

In the Matter of

Arbitration Proceedings

DOOR COUNTY

DISCUSSION & AWARD

and

DOOR COUNTY SHERIFF'S DEPARTMENT
EMPLOYEES LOCAL 1658, AFSCME, AFL-CIO

Case XXI
No. 20096
MIA-222
Decision No. 14307-A

On February 3, 1976 the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Arbitration pursuant to petition filed by the Union. From a panel of arbitrators furnished the parties pursuant to said Decision No. 14307, the undersigned was chosen and an order issued on February 17, 1976 directing him to hear the matter and issue a final and binding award. Pursuant to said order, a hearing was held at Sturgeon Bay on April 21, 1976, after which post-hearing briefs were filed by the parties.

Appearing for the Union: James W. Miller, Representative.

Appearing for the Employer: Mulcahy & Wherry, by Dennis W. Rader, counsel.

This proceeding involves a final and binding arbitration pursuant to Wis. Stats. 111.77. Both the Union and the Employer filed a notice of final offer on February 16, 1976. Subsequently, both parties amended their final offer which resolved two of the issues in dispute leaving three remaining issues to be decided by the arbitrator. Those issues and the final offer of the parties is correctly set forth in the post-hearing brief of counsel for the Employer as follows:

ISSUES

Three issues remain unresolved and are being submitted to arbitration.

NIGHT SHIFT DIFFERENTIAL

- A. County's Offer - \$7.50 per month for the 12:00 - 8:00 A.M. shift excluding ambulance crew.
- B. Union's Offer - Ten cents (10¢) per hour night shift differential for the 12:00 - 8:00 A.M. shift excluding ambulance crew.

ADJUSTMENT FOR AMBULANCE EMPLOYEES AND COMMUNICATION - SECURITY DEPUTIES

- A. County's Offer -

EMT

- 1. \$10.00 per month additional January 1, 1976
- 2. \$10.00 per month additional July 1, 1976

COMMUNICATION - SECURITY DEPUTIES

- 1. \$7.00 per month additional January 1, 1976

- B. Union's Offer -

EMT & COMMUNICATION - SECURITY DEPUTIES

- 1. \$10.00 per month additional January 1, 1976
- 2. \$10.00 per month additional May 1, 1976
- 3. \$10.00 per month additional September 1, 1976

WAGE INCREASE

- A. County's Offer

- 1. \$60.00 across the board wage increase

B. Union's Offer

1. \$81.00 across the board wage increase

1. NIGHT SHIFT DIFFERENTIAL

In its post-hearing brief the Union argues:

"It should be noted that both Union Exhibit 10 and Employer Exhibit 25 clearly establish that the Union's position is the most reasonable. It must also be noted that Union Exhibit 10 lists the Sturgeon Bay Police Department receiving fifteen cents (15¢) per hour after 11 p.m. The Sturgeon Bay Police Department and the Door County Sheriffs Department work out of the same building and use the facilities in the Door County Safety Building. It is also to be noted that even with the ten cents (10¢) per hour request for this shift it would not put Door County ahead of Kewaunee County which gets fifteen cents (15¢) per hour or City of Sturgeon Bay Police Department which also gets 15 cents per hour. In fact, they would be behind most of the comparisons used by the Union and the Employer."

To this argument, the Employer in material part argues as follows:

"Shift differential payments are by no means a common practice in County and City law enforcement units. Five of the eleven comparable communities do not have any shift differential payment provisions at all (employer exhibit #25). Door County granted a 3rd shift differential payment for the first time in negotiations for the 1976 contract.

* * *

"Door County is one of the seven employers which provide shift differential payments; five have no such payment provisions at all. Furthermore, when all the employee benefits, including shift differential are totaled, Door County's offer is near the top of the list of comparable communities."

