

STATE OF WISCONSIN

ARBITRATION AWARD

In the Matter of the Arbitration between: :

GENERAL DRIVERS, DAIRY EMPLOYEES, WAREHOUSEMEN, :
HELPERS & INSIDE EMPLOYEES' LOCAL UNION NO. 346 :

and :

DOUGLAS COUNTY (SHERIFF'S DEPARTMENT) :

Re: Case XLVII
No. 19045
MIA-165
Decision No. 13572-B

Background

The Union represents a unit consisting of all law enforcement personnel in the employ of Douglas County excluding Sheriff, Undersheriff, Office Clerical employees, Jailers, Ambulance Attendants and all other employees. There are 17 in the unit, including one Lieutenant, one Juvenile Officer, one Detective Sergeant, four Sergeants, and ten Deputies. This dispute involves a collective bargaining agreement for 1975. A petition to initiate arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act was filed by the Union on April 14, 1975. The Wisconsin Employment Relations Commission found that the conditions precedent to initiation of binding arbitration had been satisfied and that an impasse existed. The parties thereupon filed their final offers as provided in the law and selected an arbitrator in accordance with the usual procedures. On September 16, 1975 WERC notified the parties that Mr. John Waddleton had been appointed as arbitrator.

Mr. Waddleton held a hearing in Superior on October 29, 1975. The parties presented evidence to support their respective positions in the form of documents and oral testimony. Both parties later filed written briefs. Mr. Waddleton used a recording machine to tape the proceedings. Thereafter, Mr. Waddleton was unable to complete his work in this dispute and on November 5, 1976 the undersigned was appointed by WERC as a substitute arbitrator to issue a final and binding award.

Shortly after November 5, I examined the materials that had been submitted at the original hearing and the briefs that had been filed after that hearing. After listening to the tape made by Mr. Waddleton of the original hearing, I informed the parties by letter dated November 20, 1976 that except for fourteen and one-half minutes of introductory material, there was nothing audible recorded on the tape. After some further telephone communication and written correspondence with the parties it was agreed that an informal rehearing would be held where the representatives of the parties would review for the substitute arbitrator the materials that had been presented at the original hearing in October, 1975. This rehearing was held on March 4, 1977. Both representatives reviewed the written exhibits and their notes concerning the testimony of witnesses at the original hearing. They finished with oral arguments.

.. Appearing for the Union, General Drivers, Dairy Employees, Warehousemen, Helpers & Inside Employees', Local Union No. 346, was Mr. Don L. Bye, of Halverson, Watters, Bye & Downs, Attorneys and Counsellors, 700 Providence Building, Duluth, Minnesota 55802. Appearing for Douglas County was Mr. Robert Klasnya, Representative, Employers Industrial Relations Council, 2001 London Road, Duluth, Minnesota 55812. These were the same representatives of the parties who presented their positions and evidence to Mr. Waddleton. The findings and the award herein are based upon the written evidence, the briefs in the original hearing, and the oral comments and arguments made by Mr. Bye and Mr. Klasnya at the session held on March 4, 1977.

Discussion of the Issues

There are two issues. The County would increase rates by varying dollar amounts from the 1974 levels effective January 1, 1975 and July 1, 1975. The County's final offer is appended as Addendum "A". The issue on page 2 of Addendum "A" has been settled and is no longer in dispute. The Union would increase rates \$20 across-the-board from the 1974 levels effective January 1, 1975 and provide monthly longevity payments of \$5 after five years of service, with similar increments up to \$20 after twenty years of service. In addition, the Union would provide a cost-of-living allowance effective January 1, 1975 that would be based upon a formula that would produce \$35 per year for each individual for each full .4% change in the level of the All Items, U.S. Average, Consumer Price Index between January and July, 1974. The escalator clause would then operate again effective July 1, 1975, based upon the same formula for the period from July, 1974 to January, 1975. The Union's final offer is appended as Addendum "B."

Since at the time of the original hearing in October, 1975, all of the data were available upon which the escalator formula was based, it is possible to show in the following table how the two offers would compare during the year of the prospective labor agreement.

