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STATE OF WISCONSIN

AUG 16 1976

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 *
 In the Matter of the Petition of *
 *
 TEAMSTERS UNION LOCAL NO. 695 *
 *
 For Final and Binding Arbitration *
 Involving Police Personnel in the *
 Employ of *
 *
 CITY OF MUSKEGO *
 *

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ARBITRATION AWARD

Case XIII
 No. 19988 MIA-202
 Decision No. 14345-A

This arbitration is to resolve an impasse between the Teamster's Union Local 695 (hereinafter the Union) and the City of Muskego (hereinafter the City) with respect to negotiations leading toward a collective bargaining agreement for the year 1976 covering the wages and conditions of employment of police personnel employed by the City of Muskego. The Union petitioned the Wisconsin Employment Relations Commission for arbitration of the dispute pursuant to Section 111.77, Wisconsin Statutes. The Commission certified that an impasse had been reached, ordered arbitration, and, by an order of March 10, 1976, appointed Richard B. Bilder, of Madison, Wisconsin as impartial arbitrator to issue a final and binding award in the matter. This is a "Form 2" proceeding under Section 111.77, Wisconsin Statutes in which "the arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification."

A hearing was held at the Muskego City Hall on May 10, 1976. Both parties were given full opportunity to present oral and written evidence and testimony, and each party subsequently submitted briefs. Mr. David L. Uelmen appeared for the Union and Mr. Roger E. Walsh appeared for the City.

The criteria to be applied by the arbitrator in a proceeding under 111.77, Wisconsin Statutes, are prescribed in Section 111.77(6). That section reads as follows:

- (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.

ISSUES INVOLVED

The parties have agreed to various matters in their negotiations. The three issues still in dispute, as indicated by their final offers, are as follows:

(1) Educational Incentive Program

City Offer: Add a new provision to the contract to read:

Full-time employees who, on or after January 1, 1976, successfully complete an approved course of study in an accredited college, university or technical college and receive an Associate Degree in Police Science shall be entitled to an educational incentive bonus of \$640, payable as follows:

\$300 on December 1st immediately following receipt of such degree, \$170 on each of the next two succeeding December 1st.

Such payments shall be subject to the following conditions:

- (a) The employee must have taken at least 32 credit hours while employed as a Police Officer for the City of Muskego. In the event the employee has taken less than 32 credit hours while so employed, his educational incentive bonus shall be limited to \$10 for each credit hour taken while so employed and such bonus will be paid in three annual installments on the dates listed above, the first installment to be 46% of the total bonus and the other two installments each to be 27% of the total bonus.
- (b) The employee must be employed as a Police Officer for the City of Muskego when he receives the degree.
- (c) The Associate Degree courses offered at Waukesha Technical Institute, University of Wisconsin-Milwaukee, and Marquette University as of January 1, 1976, are considered as an approved course of study. Any changes in the above courses which are substantially different from the courses in effect on January 1, 1976 or degrees from other institutions must receive prior approval from the City.
- (d) The employee must be employed as a Police Officer for the City of Muskego on a payment date.
- (e) Successful completion means to maintain a "C" or better average.
- (f) All courses must be attended on the employees' own time.
- (g) No employee can take more than six (6) credits per semester, unless an exception is granted by the Chief of Police.

The educational incentive bonus is not to be considered part of salary or earnings for any other purpose, including computation of overtime rates, and will be paid only once per employee.

Any full-time employee who was employed as a Police Officer for the City of Muskego on December 31, 1975, and who received an Associate Degree in Police Science from any of the educational institutions listed above while employed as a Police Officer for the City of Muskego, but prior to January 1, 1976, shall be entitled to receive the Educational Incentive Bonus in accordance with and subject to the provisions and conditions listed above.

Union Offer: Add a new provision to the contract to read:

"Philosophy or Intent:

To create an incentive that will improve the educational level of law enforcement personnel and also to award those who have achieved degree status - a bonus for doing so.

