
 *
 In the Matter of the Petition of *
 *
 Marinette County Sheriff's Department *
 Employees, Local 1752, WCCME, AFSCME, *
 AFL-CIO *
 *
 For Final and Binding Arbitration *
 involving Law Enforcement Personnel *
 in the Employ of *
 *
 Marinette County (Sheriff's Department) *
 *

Case XXIX
 No. 20097 MIA-223
 Decision No. 14360-A
 Arbitration Award

Appearances

James E. Murphy, Corporation Counsel, appeared for the County.
 James W. Miller, District Representative, appeared for the Union.

Introduction

The Wisconsin Employment Relations Commission (WERC) on petition of the Marinette County Sheriff's Department Employees, Local 1752, WCCME, AFSCME, AFL-CIO (hereafter Union) pursuant to Wis. Stat. Sec. 111.77 (3)(b) appointed Arlen Christenson of Madison, Wisconsin impartial arbitrator to issue a final and binding award in a collective bargaining dispute between the Union and Marinette County (hereafter County). Under the statutory procedure there is a "final offer" arbitration proceeding in which the parties are each required to submit their final offers and the arbitrator is required to choose one or the other without modification. A hearing was held at the Marinette County Court House on April 30, 1976 at which time both parties were given full opportunity to present evidence and arguments. Post hearing briefs were received by May 17, 1976.

Final Offers

The final offers of the parties were as follows:

County:

Marinette County's position on the two remaining issues of life insurance and grievance procedure are as follows:

- A. County has offered to pay one-half of the premium on \$25,000 life insurance policy.
- B. To allow the present grievance procedure to remain in contract, however, a clause be added that in matters of discipline and discharge, the Marinette County Civil Service Ordinance shall rule.

Union:

The Two remaining issues unresolved in the above matter are:

Union requests full payment of life insurance premiums.

Grievance Arbitration Procedure to be used on all unresolved disputes including discipline and discharge.

At the hearing it developed that the parties still had not reached agreement on a third issue, namely, meal allowance. The positions of the parties on that issue are as follows:

County:

Each member of the bargaining unit shall be given an allowance of \$20.00 per month for meals. No receipts required. The \$20.00 shall be automatically added to the officer's check the first pay period of the month.

Union:

Each member of the bargaining unit shall have \$20.00 a month added to his base pay in lieu of a meal allowance.

Discussion

The 1975 collective bargaining agreement provides that "no employee shall be reprimanded, suspended or discharged except for just cause." It also specifies certain serious offenses for which an employee may be discharged "without warning or notice." For all other offenses the agreement requires progressive discipline beginning with a written reprimand followed by a suspension and culminating in dismissal. Finally, the agreement provides that disputes over whether or not there was just cause for discipline are subject to arbitration by a staff member of the Wisconsin Employment Relations Commission (WERC).

The County's offer includes a provision that the disciplinary procedures of the City Civil Service Ordinance, creating a civil service system for the Sheriff's Department, be substituted for the present contractual procedure. Under the civil service ordinance a deputy "may be suspended, demoted or dismissed by the [Grievance] Committee [of the County Board] when charged with any of a series of listed offenses. The offenses range from "commission of a felony" to "uncleanliness in person or dress on active duty." Included are "Destructive criticism of departmental orders to the outside public" and "any other act or omission contrary to good order or discipline." The ordinance incorporates by reference the disciplinary procedures of Wis. Stat. Sec. 59.21 (8)(b)(1) through (6). Accordingly a deputy charged with an offense under the ordinance would be entitled to a hearing before the grievance committee and an expedited appeal to the Circuit Court for Marinette County.

Whether or not discipline of law enforcement officers should be a matter for collective bargaining has been much discussed. The WERC holds that disciplinary procedures are a mandatory subject of collective bargaining under Wis. Stat. Sec. 111.70. A recent legislative enactment requiring bargaining on disciplinary procedures for police officers was vetoed by the governor. There are strong arguments pro and con. At issue in this proceeding, however, is not whether the disciplinary procedures should be bargained but what the results of the bargaining should be. The parties have already bargained extensively and are at impasse.

The provisions of the 1975 collective bargaining agreement are typical grievance and arbitration procedures using the common "just cause" standard for discipline. Under this procedure the County has the burden of showing just cause for discipline to the satisfaction of a third party. The just cause standard is well understood and often applied in labor relations. The County's proposal to substitute the Civil Service Ordinance procedure in discipline matters, on the other hand, introduces a substantial element of uncertainty. It is not clear what standard must be met to justify discipline. Moreover the grounds for discipline, including discharge, are so broadly written as to create justifiable concern on the part of the Union. A deputy subject to the disciplinary provisions of the ordinance faces the possibility of discharge for uncleanliness or for criticizing departmental orders. It is possible that aggravated forms of similar conduct might also justify discharge under the collective bargaining agreement but only if the just cause standard were met. Under the ordinance a deputy can be discharged for such conduct if the members of the Grievance Committee, governed by no standards but their own judgment, consider it appropriate. Such relatively unfettered discretion is cause for concern, particularly in view of the specification of offenses of the kind cited above and the broad catch-all offense of any "act or omission contrary to good order and discipline."

The statute under which this proceeding is conducted directs the arbitrator to consider a list of factors in reaching a decision. Most of those factors relate to monetary issues and are not relevant to an analysis of the issue under discussion. One of the factors to be considered that seems relevant, however, is the comparison of "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."

The evidence in the record is sparse but all indications are that most collective bargaining agreements have some kind of grievance arbitration procedure with arbitration as its termination. Most such procedures provide for a "just cause" standard in reviewing disciplinary decisions. Few, if any, would contain an agreement that discharge may be based on such grounds as contained in the Marinette County Civil Service Ordinance.

The arbitrator's job in a final offer arbitration is to select one of two offers. Such an either or proposition leaves no room for adjustments in the interest of fairness. Were I free to make such adjustments I probably would in this case. I find the monetary settlement to be ample and some aspects of the Union's offer more than would be justified by the application of the statutory criteria. I also find, however, that the disciplinary procedure contained in the County's final offer tips the balance away from the County offer and in favor of the Union's. In particular the broad and vague grounds for discharge make the County's proposed procedure objectionable.

I am compelled by this to chose the Union's final offer.

Award

It is my award that the Union's final offer is adopted pursuant to Wis. Stat. Sec. 111.77 and shall be incorporated into the collective bargaining agreement between the parties.

Dated at Madison, Wisconsin, this 25th day of June, 1976.

Arlen Christenson /s/
Arlen Christenson, Arbitrator