2. ADJUSTMENT FOR AMBULANCE EMPLOYEES AND COMMUNICATION - SECURITY DEPUTIES

This issue involves the claim of the Union that there is an intra-unit inequity for both of the jobs in question and further that the inequity exists in equal measure and both should be adjusted upward in like measure. In addition to the several exhibits submitted, oral testimony was also given at the hearing. In his concluding argument, counsel for the Union in his post-hearing brief argues that:

"The 1975 Labor Agreement shows that both the Communication-Security Deputy and the EMT's monthly salary are the same. The Union, in its request, has been consistent with keeping the two (2) positions at the same salary. The Employer would have the EMT's \$13.00 per month ahead of the Communication-Security Deputy. A disparity, based on the evidence shown by the Union that should not be allowed to stand."

As to the Emergency Medical Technicians (EMT), counsel for the Employer argues that:

"... Although the EMT's carry deputy cards, no EMT has ever arrested anyone. None of the EMT's have had any law enforcement training as part of their jobs in the Sheriff's Department. No testimony was submitted which would indicate that the duties of the EMT's have increased over the past several years. No legitimate reasons have been brought forth to support the added wage adjustment for the EMT personnel."

And as to the Communication and Security Deputies, counsel points out that:

"Employer exhibit #23 shows that the Door County offer is above the median rate of comparable counties. The County's offer of \$10,356, per year is significantly above the \$9,988.49 annual average of the other five comparable counties' rates. ... The Union's request on this position amounts to a 12.6% increase over last year's wages. No position needs to be adjusted by that percentage unless the job duties and responsibilities are substantially changed. The Union's request of 12.6% is totally inappropriate and unreasonable."

3. GENERAL ACROSS-THE-BOARD WAGE INCREASE

The Union is asking for a general across-the-board increase (in addition to the inequity adjustments referred to immediately above) of \$81 per month. The Employer's last offer for a general across-the-board increase is \$60 per month.

The Union in its post-hearing brief in material part argues as follows:

"... The increases granted to public employees in Door County Highway, Sturgeon Bay Police Department and Sturgeon Bay Department of Public Works have been very high in comparison to the rest of the public employees in the State. The increases in Door County Highway was averaged 14.5%, Union Exhibit #9, Sturgeon Bay City Department of Public Works averages 12.8%, Sturgeon Bay Police Department 9.2%. These are organized groups and have completed negotiations for 1976. The Employer granted an 8% increase to all non-Union employees, Employer Exhibit #5. The Union seeks an average increase of 11.1%, Union Exhibit #8; the Union is not asking for 14.5%, not even 12.8%. In fact, the Union is seeking to be right in the middle of the increases granted to all public employees, Union and non-Union. This can hardly be called unreasonable. Let us look at the Road Deputy classification in Door County, a combined department. These officers work both traffic and criminal complaints. They do investigations, handle traffic, serve papers, the total police officer. They work out of the Door County Safety building, which also houses the Sturgeon Bay Police Department. The Union and the Employer, in their exhibits Union #5 and Employer 24, do have at least four (4) areas of comparison that they agree on - Marinette County, Sturgeon Bay Police, Kewaunee County and Brown County. You will recall that Marinette County County had settled on wages and Employer Exhibit #24 was corrected to read \$913.00 per month for Marinette County. They work a forty (40) hour work week which gives them an hourly rate of \$5.26 per hour. The ranking would be as follows if the Union's position is accepted: Brown County \$6.18 per hour, Kewaunee County \$5.38 per hour, Marinette County \$5.26 per hour, Door County \$5.20 per hour and City of Sturgeon Bay Police \$5.18 per hour. If the Employer's offer is accepted it would be as follows: Brown County \$6.18 per hour, Kewaunee County \$5.38 per hour, Marinette County \$5.26 per hour, Sturgeon Bay Police \$5.18 per hour and Door County \$5.08 per hour. Again this shows that the Union is not unreasonable; they do not want to be the highest paid in the area, they just want to be treated fairly. The Employer would have the County Deputy receive ten cents (10¢) per hour less than what the Sturgeon Bay Police officer makes and they both work out of the same building. Surely this cannot be deemed reasonable. Union Exhibit #6 for wage comparison on Communication-Security Deputy position. Using the same comparisons, noting two exceptions, Sturgeon Bay Police does not have his position, Marinette County Jailors are paid the same rate as Road Deputies. If the Union's position is accepted the ranking would be: Brown County \$6.18 per hour, Marinette County \$5.26 per hour, Kewaunee County \$5.20 per hour and Door County \$4.98 per hour. If the Employer's position is accepted: Brown County \$6.18 per hour, Marinette County \$5.26 per hour, Kewaunee County \$5.20 per hour and Door County \$4.74 per hour. It must be remembered that only Kewaunee and Door County have the Radio and Jailor positions combined; the others have one man for each job."