The President's Committee on Law Enforcement recommends:

"The ultimate aim of all Police Departments should be that all personnel with general enforcement powers have baccalaureate degrees."

Goals of the Plan:

The goals of this plan are:

1. Upgrade the educational level of the officer.
2. Continue the attraction of individuals who have an interest in law enforcement.
3. Retain high quality officers who exhibited a desire for self-improvement.
4. Increase the level of community rapport.

THE PLAN

General Provisions: Participation in the plan must be predicated not only on a satisfactory level of academic achievement, but on at least a satisfactory level of job performance as well. Any participant who cannot maintain those levels of performance must cut back on school attendance, not job performance.

To be eligible for the plan, an officer must have completed the required probationary period of the Department.

Pay Provisions: Two Dollars (\$2.00) per credit per year not to exceed sixty (60) credits or One Hundred Twenty Dollars (\$120.00) per year.

Administrative Provisions: All credits applied for under the plan must be approved by the Course Approval Committee. The Committee shall have broad discretion in approving courses. Their discretion, however, is limited to the study areas indicated below:

1. Police Science courses or degrees established by a Technical or University School.
2. Criminal Justice courses or degrees established by a University.

The Committee shall use as a guideline the curriculums from Marquette, University of Wisconsin Milwaukee, MATC & WCTI to determine acceptability of credits.

A grade of "C" or better is necessary in order for a course to be eligible for payment.

Degrees shall not be accumulative, ie., pay for Associate Degree plus Baccalaureate Degree, or two (2) Associate Degrees.

Credits earned toward a Baccalaureate Degree after receiving an Associate Degree shall be paid, as individual credits in addition to the Associate Degree bonus.

Course Approval Committee: The Committee shall consist of four (4) members as follows:

Two (2) representatives of the City, and

Two (2) members of the Association.

Three (3) members shall make up a Quorum.

The Committee will meet yearly in the month of August to review credits earned the previous year.

The Committee shall certify acceptable credits to the City for payment.

Officers shall initially submit a certified transcript of the credits and/or degree he wishes to enter into the plan. Officers submitting additional credits to the plan shall submit an official final grade for the credits he wishes to enter.

All credits that officers wish applied to the plan must be presented to the Committee prior to the meeting.

All or any changes in Degree Programs shall be brought to the immediate attention of the Approval Committee."

2) Wages

City Offer: The City has offered a detailed salary range schedule which the parties agree is equal to a 7-1/2% increase effective January 1, 1976 to all steps in all classifications.

Union Offer: An 8% increase effective January 1, 1976 to all steps in all classifications.

3) Health Insurance

City Offer: Revise "Health Insurance" paragraph in Article VII to read:

"Health Insurance. The City shall continue the present Hospital and Surgical Insurance plan now in effect or its equivalent in coverage, and shall pay up to \$29.80 per month toward the cost of a single plan and up to \$82.92 per month toward the cost of a family plan."

Union Offer: Retain the present "Health Insurance" paragraph in Article VII, which reads:

"The City shall continue the present Hospital and Surgical Insurance plan now in effect or its equivalent in coverage, the cost thereof shall be paid for by the City."

DISCUSSION

I will examine each of the three issues in dispute separately. However, the parties appear in agreement that the major item in dispute between them concerns the provisions of the proposed educational incentive plan, and their arguments have been principally addressed to this issue.

Educational Incentive Program

The issue of an educational incentive program has been a major item of dispute between the parties for several years. In the negotiations for their 1975 contract, the question was temporarily resolved by mediation through a memorandum of understanding which provided for appointment of a joint committee to study this question and report back to the bargaining committee prior to the start of 1976 negotiations. The memorandum provided further that:

"The Parties agree that an educational incentive program in some form shall be implemented as of the effective date of the Agreement subsequent to this 1975 Agreement, and it is recognized that the cost of such program shall be taken into consideration in determining the size of the 1976 package."

However, the Joint Study Committee failed to resolve this issue and it became again the major issue in the present negotiations.

