---|-------------------------|------------------------------|
| Messrs. Dorn, Kazik, Pollak | 19 C | \$ 9,092.44 [757.70 per mo.] |
| Messrs. Castelic, Gleason, Orde, Peters | 19 D | 9,456.14 [788.01 per mo.] |
| Messrs. Brick, Etter Jr., Hooper, Lokmer, Morella, Novak, Smits | 19 E | 9,834.39 [819.53 per mo.] |
| Messrs. Aerts, Ahasay, Gerke, Jakubenas | 22 E | 11,062.36 [920.86 per mo.] |

The following are the monthly salary rates proposed (for 1975) by the parties for the Patrolman classification and the progression steps indicated:

| | <u>Starting</u> | <u>6 months</u> | <u>18 months</u> | <u>30 months</u> | <u>42 months</u> |
|--------------|-----------------|-----------------|------------------|------------------|------------------|
| Association: | 595.00 | 768.00 | 838.00 | 883.00 | 928.00 |
| City: | 790.00 | 821.00 | 854.00 | 888.00 | 923.00 |

The following is the monthly salary proposal (for 1975) by the parties for the classifications of Sergeant and Investigator:

| | <u>Starting</u> | <u>6 months</u> |
|--------------|-----------------|-----------------|
| Association: | 973.00 | 1,031.00 |
| City: | 1,038.00 | |

The City also proposed that the monthly salary for the classifications of Corporal and Assistant Investigator be established at \$960.00 per month for 1975. The Association made no proposals in respect to those positions because, as it alleges, there is nobody in those classifications at this time and there has been no negotiations between the parties to establish or fill those positions. [Association's Post-Hearing Brief, p. 2.]

[Note: The data respecting proposed salaries for 1975 is taken from the City's amended proposal dated February 27, 1975 and the Association's proposal of the same date. Those proposals were a part of the "final offers" of the parties to which they are committed in this case.]

The evidence establishes that, for 1975, the following salary schedule applies to the Law Enforcement Officers of the City of Green Bay and Brown County:

| | <u>Starting</u> | <u>6 months</u> | <u>18 months</u> | <u>30 months</u> | <u>42 months</u> |
|---------------|-----------------|-----------------|------------------|------------------|------------------|
| Green Bay: | 670.00 | 843.00 | 913.00 | 978.00 | 1,003.00 |
| Brown County: | 670.00 | 843.00 | 913.00 | 958.00 | 1,003.00 |

[Note 1: The data for Green Bay was supplied to the Association by the Comptroller, City of Green Bay, and was submitted to the arbitrator by the Association with its Post-Hearing Brief, March 23, 1975 (copies indicated to have been sent to the City Attorney and to the City Administrator of the City of De Pere). The data for Brown County is contained in a letter to the arbitrator dated February 19, 1975, in which the Association repeats the salary schedule previously proposed for its members (as of November 27, 1974) and which at the time of the hearing the parties agreed represents the salary structure which is applicable to the Brown County Sheriff's Department.]

[Note 2: The arbitrator suspects that the difference in the rates given for the 30-month stage of progression is a typographical error.]

Arbitrator's Comments Re: Salary Proposals

The arbitrator notes the following in respect to salary proposals for the Patrolmen in the De Pere Police Department:

- 1) The City proposes a starting rate which is \$195.00 per month higher than the rate asked for by the Association and is \$120.00 higher than is the hiring-rate established for Patrolmen in the City of Green Bay and in Brown County. The salary which the City proposes for Patrolmen who have reached the 5th and final stage of progression (3 1/2 years) is \$5.00 per month below the Association's proposal and is \$80.00 below the rate applicable in the City of Green Bay and in Brown County.

The starting rate proposed by the Association is \$75.00 below the rate applicable in the other 2 named law enforcement departments (Green Bay and Brown County) and that same differential is proposed for each stage of the salary progression.