In his post-hearing brief, counsel for the Employer points out that the County's final offer provides the same percentage wage increase to Sheriff's Department personnel as was offered to other County employees. In his brief he argues:

"... Under the Union's offer the uniformity in the 1976 wage increases would be lost (\$81 per month plus the wage adjustments is 11.10%). The Sheriff's Department personnel would receive 3.1% more than other County employees who do not bargain collectively with the County. The only other Union represented unit, the Door County Highway Department, agreed to a reduction in hours and a total wage package only 4.31% more than they earned in 1975."

He further argues that the comparative wage data contained in the several Union exhibits is highly selective and ignores the requirement of 111.77 Wis. Stats. which requires that the arbitrator give weight to comparable wage and salary levels in comparable communities. He argues that the comparable communities (Employer Exhibit 12) are Brown, Marinette, Shawano, Oconto, Oneida, Kewaunee and Vilas. That exhibit also points out that the following cities might also be viewed as comparable: Marinette, Rhinelander and Kewaunee. In this connection, counsel for the Employer argues in his post-hearing brief as follows:

"The average annual salary for Deputy Sheriffs in the eleven comparable communities is \$10,663.39. The County's offer of \$11,112.00 per year is well above the average of \$10,663.39 per year. (Even if the three lowest counties are not included in calculating the average, the County's offer is still above the average salary.)

"The statute requires that overall compensation be considered when comparing communities. In employer exhibit #29, salary, longevity, shift differential, WRF, Health insurance and Uniform allowance benefits are added together for a total compensation figure.

"The maximum monthly earnings available to a Door County Deputy with five years of service under the County's offer for 1976 is \$1,073.52 which places him in the position of being fourth among the eleven area employers (including Brown County). The Union demand would put Door County Deputies in third place among the eleven area employers. The County's offer of \$1,073.52 per month is well above the average monthly compensation total of \$1,051.40 for the eleven area employers.

* * *

"Door County has made a fair and reasonable offer which will make the wage rates in the Sheriff's Department comparable with other employers of comparable size in the area. The Union's demand would make Door County a leader in wage rates among comparable employers, a position Door County has never had in the past nor should have in the future."

In conclusion, counsel for the Employer argues that increases in the Consumer Price Index during the past years do not justify a wage increase for the Sheriff's Department beyond that offered by the County. He argues that:

"The County's exhibit #32 shows that the cost of living rose 19.21% in 1974 and 1975, while employe wage rates increased 23.02% over the average 1973 rates. ... It should be noted that the rates for the 1973 contract were determined by an arbitrator pursuant to Wisconsin Statutes 111.77. ... After gaining a 10% wage increase last year, a year in which the cost of living rose only 5%, the Union is requesting a wage package of 11.1% for 1976. This is an added 5% over the anticipated 6% cost of living increase for 1976. Furthermore, the Union submitted no evidence to demonstrate that there has been an increase in productivity or an increase in duties for the unit personnel."

Counsel concludes by observing that: "The increase in compensation offered to the deputies involved in this arbitration comes to 9.21%. The Union demands that this arbitrator award to the deputies involved in this arbitration proceeding an increase which equals 12.11%."