The principal differences between the City's proposal and the Union's proposal are as follows:

The City's offer would provide a one-time lump sum educational incentive bonus in the amount of \$640, payable \$300 on December 1st immediately following receipt of the degree and \$170 on each of the next two succeeding December 1sts, to a Police Officer receiving an Associate Degree in Police Science who is employed as a Police Officer for the city both when he receives the degree and on the date of the bonus payment. The employee must have taken at least 32 credit hours while employed as a Police Officer for the City, in the event he has taken less than 32 credit hours while so employed, the bonus is subject to certain reductions. The amount payable to any Police Officer would thus be restricted to a maximum of \$640, such payment would accrue only upon the earning of a degree, and Police Officers earning a degree prior to employment by the City would not be entitled to any payment.

The Union's offer would provide an ongoing additional income payment, in the amount of \$2.00 per credit, not to exceed sixty credits or \$120.00 per year, to Police Officers who have completed certain police related courses or degrees approved by a joint Course Approval Committee. The amount payable to any Police Officer would thus continue as a regular yearly increment to his salary throughout the period of his employment with the City, payments would accrue upon the earning of any approved credits towards a degree, and Police Officers would be entitled to such payments even though the credits or degrees were awarded to them prior to their employment by the City.

The City presently employs sixteen Police patrolmen and sergeants. While there is some variation in the evidence, it is my understanding that four of the present Police Officers possessed an Associate Degree or Bachelor's Degree at the time they were employed, five obtained Associate Degrees after employment with the City; and seven have not yet received degrees. The City has no educational requirements for promotion of police officers at present, but the Police Chief has stressed the importance of education and the force has apparently prided itself on the educational level of its Police officers.

The Parties appear in agreement that, in terms of this situation as regards the educational attainments of its present Police Officers, the cost of either plan for the year 1976 will be almost identical, amounting to about \$1500. However, under the City's proposed plan, assuming that, in addition to the five employees who have already obtained degrees subsequent to their employment with the City, the seven other employees who would be eligible for the bonus acquire degrees, the City calculates that it will incur a total potential cost over 1976 and future years of \$7,680. The City calculates that under the Union's proposed plan, assuming that all the present employees stay with the Department until retirement, its total potential costs over 1976 and future years could range from about \$39,000 to \$47,000.

The Unions arguments for its proposal are as follows: 1) Only the Union's proposal would permit all present employees to receive payments; the City's proposal, on the other hand, would result in four or five employees, who had earned degrees prior to employment with the City, receiving no payments. 2) Only the Union's proposal would provide payments per credit as these credits are earned; since the education reflected by those credits is to the City's benefit, even before a degree is earned, the City should encourage and recognize the earning of these credits. 3) The City has benefited from the educational training of its public officers, even when that education was received prior to employment with the City, since this high level of education has allowed the City to function on a "team policing system", eliminating the need for more specialized officers. 4) The Union's proposed plan is more in line than is the City's with educational incentive programs for Police officers in other similar communities in the Milwaukee suburban area. 5) The Union's proposed plan is a genuine educational incentive plan, designed to encourage Police officers to undertake further professional education.

The City's arguments for its proposal are as follows:

1) The attainment of credits alone does not necessarily make an employee a better policeman, and this should not automatically entitle an officer to additional payments. 2) The Union, rather than the City is attempting to set the standards and qualifications of employees of the City Police Department. 3) The costs to the City of the Union's program is considerably greater than that proposed by the City. 4) The Union's proposal cannot be considered as an incentive program, since it will not in fact encourage the majority of the members of the Department, who have already received their degrees, to further their education; under the Union's proposal, those officers will simply receive a continuing additional payment for education they have already received. Moreover, there is no evidence that such continuing additional payments for educational attainment are necessary to attract educated candidates to employment as Police Officers with the City; the evidence is rather that the City can attract educated candidates without the need for such additional payments. 5) The City's proposal is more in line than is the Union's with educational incentive programs in comparable surrounding communities, only a few of which have ongoing additional income payments programs. 6) The Union's proposal is almost unique in the extent of its provisions as compared to the few other ongoing income payment plans in the surrounding area, since it would provide payments to officers who earned credits or degrees prior to employment with the City. 7) The Union's proposal is in effect simply an attempt to obtain additional salary, disguised as a payment for attaining educational credits. 8) The City's proposal is more reasonable and realistic as a true educational incentive program in that it does encourage further education by officers who had little or no college education when they joined the Department, but without rewarding employees who already obtained their education as a way of qualifying for and securing a position on a police force.