- 2) The uncontested evidence in this case indicates that in 1975:
 - a) All of the Patrolmen here involved, except one, will be or will become eligible for the salary applicable to the final (the "E") stage of the progression schedule;
 - b) The one exception will be in the second last (the "D") stage of progression;
 - c) There are no plans by the City to add to its present force.
- 3) The parties agree that the various economic factors (cost-of-living, income, etc.) which prevail in the City of Green Bay and in the urban areas of Brown County outside of the cities of Green Bay and De Pere, apply in substantially the same way to De Pere.

RE: EMPLOYER CONTRIBUTION TO EMPLOYEES' RETIREMENT FUND

The City now pays \$35.00 of the monthly contribution to the Wisconsin Retirement Fund which is required, by law, of each employee. It proposes to continue paying this sum during the year 1975. The Association proposes that the City's contribution be increased so that it will pay up to \$60.00 per month per employee. This is the sum which the City of Green Bay and Brown County now pay toward this legal obligation of its Law Enforcement personnel.

The arbitrator noted earlier that all except one of the Patrolmen will qualify for the top (the "E") salary rate in 1975. Under the salary rate proposed by the Association for those employees, the Association's proposal pertinent to retirement contributions would cost the City \$55.68 per month per top-rated Patrolmen. The only employees who, under this proposal, would not have all of this required employee contribution paid for by the City would be the "Sergeant" and "Investigator" classifications. The Association calculates that the payment increase by the City proposed by it would represent a saving of \$20.68 per month for each top-rated Patrolman, \$22.98 for the Patrolman who will be in the "D" stage of progression in 1975 and \$25.00 for the Sergeants and Investigators. In effect, as the City points out, these savings represent "compensation" increases to the employees in the cited amounts, because the "deductions" from their salary will be that much less for this item.

The parties introduced into evidence, by stipulation, the following facts pertinent to the salary and the Retirement Fund Contribution proposals involved in this case:

1. 1974 total salary and Employer contribution to employee retirement for entire De Pere Police Department: \$221,925.00.
2. Increase of cost from 1974 to 1975 under present De Pere step system without any increase: \$2940.00.

3. Union Proposal's cost over 1974 after adding cost of present step system to 1974 costs: \$28,573.00.
4. City Proposal's cost over 1974 after adding cost of present step system to 1974 costs: \$24,861.00
5. Difference in cost between City's Proposal and Union's Proposal: \$3712.00.
6. De Pere 1974 Operational Budget after adding Employer contribution to Employee Retirement: \$266,845.00.
7. De Pere 1975 Operational Budget under City's Proposal after adding Employer contribution to Employee Retirement: \$309,251.00.
8. De Pere 1975 Operational Budget under Union Proposal after adding Employer contribution to Employee Retirement: \$312,963.00.
9. Green Bay 1974 Operational Budget after adding Employer contribution to Employee Retirement: \$2,049,450.00.
10. Green Bay 1975 Operational Budget after adding Employer contribution to Employee Retirement: \$2,342,925.00. [Taken from Joint Exhibit II.]

The Association introduced into evidence an Exhibit (#4) which shows that, of the 27 Wisconsin urban communities with population 10,000 to 25,000, a total of 23 pay the entire amount of the Retirement Fund Contribution.

The Association also introduced into evidence an Exhibit (#2) which compares the per capita "Operational Budget and Retirement" cost for Police services in the cities of De Pere and Green Bay for the year 1974 and the year 1975 (based on the 2 salary and Retirement Fund Contribution proposals here involved). That Exhibit shows:

| | <u>1974</u> | <u>1975</u> | <u>City's Proposal for 1975</u> | <u>Association's Proposal for 1975</u> |
|------------|-------------|-------------|-------------------------------------|--|
| Green Bay: | \$23.02 | \$26.32 | | |
| De Pere: | 18.02 | | \$20.89 | \$21.13 |

The Association points out that, while the per capita cost for 1975 in Green Bay increased \$3.30 over 1974, the Association's proposal applicable to 1975 in De Pere would increase the per capita cost only \$3.11; that, under its proposal, the per capita cost for 1975 in De Pere would be \$5.19 less than it is in Green Bay.