<u>Classifications</u>	<u>Rates in 2nd half of 1974</u>	<u>Douglas Co. Final Offer</u>		<u>Union Final Offer</u>	
		<u>1/1/75</u>	<u>7/1/75</u>	<u>1/1/75</u>	<u>7/1/75</u>
Lieutenant & Juvenile Officer	\$864.10	\$916	\$953	\$924.93	\$962.85
Detective Sergeant & Sergeant	813.10	862	896	873.93	911.85
Deputy (Over 6 Months)	749.10	794	826	809.93	847.85
Deputy (Under 6 Months)	699.10	741	771	759.93	797.85

None of these figures includes "Holiday Pay," figures in the 1974 labor agreement that are added to "Base Pay" to arrive at "Gross Pay." The figures in the table above reflect "Base Pay." They do not include the Union's proposal for longevity pay. If the proposed longevity pay figures were included, nine of the fourteen individuals in the unit would receive varying amounts from \$5 to \$20 per month in addition to the figures in the table. The parties agreed at the hearing that the total longevity commitment during the 1975 contract year would be \$1020 if longevity payments were added.

The Union position is based on an effort to achieve approximate parity with the police force in the City of Superior. The Union's proposed \$20 across-the-board increase plus the application of the cost-of-living clause taken directly from the agreement between the City of Superior and the Policemen's Association would result in figures a bit below those for the members of that unit. The longevity pay proposal is exactly the same as the one in the Superior policemen's agreement.

The Unions' general position is that Douglas County Sheriff Department personnel should be compared with personnel doing similar work nearby; that is, in the Cities of Superior and Duluth and in St. Louis County, Minnesota, the county in which Duluth is the County Seat. Rate comparisons indicated that personnel in similar classifications in the Duluth Police Department and in the St. Louis County Sheriff's Department were paid about \$200 to \$300 per month more than personnel in the Douglas County Sheriff's Department.

Conversely, the County feels that its offer is consistent with its settlements in other units for 1975. Rather than comparing these employees solely with policemen in the City of Superior and with nearby jurisdictions in Minnesota, the County would compare itself with law enforcement personnel in other counties in the northwest region of the State of Wisconsin. In all cases their rates for personnel doing similar work are substantially lower than the rates paid in Douglas County. As to the cost-of-living escalator clause, the County is opposed to it as a condition inappropriate in the public sector. Like the longevity proposal, its adoption would constitute a change in policy as regards compensation which the County would not agree to in collective bargaining in the absence of arbitration.

There was voluminous testimony introduced by both sides to support their respective positions.

In addition to basing employment conditions for the employees on a comparison with the Superior Police Department, the Union argues that adoption of a cost-of-living clause would provide a better basis for bargaining over employment conditions in the future, that the existence of an objective standard for wage determination would reduce the scope of any dispute in ensuing negotiations and thereby the time taken up by annual negotiations. Although it did not commit itself to it, the Union suggested that a two year agreement would be a strong possibility in future bargaining if the cost-of-living clause were adopted.

The County, however, points out that this was the second year in succession that this Union has gone to arbitration under the provisions of Chapter 111.77(3). In this case the objective is to achieve two conditions of employment, a cost-of-living clause and a longevity clause that the County would not agree to in negotiations if there were no outside intervention. The County disputes the validity of any comparison with Duluth or St. Louis County on grounds that their populations are not comparable to those of Superior and Douglas County. Furthermore, because they are in another state, it is inappropriate to make simple comparisons of rates without also exploring the effects of other influences stemming from different state statutes and local ordinances. The County also stressed the different economic condition of Douglas County, its high unemployment rates, its net outmigration, the high percentage of low income families, as well as a general state of economic distress in the County. Finally, the County emphasized that the level of its settlements with other unions and the increases given to non-union employees were all lower than the settlement proposed here by the Union and that a departure from the previous pattern of settlements would have an adverse effect upon the County's general bargaining posture.

Opinion

As is the situation in many other cases in final offer selection arbitration neither of the final offers is attractive to the arbitrator. The decision is further complicated by the need to make a judgment on the basis of facts available at the time of the original arbitration hearing, not on what we know has occurred since that time.

I have some reservations about the Union's proposal. In the first place, the cost-of-living clause is taken directly from the agreement between two other parties. It appears to have been designed to provide wage increases proportionate to increases in the cost-of-living for deputies who were being paid \$729.17 per month at the time the clause was first adopted. ($\$35$ per year divided by $.4\%$ yields $\$8750$, or $\$729.17$ monthly.) This means that for higher paid personnel (which in 1975 would include everyone on the force) there are decreasing percentage increments of extra payments as the cost-of-living clause operates. That is, personnel paid at a rate of $\$729.17$ per month would get a proportionate increase in wages if the cost-of-living went up $.4\%$ ($\$729.17 \times .004 = \$2.917 \times 12 = \$35$ per year.) Higher paid employees would get less than proportionate increases. For instance, a Lieutenant under the Union's proposal, who was earning $\$924.93$ in the first half of 1975, would also get the same increment of $\$35$ as the Deputy even though his cost-of-living, as figured on a percentage basis from his salary, would have gone up $\$44.40$ per year ($\$924.93 \times .004 = \$3.70 \times 12 = \$44.40$).