In deciding this issue, I have given principal weight to the criterion provided in Section 111.77(6)(d), Wisconsin Statutes, which directs me to consider, inter-alia, a comparison of the conditions of employment of the employees involved in the arbitration proceeding with those of other employees performing similar services in comparable communities. Each of the parties has introduced evidence as to the practice concerning educational incentive programs for Police Officers in suburban communities similar to Muskego in the Milwaukee area. Since the evidence submitted in City Exhibits 7 and 8 and the accompanying copies of relevant contracts is more detailed than that in Union Exhibit 1, I have relied primarily on the former.

While the relevant provisions are subject to differences in interpretation, this evidence appears to indicate the following: Of some 24 suburban communities in the Milwaukee area generally comparable to the City of Muskego as to which detailed evidence has been submitted, 11 have no educational incentive program whatsoever, five municipalities have only a tuition reimbursement program; and eight have an ongoing additional income payment program in some form. (The City points out with respect to tuition reimbursement programs that there has apparently been little tuition costs to policemen in the area since most tuition costs have been reimbursed by federal grants.) That is, about two-thirds of these communities have no programs for educational incentive bonuses or additional income payments to their Police officers.

Of the eight municipalities in the area (one-third of the total for which data was submitted) which have ongoing additional income payment plans, three (Whitefish Bay, Cudahy, Brookfield) apparently make no payments for credits earned outside of employment with the municipality, three others (St. Francis, Franklin, Greendale) have waiting periods or other restrictions, and two (Menomonee Falls and New Berlin) (one-twelfth of the total) have no restrictions and thus appear to be comparable with the program proposed by the Union.

Most of the municipalities which have educational incentive programs providing for direct payments appear to provide for payment per credit as credits are achieved. Five of these programs (slightly more than one-fifth) pay for credits earned prior to joining the department. However, of these five, St. Francis has a 3 year waiting period, Franklin a two year waiting period, and Greendale has a program under which it will take five years to receive full payment for 60 credits.

There is apparently no program directly comparable to the one-time bonus plan proposed by the City. However, the City suggests that its program can be considered as close to a tuition reimbursement program. To the extent that tuition costs are in fact covered by federal grant, the City's proposal would appear somewhat more favorable to employees than a tuition reimbursement plan; however, it is, of course, less favorable than a continuing income plan.

It appears from this survey that most of the communities comparable to Muskego in the surrounding area on which detailed evidence was offered have either not adopted educational incentive programs for their Police officers or have adopted programs considerably more limited in their benefits than that which the Union proposes. As indicated, only about one-third of these communities have programs which offer additional income to their Police officers as an educational incentive; only slightly more than one-fifth make payments for prior credits, and several of these have restrictions. Indeed, since only two out of these 24 communities have programs comparable in extent of benefits to that proposed by the Union, the Union's plan must be viewed as uncommon. On the other hand, the program proposed by the City would appear more favorable than those presently offered by some two-thirds of the comparable communities in the area.

Given this state of the evidence, I must conclude that the City's proposal regarding an educational incentive program is more in line with prevailing practice as to conditions of employment regarding educational incentive programs in comparable communities than is that of the Union. Since Section 111.77(6), Wisconsin Statutes, directs me to take account of such comparable conditions, and since I agree with the City's argument that an arbitrator in a "final offer" interest arbitration of this sort should be hesitant to award benefits of programs which are uncommon or have not found fairly substantial acceptance in comparable communities, I on this basis decide the educational incentive program issue in favor of the City's proposal.