The City presented an Exhibit (#2) showing that the salary increase it proposes would increase that cost \$27,801.48 or 14.9%. It also shows that the slotting of the individual employee into his proper place in the newly-established progression schedule will provide the individuals involved with increases ranging from 12.4% to 18.1% over the salary they received under the 1974 Agreement.

RE: HOLIDAY PAY

The 1975 Agreement between the parties established the following as holidays: New Year's Day, Good Friday afternoon, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, afternoon of December 24 and Christmas Day. It also provided holiday pay at the rate of \$35.00 per day for the cited days.

The Association proposes that:

- 1) Holidays be paid at the normal hourly rate applicable to the individual employee;
- 2) That the employees "be given the alternative of being paid for holidays, or of taking compensatory time off in lieu of pay;" that such time off is "to be taken pursuant to Departmental rules insuring that a normal complement of men be on duty at all times."

The Association proposed the "hourly rate" formula because the holiday pay which the individual employee will receive will reflect his personal salary per day. It urges the "compensatory time off" alternative as a substitute for the possibility that, when the Federal Fair Labor Standards Act begins to apply to the City, the parties may lose the current right to provide that the employees be compensated for overtime work through compensatory time off. It also suggests that, to the extent that the employees choose and are granted time off, the cost of holiday pay to the City is lessened.

The City proposes that the flat rate for holiday pay be continued, but that it be increased to \$40.00. It contends that this rate produces a result which is "substantially the same as" the hourly-rate formula, proposed by the Association, provides. It calculated that, under its proposed salary for Patrolmen who are at the top of their progression schedule (the majority of the present personnel in the bargaining unit), the hourly-rate formula proposed by the Association would produce only a \$2.60 per day advantage over the \$40.00 per day proposed by the City.

The City also argues that the reason stated by the Association for wanting the right to take compensatory time off is not valid now, because:

- 1) The "Federal Register," Vol. 39, #212 (Friday, November 1, 1974 pp. 38663-38666) suggests that the overtime provisions of the Federal Law will not be controlling in respect to Police personnel until several years hence;
- 2) When it does become effective, the possibility exists in the law that it may be interpreted to disallow compensatory time off for holidays as well as for over-time worked.

The City also stated that, to allow compensatory time off for holidays, would mean that, in addition to such time off for overtime, the Police Department would be faced with the possibility of having 133 shifts more in 1975 in which it would have to operate without a full complement of Officers.

The Association introduced into evidence an Exhibit (#4) which shows that, of the 27 Wisconsin urban communities with population 10,000 to 25,000, a total of 21 compensate for holiday pay on the "hourly rate" basis. Of these, 3 have established "compensatory time off" as an alternative, and 3 compensate on the "per day" basis.

The City objects to the increase proposed by the Association because, for most of the affected employees, the \$60.00 maximum being sought exceeds the amount required to pay the entire contribution required, thus "creating an artificial fringe benefit during the 1975 contract year." It also has the effect of increasing substantially the salary of each employee.

RE: METHOD OF FINAL DETERMINATION OF GRIEVANCES

The "Grievance Procedure" contained in the 1974 Agreement provided, in effect, that when, in discussions with the Police Chief, a grievance is not disposed of in a mutually satisfactory manner, it may be submitted "to the Police and Fire Commission and the Mayor." It then provided that, "the Commission shall submit a full report and recommendation to the Mayor for a final determination."

The Association proposes that an additional step be added to provide for final arbitration by an impartial arbitrator appointed by the Wisconsin Employment Relations Commission.

The City proposes that the 1974 provision be retained, because:

- 1) It is "in substantial compliance with the provisions of Section 62.13(5), Wisconsin Statutes and, under that Statute, the Association may appeal "to the Circuit Court," if it is dissatisfied with the Mayor's decision.
- 2) The Mayor has the responsibility of exercising independent judgment in respect to disputes between department heads and their employees.
- 3) There is no contention in this case that, under the prevailing procedure, grievances were not fairly and impartially handled, or that unfair decisions resulted.