Under the provisions of 111.77 Wis. Stats., the arbitrator is required to select the more reasonable of the contending proposals judged on the criteria set forth in the Statute. The final offer of both the Employer and the Union is to be judged in its entirety. However, it seems appropriate to comment upon each of the three issues involved.

As to the first issue, that involving the Night Shift Differential, it should be observed that premium payments for work performed at any particular hour of the day or night are highly unusual for law enforcement employees unless overtime rates are involved, and under certain circumstances where either call-in or call-back premiums are called for. Night Shift Differential payments are equally rare for fire fighters and night watchmen. In private industry the same is true where the nature of the work requires a continuous process. It approaches an anachronism to speak of a night shift differential for any of this class of employees except under very special circumstances not present here. Consequently, the Employer's offer of an additional \$7.50 per month for the 12 midnight to 8 a.m. shift is more than usually reasonable.

As to the second issue involved, i.e., the Adjustment for Ambulance Employees and Communication-Security Deputies, the Employer's offer seems more in line with the evidence adduced at the hearing and any objective analysis of the several pertinent exhibits.

The overriding issue is, of course, the wage issue involving the County's offer of a \$60 per month across-the-board increase compared with the Union's offer of an \$81 per month across-the-board increase. It should be noted that after the hearing and all proofs were in, Employer counsel in his letter of May 10, 1976 raised a question with respect to the meaning and application of an "across-the-board increase". In that letter he observed: "I have noticed some mathematical errors in the calculation of the Hiring and 6 month rates. Apparently in some cases, the \$81 increase was added to the hiring and 6 month rates directly without consideration of the County policy of maintaining an approximate 90% and 95% of the final rates for the hiring and 6 month rates." To this letter Union counsel made reply on May 12, 1976 which in effect repudiates the Employer's position and suggested that if there were any remaining questions concerning the problem that a further hearing or meeting be held. No such meeting was called by the arbitrator because he can see no basis for the position taken by Employer counsel and is in wholehearted agreement with the Union spokesman in this regard. An "across-the-board" wage or salary adjustment means precisely that, i.e., the adjustment of each and every wage and salary rate in like measure whether it be a starting rate, a probationary rate, an interim rate or a final rate. In sum, a rate of whatever kind or description which characterizes the wage and salary schedules of the labor agreement, except only where an exception is clearly set forth in the labor contract.

When properly applied, the arbitrator does agree, however, that the Employer's offer of a \$60 per month across-the-board wage increase seems more reasonable than the \$81 per month adjustment offered by the Union. The Union's several exhibits as well as its final argument are difficult to follow because its basic data is based upon hourly rates of pay even though the whole bargaining proceedings as well as the final offers were based upon monthly salary rates. Furthermore, I agree with Employer's counsel that the several units used for comparison by the Union are highly selective and that the comparative wage data submitted by the County is more in keeping with the statutory requirements.

It is also true that the increases in the Consumer Price Index during the past several years does not justify the increase contended for by the Union. The total increase offered by the County to the deputies involved in these proceedings amounts to approximately 9.21% while that proposed by the Union equals approximately 12.11%. In sum, it is the opinion of the arbitrator that the offer of the Employer is the more reasonable of the two and comes closest to meeting the standards set forth in 111.77 Wis. Stats.

A W A R D

The Employer's last offer is adopted as the award in these proceedings as follows:

NIGHT SHIFT DIFFERENTIAL - \$7.50 per month for the 12:00 - 8:00 A.M. shift excluding ambulance crew.

ADJUSTMENT FOR AMBULANCE EMPLOYEES AND COMMUNICATION-SECURITY DEPUTIES - EMT: \$10.00 per month additional January 1, 1976 and \$10.00 per month additional July 1, 1976. COMMUNICATION - SECURITY DEPUTIES: \$7.00 per month additional January 1, 1976.

WAGE INCREASE - \$60.00 across-the-board wage increase.

Respectfully submitted,

Philip G. Marshall /s/
Philip G. Marshall

July 23, 1976