All cost-of-living clauses based on this kind of a formula have the same characteristic. Indeed, they are designed in such a way as to produce equal dollar increments at all pay levels. If this is what the parties who negotiate them want, then there is no reason for an arbitrator to be critical. But since it has offered larger dollar increments to the higher paid classifications in the unit (see Addendum "A"), it appears that the County prefers not to compress the scale, which will be the outcome of adopting the Union's proposal. The formula that the Union proposes was already out of date in 1975. It can be revised, of course, in future negotiations, but it is fair comment to say that if a cost-of-living clause is to be adopted, it would be better if it were devised by the parties who have to live with it.

In the second place, the cost-of-living clause proposed by the Union does not reflect current changes in the cost-of-living. Depending upon how one interprets it, the clause operates with a lag of from six months to one year. That is, the cost-of-living allowance effective for the first pay period after January 1 is based upon the change in the index for the six month period beginning one year in the past. Should the cost-of-living rise rapidly for six months, then stabilize or decline for six months, a wage increase would coincide with the period of stable or declining living costs. Conversely, if the cost-of-living should rise sharply after a year of declining or stable prices, it would take six months to a year for paychecks to reflect the increase. These are hardly fatal defects, of course, and they have a distinct advantage to the County in that with some judicious judgments based on trends, salary rates would be predictable one year in advance.

The parties informed the arbitrator at the March 4 hearing that they were in agreement that the clause proposed by the Union was intended to be based on the All Items, U.S. Average, CPI rather than the index for the Minneapolis-St. Paul area, as specified in the final offer shown in Addendum "B". Consequently it would not operate in exactly the same fashion as the clause in the City of Superior-Wisconsin Professional Policemen's Association agreement. In other respects it would operate according to the wording proposed. Two comments are appropriate here on what appears to be the only interpretation that can be made of those words: First, the clause operates on the basis of a \$35 per year allowance for each full .4 of 1% increase in the index during the six month period specified. Thus, although the index rose by 5.94 per cent between January and July, 1974, this represents 14 rather than 15 units of \$35. And although the index rose by 5.47 per cent between July, 1974 and January, 1975, this represents only 13 units of \$35, not 14 units. Second, the clause operates anew each six months. Any residual part of a \$35 unit from the previous six months is ignored and dropped.

According to my calculations of how the clause would have operated in 1975, based on 1974 changes in the CPI, U.S. Average, the cost-of-living allowance actually paid would at all levels be somewhat below actual percentage increases in the cost-of-living. At the Lieutenant level (excluding the \$20 across-the-board increase) the increase from \$864.10 to \$942.85 as a result of operation of the escalation clause would equal 9.1 per cent, while the percentage rise in the index itself was 11.7 per cent. At the Detective Sergeant and Sergeant level, the increase from \$813.10 to \$891.85 would equal 9.7 per cent. At the Deputy (Over 6 Months) level the increase from \$749.10 to \$827.85 would equal a 10.5 per cent increase. If the \$20 across-the-board increase is included, then the increases in percentage terms exceed the percentage increases in the index except in the case of Lieutenants. The point being made here is that the operation of the clause would produce wage increases somewhat smaller in percentage terms than the percentage increase in the cost-of-living. This effect would be somewhat more pronounced at the higher salary levels and, as noted above, the effect would be to reduce present differentials in the salary structure.

The clause itself is a modest one and would not produce changes in salaries that the County could not cope with and even predict a year in advance. I have some concern about choosing the Union's proposal because of the County's arguments (1) that it would not otherwise accept a cost-of-living clause if it were free to resist it in the absence of an arbitration proceeding, and (2) the variation its adoption would produce when compared with settlements in several other collective bargaining units. While I recognize that these are both important considerations, I believe that it is even more important to arrive at a settlement of this dispute that will provide a basis for coordinating the employment conditions of the Deputy Sheriffs with those of the Superior Police Department. The two forces occupy the same building and cooperate with one another in the performance of their work in separate but adjacent jurisdictions. It is more important that this decision proceed in the direction of that objective than that it try to achieve some kind of equity with settlements in collective bargaining units of other County employees. On the basis of similarity in duties, the necessity of working together, and possible interchangeability of personnel there is more reason to compare the employment conditions of the Deputy Sheriffs with those of the Superior Police Officers than with the County highway or hospital employees. In that connection I would make two comments: (1) The County's own offer is somewhat higher than the settlements it describes for the other units. (2) Awarding a cost-of-living clause is not a

precedent setting event. There are a great many cost-of-living clauses in municipal collective bargaining agreements in Wisconsin, and some of them have been awarded by arbitrators. This particular clause is not disadvantageous to the County. And the longevity provision, which was hardly mentioned by the County at the rehearing and in its earlier brief, is modest indeed.