The Association presented into evidence an Exhibit (#4) which shows that, of the 27 Wisconsin urban communities with population 10,000 to 25,000, a total of 21 provide that the final appeal of a grievance is to arbitration by an independent arbitrator.

ARBITRATOR'S CONCLUSIONS

Pursuant to his function as defined earlier, the arbitrator concludes as follows:

Re: Salary Increase Issue:

It appears from the evidence that only 5 of the employees in the 19-member bargaining unit are not in the Patrolman classification. The evidence also establishes that 13 of the Patrolmen will qualify for the top (the "E") rate of that classification. It establishes, finally, that the salary proposal of the Association, in its "final offer" as it applies to the top-rated Patrolmen, is only \$5.00 per month higher than is the salary proposal by the City for those men.

In the opinion of the arbitrator, therefore, the cost difference between the salary proposals of the parties, as those proposals will have application in 1975, is of minor importance in this case. Since the arbitrator must select, as a "package", the final offer of the party whose proposals on all of the disputed issues appear to be most appropriate in the light of the factors which are to be considered, the choice of the salary proposal will, in this case, depend on the appropriateness of the "offers" made in respect to the other disputed issues.

Re: Employer Contribution to Employees' Retirement Fund

The Association is proposing that the City increase its payment to this employee contribution obligation, from the 1974 rate of \$35.00 per month per employee in the bargaining unit (which is the rate the City proposes should continue for 1975), to whatever amount of contribution is owed by the employee, but not exceeding \$60.00 per month per employee. This proposed increase would cost the City in the neighborhood of \$20.00 per month per man more than this consideration cost in 1974.

The reasonableness of these proposals must be gauged in the light of the facts that:

- 1) For 1975, the City of Green Bay and Brown County are committed to pay up to \$60.00 per month per employee toward this contribution required of their Law Enforcement employees by State law.
- 2) The employees with the Patrolman functions in those jurisdictions have a salary rate which is \$75.00 per month higher than is the De Pere rate for comparable progression status.
- 3) The Patrolman classification of employees in the City of De Pere have training, qualifications and responsibilities which parallel those employed by the other jurisdictions named.
- 4) Economically, the three governmental jurisdictions are relatively equal.
- 5) There was no showing that the requirement to pay the sum proposed by the Association toward the contribution here involved would create grave financial problems for the City of De Pere.

Re: Holiday Pay

The Association's proposal that the holiday pay be based on the hourly-rate of the individual employee (instead of increasing it \$5.00 to \$40.00 per day, as proposed by the City) would produce a minor cost increase over the amount payable under the City's proposal. However, it would have the advantage of establishing the pay in direct line with the individual employee's salary rate.

The Association's further proposal that the employees be allowed to substitute compensatory time off for the money payment would be a financial advantage to the City, to the extent that the employees requested that alternative, and to the extent that the Police Department felt free to accept their absence for this purpose. The latter aspect of the proposal would appear to provide the control needed by the Department to assure the desired adequate manning.

Re: Method of Final Determination of Grievances

The Association's proposal that the terminal point of the Grievance Procedure be arbitration by a qualified outsider is now common practice in collective bargaining agreements effected in the public sector. That proposal does not preclude the Mayor from continuing to function as he does now. Experience suggests to the arbitrator that there are times and circumstances when the interest of all concerned is best served by the utilization of arbitration as the final step in the disposition of a complaint. Then too, in recent years, Courts of law have recognized that arbitration operates in an area of rights in which decisions by impartial specialists in the field of employer-employee relations are generally preferable.

DECISION

In view of the arbitrator's obligation to select, "without modification," the "final offer" of the party whose proposals, in respect to the issues in dispute, and in the light of the evidence presented (when measured by the "factors" established by the law under which this proceeding is conducted), the arbitrator concludes that the "final offer" of the Association is the more equitable and appropriate of the two presented and, therefore, should be incorporated into the 1975 Agreement between the City of De Pere and the De Pere Police Benevolent Association.

April 3, 1975

Date

H. Herman Rauch /s/

H. Herman Rauch, Impartial Arbitrator
(by Appointment, Wisconsin Employment
Relations Commission)