My decision in this respect might be different if I believed the City's proposal, or the City's position in refusing to accept the Union's proposal, to be clearly unreasonable. However, I cannot say that this is the case. The City's commitment is to an "educational incentive plan in some form". A principal purpose of such a plan, and a principal justification of such a plan in terms of the City's interests and outlay of public monies, is to encourage Police Officers to acquire additional education in order to enable them to perform their duties more effectively. The City's proposal does furnish an educational incentive to its Police officers, although it is one less generous than would be provided by the Union's proposal. As to the City's refusal to accept the Union's proposal, I cannot say that the City has acted clearly unreasonably or arbitrarily in taking the position that payments to its Police officers for education obtained prior to their employment with the City do not serve as an incentive for such officers to acquire further education and thus do not result in any additional benefit to the City. Indeed, the City points out that, under the Union's proposal, it would be required to make additional payments to several officers for education which they received many years prior to their employment with the City. As to the argument that such payments for prior education are desirable to encourage college educated applicants to seek employment with the City, the City points out that high educational qualifications are becoming common among applicants for police positions, and that the City has experienced no difficulty in recruiting college educated applicants without having a program such as the Union proposes providing additional payments for prior education. In the City's view, such prior educational achievement is rewarded and reflected in the decision to hire a particular officer and in the wages he is offered. The City's reluctance to make payments for prior education is not unique. As previously indicated, several other of the surrounding communities, even those which have adopted continuing payment plans, appear to share the City's view in this respect.

municipality. Again, there might be arguments either way as between a program based on a one-time bonus and one based on continuing income increments, or as between a program based on payments for credits earned and one based on the achievement of a degree. For example, it might be argued that even the taking of a single course can increase an officer's effectiveness and benefit the City. Finally, different assessments could be made as to the amount of payments appropriate to provide an adequate educational incentive and reflect a municipality's benefits from such additional education of its Police Officers. In the normal course, these complex and difficult questions would and should be best determined by the parties themselves rather than by an arbitrator.

Wages

The difference between the City's and Union's wages offers amount to one-half of one percent or approximately \$66 per year. The parties appear to be in agreement that this difference is not substantial and is less central to their dispute than the issue concerning the educational incentive program. However, each has presented somewhat conflicting evidence concerning wages in other comparable suburban communities in the Milwaukee area, other current wage settlements, and increases in the cost of living.

The City argues that both wage proposals would put the Muskego Police officers in about the same relative position with comparable suburban municipalities in the area. On the basis of total monetary compensation, this is apparently slightly below the average. The City argues however, that when somewhat better sick leave provisions and working hours are taken into account, even the City's offer would place Muskego Police Officers somewhat above the average. In analyzing the cost impact of 1976 settlements over 1975 contracts, the City computes the City's offer as .3% less than the average percentage increase in the area, and the Union's offer as .2% more than the average percentage increase in the area. In dollar amounts, the City's offer is \$4 per month less than the average while the Union's offer is \$1 per month above the average. The City points out, however, that in computing the value of the Union's offer, it has taken only the first year's impact of the Union's proposal for an ongoing educational incentive program into account. The City further argues that, while the 1975 average increase in the Consumer Price index was 9.1%, this increase has over the past 15 months indicated a steady decline. It suggests that a projection on an annualized basis of the rise of the Index for the first quarter of 1976, which is .7%, indicates a total increase in 1976 of only 2.8%.

The Union argues that the Police Officers working for the City are in the low range of officers working for various municipalities in the surrounding area and that its proposal will bring them more into line with prevailing wage levels and better reflect the increase in the cost of living.