Chapter 111.77(6) gives the following criteria to the arbitrator:

(6) 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 employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees 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 employees, 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.

In my opinion an award in favor of the Union satisfies the pertinent criteria listed above. Although the general economic distress of the area was emphasized by the County, there was no significant issue of ability-to-pay raised, and in any event, the difference between the two offers is not great enough to make that an issue. I believe that the significant comparison for the employees in this unit is with the police force of the City of Superior. In my experience there is a general trend within the state toward salary equity between county and city law enforcement personnel. The parties made very little attempt to draw comparisons in wage adjustments from the private sector. Such comparisons would have less relevance to law enforcement personnel compensation than to other County employees anyway. The escalator clause proposed by the Union, as described above, is modest in meeting the criterion of cost-of-living in 111.77(6)(e). Although the County showed that insurance payments on behalf of employees in this unit are higher than comparable payments made by the City of Superior to its policemen, the difference was not great. In my opinion an award for the Union is also consonant with the criteria described in 111.77(6)(f), (g), and (h) of the statute.

If I were able to fashion an award rather than accepting one or the other final offer, I would probably not arrive at the same conclusion as that represented in the Union's final offer. But it is not unreasonable in comparison with other settlements for the year 1975. In my opinion it would be wise for the County to adopt a policy of coordination of the terms and conditions of employment for the members of this unit with those for the members of the Superior Police Department. Although the Union's proposed escalation clause has some disadvantages, as I have described, its adoption would be consistent with that recommended objective. For these reasons I make the following award:

AWARD

The final offer of the Union is adopted, with the condition that the cost-of-living clause quoted in the document submitted to the Wisconsin Employment Relations Commission on May 7, 1975 and included here as Addendum "B" operates on the basis of changes in the All Items, U.S. Average, Consumer Price Index, not the Minneapolis-St. Paul Index, for the year 1974, not 1973. The other conditions in the Union's final offer are adopted.

Dated: March 31, 1977
at Madison, Wisconsin

Signed: David B. Johnson /s/
David B. Johnson
Substitute Arbitrator appointed
by the Wisconsin Employment
Relations Commission

ADDENDUM "A"

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RECEIVED

UN-4 1975

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Case No. XLVII
No. 19045 MIA-165
Decision No. 13572

In the Matter of the Petition of
GENERAL DRIVERS, DAIRY EMPLOYEES,
WAREHOUSEMEN, HELPERS & INSIDE
EMPLOYEES LOCAL UNION NO. 346
For Final and Binding Arbitration
Involving Law Enforcement Personnel
in the Employ of
DOUGLAS COUNTY (SHERIFF'S DEPARTMENT)

AMENDED FINAL POSITION OF DOUGLAS COUNTY

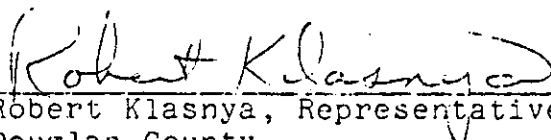
The County provides their final offer as follows:

<u>Lieutenant and Juvenile Officer:</u>	
Effective January 1, 1975-----	<u>37</u> \$916.00
Effective July 1, 1975-----	953.00
<u>Detective Sergeant and Sergeant:</u>	
Effective January 1, 1975-----	<u>34</u> \$862.00
Effective July 1, 1975-----	896.00
<u>Deputy (Over 6 Months):</u>	
Effective January 1, 1975-----	<u>32</u> \$794.00
Effective July 1, 1975-----	826.00
<u>Deputy (Under 6 Months):</u>	
Effective January 1, 1975-----	<u>30</u> \$741.00
Effective July 1, 1975-----	771.00

Health and Welfare: Effective January 1, 1975, the Employer agrees to contribute on behalf of all eligible employees an amount not to exceed Fifty Dollars and Three Cents (\$50.03) per month towards the cost of a family rate and Twenty-four Dollars and Twenty-seven Cents (\$24.27) per month towards the cost of a single plan, semi-private room rate.

