

In the Matter of the Petition of \*  
 \*  
 TEAMSTERS UNION LOCAL NO. 579 \*  
 \*  
 vs \*  
 \*  
 CITY OF WHITEWATER \*  
 \*  
 re \*  
 \*  
 Final-Offer Binding Arbitration \*  
 Involving City of White Water Law \*  
 Enforcement Personnel \*  
 \*  
 \* \* \* \* \*

WERC Case V, No. 19021  
 MIA - 164  
 Decision No. 13622-C  
 ARBITRATION OPINION & AWARD  
 Arbitrator: James L. Stern

BACKGROUND

On April 4, 1975 Teamsters Union Local No. 579, hereinafter identified as the Union, filed a petition with the Wisconsin Employment Relations Commission (WERC) involving the law enforcement personnel of the City of Whitewater, stating that it had reached an impasse on wages and other benefits to be paid in 1975 by the City of Whitewater, hereinafter identified as the Employer, and requested that the matter be resolved by final and binding arbitration, Form 2 of Wisconsin Statutes, 111.77(4)(b) under which the arbitrator must select as his award the final offer of one of the parties without modification of such final offer.

The WERC conducted an information investigation on April 22 and May 5, 1975 and, finding that an impasse still existed, issued an order for arbitration dated May 7, 1975, and furnished the parties with a panel of arbitrators from which they could select an arbitrator. On May 29, 1975, the WERC dismissed the order to arbitrate because it had been advised by the Union that the impasse had been resolved. In an order dated September 16, 1975, the WERC set aside the May 29, 1975 dismissal order because the Union advised the WERC that the settlement had not been consummated and that the impasse still existed. The parties thereupon advised the WERC that they had selected the undersigned arbitrator from the panel furnished them by the WERC and the WERC, in turn, issued an order dated September 23, 1975 appointing him as impartial arbitrator.

The arbitration hearing scheduled for December 2, 1975 was waived by agreement of the parties and the arbitrator. The parties filed a stipulation of facts and, upon the request of the arbitrator, the parties also filed written arguments by December 15, 1975 in support of their respective positions and furnished the arbitrator with exhibits relevant to the issue before him.

ISSUE

The sole issue in dispute is whether or not there shall be an \$800 ceiling on longevity pay benefits.

DISCUSSION

The Employer argues that it is fair and equitable to place an \$800 ceiling on the longevity pay plan for police because other City of Whitewater employees have such a ceiling and because, even with the ceiling, the Whitewater longevity pay plan compares favorably with comparable cities which it cites in its brief. The Employer also contends that the contract is "subsumed under the Personnel Regulations Section 2.64.140" and the "proposal by the City makes explicit, then, what was implicit in the prior contract" (see Employer Brief, pp. 1 & 2).

The Union argues that this benefit imposes relatively little cost since only two police officers are eligible for longevity payments that exceed the \$800 ceiling and that "one employee would suffer a reduction if the employer's position is accepted, for the ceiling did not apply in 1974, and the senior man received more than \$800 per year." (See Union Brief, p. 1). The Union states also that it accepted the employer's position on wages, cost of living and vacation and argues that it would be fair, therefore, for the Employer to agree with the Union position on longevity.

After some reflection upon the positions of the parties, the arbitrator concluded that the essential question was whether or not there was a ceiling in effect during 1974. The Union argument that it should prevail on the remaining item in dispute because the Union has made other concessions does not seem persuasive to the arbitrator. Perhaps the Employer positions on these other issues were sensible and, because this was recognized by the Union, the Union agreed with the Employer.

The Employer claim that comparable employers have less generous longevity pay plans and that other City of Whitewater employees are subject to the ceiling are sound arguments but, standing alone, are not conclusive. These arguments probably were applicable a year earlier when the 1974 collective bargaining agreement was negotiated. If these arguments were of overriding importance then, the Employer, presumably, would not have agreed in 1974 to remove the ceiling. If the Employer removed the ceiling in 1974, despite the arguments for not doing so, it does not seem to the arbitrator that these arguments are sufficient grounds for putting the ceiling back in the collective bargaining agreement -- that is, if it actually was removed in 1974.

We turn then to this critical question of whether or not there was a ceiling in 1974. The Employer states that Section 2.64.140 of the Personnel Regulations provides for such a ceiling and that the collective bargaining agreement is subsumed by these regulations. In effect, the Employer is arguing that the collective bargaining agreement is an abbreviated version of the personnel regulations. However, the arbitrator finds no evidence to support this contention and therefore rejects it. If it was the intention of the parties to maintain a ceiling in 1974, and the ceiling was inadvertently omitted from the collective bargaining agreement, the Employer should have so stated and introduced evidence in support of this claim.

Furthermore, Employer Exhibits A, B, C and D show that the ordinance in effect in 1972 and 1973 contained a ceiling on longevity pay of \$720 and that the 1972 and 1973 collective bargaining agreement covering the police department also contained the identical language providing for a \$720 ceiling. The ordinance in effect in 1974 and still in effect as of December 5, 1975 provides for an \$800 ceiling. Presumably, the council decided to increase the ceiling from \$720 to \$800. In the 1974 collective bargaining agreement covering the law enforcement personnel, however, one doesn't find either the \$720 ceiling which was in the prior agreement or the \$800 figure which was put in the ordinance when the ceiling was raised for other employees.

It appears to this arbitrator that, on its face, the 1974 collective bargaining agreement covering law enforcement personnel did not contain any ceiling, nor, so far as the arbitrator is aware, did it contain any language specifically subsuming the agreement under the personnel regulations. The arbitrator believes, therefore, that the ceiling which was omitted from the 1974 agreement should continue to be omitted from the 1975 agreement and will so rule by selecting the Union's final offer.

#### AWARD

For the reasons set forth in the previous discussion section of this opinion and with full consideration of the evidence and arguments of the parties and the criteria listed in the statute, the arbitrator selects the final offer of the Union and hereby orders that no ceiling be placed on the longevity pay plan of law enforcement personnel and that they be paid longevity pay accordingly in 1975.

12/18/75  
December 18, 1975

James L. Stern /s/  
James L. Stern  
Arbitrator