As the two parties' agree, the differences involved in their wage proposals are small, and they have not argued this issue extensively. The evidence submitted as to 1976 wage increases in surrounding comparable communities (City Exhibit 3) indicates that both proposals are close to the average for such communities. However, a comparison of wages and total monetary compensation paid by the City to its Police Officers with that of comparable communities in the Milwaukee metropolitan area (City Exhibit 2 and Union Exhibit 4) indicate, that, as the City concedes, these amounts are slightly below the average of surrounding communities. To some extent, this differential may, as the City argues, be balanced by the City's slightly above average sick leave provisions and working hours.

The parties have not presented any extensive arguments based on increases in the cost of living. While it is true that this rate of increase appears to be slowing, the substantial rise in the Consumer Price Index in 1975 seems to me to give some support to the somewhat higher rather than lower wage offer.

Since each of these wage offers appear reasonable and they differ so little from each other, it is not easy to choose between them. However, because I believe that the present level of wages paid by the City is slightly below that of surrounding communities, I would consider the Union's somewhat higher wage proposal slightly preferable. Thus, if this were the only issue involved in this arbitration, I would decide the wage issue in favor of the Union's proposal.

Health Insurance

The difference between the City's and Union's proposals on health insurance is that the Union's proposal to maintain the present contract language would continue to obligate the City to pay the full amount of the Health Insurance premiums charged by the City insurance carrier during 1976, including any increases in premiums, while the City's proposal would place a dollar limit on the amount the City would pay for health insurance, limited to the City's present costs under its current contract with the insurance carrier.

The City argues that its proposal will not have any effect on its Police Officers during 1976 since its present contract with its insurance carrier limits such premiums to the dollar amounts specified in its proposal. It points out, however, that sizeable increases in health insurance premiums have occurred in 1976 and are likely to continue. Thus, the City explains that its purpose in this new provision is simply to insert a dollar figure into its present contract with the Union so that the City's continued payment of all of such premiums in future contracts with the Union will not be a foregone conclusion but will be subject to negotiations.

The Union argues that the City proposal would break with a long tradition of contracts under which City employees have been guaranteed full coverage of their health insurance program, and that, even if there is no change in cost during 1976, such a provision might place employees at a bargaining disadvantage in future negotiations.

As indicated, under both proposals the City would pay the full amount of employees' health insurance premiums during 1976. What is at issue is whether this obligation will be expressed in general terms or in terms of the specific dollar amounts stated in the 1976 health insurance contract. The parties' chief concern appears to be the effect of one or the other form of expression on their future negotiations.

The parties have presented very little evidence on this point and, in particular, I have no evidence of practice in contracts in comparable communities. I do, however, find more persuasive the Union's argument that, since a change in the language has no immediate practical effect in 1976, there is no reason to change such language now and that the treatment of this issue during future contract years should be left to future negotiations. That is, the City seems to be anticipating a problem which, while it may arise, has at least not yet arisen with respect to the provision of benefits under this contract. I can understand the Union's hesitancy in agreeing to a change which it believes might prejudice its future position. Thus, if this were the only issue involved in this arbitration, I would decide the health insurance issue in favor of the Union's proposal.

CONCLUSION

Since I am limited by law to a choice between the two entire "final offers" before me, I conclude that the City's final offer should be adopted.

I do so primarily because I am persuaded that the City's proposal regarding an educational incentive program is more in accord with practice concerning such programs in comparable communities in the area than is the Union's proposal. This seems clearly the major issue in dispute between the parties and both of the parties have indicated that they believe that my decision in this arbitration should be based principally upon my decision on this issue.

While I am inclined slightly to favor the Union's proposals on the wage and health insurance issues, the differences between the parties' proposals in these respects are relatively small and seem clearly less important than the difference over the educational incentive program. As regards the new health insurance provision, the inclusion in the contract of the new provision proposed by the City will of course reflect the nature and effects of this type of "final offer" arbitration rather than the specific agreement of the Union.

AWARD

It is my award that the City's final offer be and the same hereby is adopted.

Dated at Madison, Wisconsin this 15th day of July, 1976.

Richard B. Bilder