The Employer guarantees that the employee shall not pay more than One Dollar (\$1.00) per week or Four Dollars and Thirty-three Cents (\$4.33) per month for family coverage. The single employee shall make no contribution for the life of this Agreement. The level of benefits shall be the same as in effect as of January 1, 1975.

This final position is submitted this 3rd day of June, 1975.

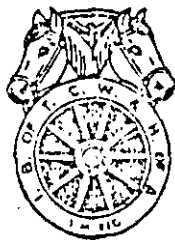

Robert Klasnya, Representative
Douglas County

GENERAL DRIVERS,

Dairy Employees, Warehousemen, Helpers & Inside Employees

LOCAL UNION NO. 346

Russell C. Doty, Secretary-Treasurer
Thomas Kellerhult, President
Orval Anderson, Vice President
Sherman Liimatainen, Recording Secretary



AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

2802 WEST FIRST STREET  20 DULUTH, MINNESOTA 55806

May 7, 1975

RECEIVED

MAY - 8 1975

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Mr. Morris Slavney, Chairman
State of Wisconsin Emp. Relations Commission
Room 906
30 W. Mifflin St.
Madison, Wisconsin 53703

Re: Douglas County (Sheriff's Dept.)
Case XLVII No. 19045 MIA-165

Dear Mr. Slavney:

Enclosed is the Union's final offer in reference to
arbitration for Douglas County Sheriff's Department.

Very truly yours,

GENERAL DRIVERS UNION NO. 346

Orval F. Anderson
Orval F. Anderson
Vice President

OFA:ab

Encls.

cc: Robert Klasnya
Jim Murray

Keep 'Em Rolling — When you make a purchase, always say, "DELIVER IT."

RECEIVED

MAY - 8 1975

DOUGLAS COUNTY
DEPUTY SHERIFFS

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

The Union provides their final offer as follows:

- Issue 7*
1. Effective January 1, 1975, \$20.00 across the board. ?
 2. Cost-of-living adjustment the same as was granted the Superior Police Department, effective January 1, 1975. Cost-of-living formula enclosed. ?
 3. Longevity. \$ 5 per month after 5 years of service.
10 per month after 10 years of service.
15 per month after 15 years of service.
20 per month after 20 years of service.
 4. Retroactive to January 1, 1975.

RECEIVED

MAY - 8 1975

(4) Cost of Living Clause

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Section 1. Effective with the first pay period following January 1, 1974 and semi-annually thereafter during the term of this agreement, a cost of living adjustment, if applicable, shall be paid.

Section 2. Such adjustment shall be based on percentage changes, if any, in the Consumer Price Index, New Series, for the Minneapolis-St. Paul area of the Bureau of Labor Statistics, U. S. Department of Labor (1967), (hereinafter referred to as the C.P.I.).

Section 3. If, as of July 1973, the C.P.I. shall have risen to a level which is a full .4 of 1% or more higher than the level of January 1973, with the beginning of the first pay period after January 1, 1974, all employees shall receive a cost of living allowance of thirty-five dollars (\$35.00) per year for each full .4 of 1% by which the C.P.I. exceeds the level of January 1973. The cost of living allowance, therefore, shall be paid monthly during the first six (6) months of the calendar year 1974, for the increase in the C.P.I. between January 1973 and July 1973. The cost of living difference shall be again computed between July 1973 and January 1974 and the cost of living allowance, figured on the same basis, that is, thirty-five dollars (\$35.00) per year for each full .4 of 1% shall be paid monthly beginning with the first pay period after July 1, 1974 through December 31, 1974.

Section 4. If after an allowance has been in effect pursuant to Section 3, the C.P.I. shall show a decrease, thirty-five dollars (\$35.00) shall be deducted from the allowance for each full .4 of 1% decrease in the C.P.I. below the level which the C.P.I. was required to reach in order to earn the last previous raise of allowance.

Section 5. The cost of living allowance payable at any time shall be in addition to, and irrespective of, the computed base salary rate otherwise payable under the terms of this agreement.

Section 6. This cost of living allowance will be computed and paid in the manner pursuant to Section 3, beyond December 31, 1974, if this contract has not been replaced by a new negotiated contract. That is on the first pay period following January 1 and July 1. The cost of living allowance will be computed and paid upon the same monthly basis as in the contract using 1974 C.P.I. in place of 1973.