

)  
 In the Matter of the Final & )  
 Binding Arbitration Between )  
 )  
 BROOKFIELD PROFESSIONAL )  
 POLICE ASSOCIATION )  
 )  
 and )  
 )  
 CITY OF BROOKFIELD )  
 )

CASE XVII

NO 19958

MIA 195

Decision No. 14395-A

DECISION AND AWARD

APPEARANCES:

FOR THE CITY:

TOM E. HAYES of Hayes & Hayes, Attorneys

FOR THE ASSOCIATION:

JOHN H. LAUERMAN, Attorney at Law.

PREHEARING PROCEEDINGS

The Brookfield Professional Police Association, hereinafter referred to as the Union or Association, filed a petition with the Wisconsin Employment Relations Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act, Wis. Stats. The gravamen of the petition was for the Commission to help resolve an impasse which had arisen in collective bargaining between the Association and the municipality, the City of Brookfield.

In due course the Commission found that an impasse did exist between the bargaining parties with respect to negotiations leading toward a collective bargaining agreement for the years 1976 and 1977. The Commission thereupon certified that the conditions precedent to the initiation of compulsory final and binding arbitration, as required by Sec. 111.77 had been met.

As a result the undersigned was chosen to act as arbitrator on March 19, 1976, to "issue a final and binding award in the matter."

On May 20, 1976, a hearing was held at the City Hall of the City of Brookfield wherein witnesses were examined and various exhibits were introduced and received in evidence. Each of the parties submitted extensive briefs which were of inestimable assistance to the Arbitrator.

The Brookfield Professional Police Association is the collective bargaining agent for 43 police personnel of the City of Brookfield, including the following classifications: patrolmen, corporal and sergeant/detective. The City of Brookfield is a municipality, which employs such personnel.

ISSUES

As required by statute, each party had submitted timely final offers bearing upon the unresolved issues -- wages and compensatory time off for overtime worked.

A parallel comparison of the unresolved issues are as follows:

WAGES:

January 1, 1976 through July 2, 1976

<u>PATROLMAN</u>	<u>CITY</u>	<u>ASSOCIATION</u>
		<u>Monthly</u>
Start	\$1055.00	\$1057.86
1/2 Year	1075.00	1076.76
1 Year	1095.00	1094.04
1-1/2 Years	1115.00	1101.60
2 Years	1135.00	1130.76
2-1/2 Years	1155.00	1147.50
3 Years	1175.00	1165.32
<u>CORPORAL</u>	1235.00	1219.86
<u>SERGEANT/DETECTIVE</u>	1295.00	1273.86

July 3, 1976 through December 31, 1976

<u>PATROLMAN</u>	<u>CITY</u>	<u>ASSOCIATION</u>
Start	\$1065.00	\$1131.91
1/2 Year	1085.00	1152.32
1 Year	1105.00	1170.62
1-1/2 Years	1125.00	1178.71
2 Years	1145.00	1209.91
2-1/2 Years	1165.00	1227.83
3 Years	1185.00	1246.89
<u>CORPORAL</u>	1245.00	1305.25
<u>SERGEANT/DETECTIVE</u>	1305.00	1363.03

For the Year 1977

<u>PATROLMAN</u>	<u>CITY</u>	<u>ASSOCIATION</u>
Start	\$1135.00	\$1222.46
1/2 Year	1155.00	1244.30
1 Year	1175.00	1265.27
1-1/2 Years	1195.00	1273.01
2 Years	1215.00	1306.70
2-1/2 Years	1235.00	1326.06
3 Years	1255.00	1346.64
<u>CORPORAL</u>	1315.00	1409.67
<u>SERGEANT/DETECTIVE</u>	1375.00	1472.07

As to Election for Compensatory Time Off

CITY  
One (1) hour for each hour of overtime worked to the limit permitted by agreement.

ASSOCIATION  
One and one-half (1-1/2) hours for each hour of overtime worked to the limit permitted by agreement.

The issue for determination by the Arbitrator is which of the end proposals should be incorporated in the final agreement between the parties for the years 1976 and 1977. The statute does not permit the Arbitrator to alter, change, amend or modify the respective final offers and a choice is to be made as to which is more reasonable and therefore acceptable.

Sec. 111.77 sets forth factors to which the arbitrator must give weight: interest and welfare of the public, financial ability of the municipality to meet the anticipated costs, comparison of wages of unit employes with wages of other employes performing similar services and with other employes generally; in public employment in comparable communities and in private employment in comparable communities; the average consumer prices for goods and services (C.L.I.), overall compensation presently received including fringe benefits, changes during pendency of arbitration and any other relevant factors "traditionally taken into consideration in the determination of wages, hours and conditions of employment..."

While the parties in their discussion of the issues lay weight to the following criteria: comparison of final offers to wages and other conditions of employment of comparable communities, the cost of living as evidenced by changes in consumer price index, the interests and welfare of the public and the financial ability of the municipality to meet costs, the arbitrator is not limited to these factors alone but may reach out to any other relevant factors generally considered by bargaining parties in their determination of wages, hours and other conditions of employment.

#### DISCUSSION

As to comparison of final offers of the parties relating to wages and other condition of employment with similar factors in comparable communities.

The parties are far from agreement with respect to which communities should be selected for comparison and what salary figures are to be utilized in the comparison.

Thus the City has chosen for its sample population the nineteen (19) communities in the Milwaukee Metropolitan Area which have reached final agreement for the year 1976. The comparison is then made in terms of the salary at year end received by the patrolman at the maximum salary level in those communities. The City reasons that the broader base should be used in order to view the situation from a total labor force standpoint.

The Association, on the other hand, has selected for its sample population six (6) communities which surround the City of Brookfield. The Union proceeds then to compute an average monthly or annualized salary figure over the two proposed increases for 1976 (keeping in mind that salaries are to change in January and July and thereafter), with which it has made comparisons to the maximum salary level received by patrolmen in those communities.

The City defends the reasonableness of its offer on the ground that the salary at year end under its wage proposal for 1976 represents a 9.8 percent increase in the maximum monthly salary rate over 1975. This figure it argues is well above the 8.35 percent mean increase granted to the patrolmen in the Milwaukee Metropolitan communities where only four have provided higher increases and none have offered an increase above 11 percent. Should the Union proposal be accepted, argues the City, the increase would be 15.6 percent in terms of year end wages. This would be by far the highest increase awarded to patrolmen in a Milwaukee Metropolitan community. The practical effect of such an increase would be to lift the Brookfield patrolman's maximum monthly salary from the 24th to the 4th position among the police departments in the same area, surpassed only by the departments of the City and County of Milwaukee and Menomonee Falls.

The City further argues that the fringe benefits already conceded would cause the City's offer to compare even more favorably. Also that Brookfield patrolmen reach the maximum in three years, thus more quickly than in many other communities.

The City contends that its offer would increase the comparable status of patrolmen from \$46 less than the mean to only \$33 less than the mean maximum monthly salary for patrolmen in the metropolitan area. In terms of total employment cost, the City states that its offer is only \$12 less than the mean of these communities. Finally the City argues that as a matter of internal department comparisons, the City's offer represents \$53 more a month than the fire fighters receive whereas the Union proposal would increase that to \$79.

On the issue of compensatory time off, Exhibit No. 19 shows that eight (8) area communities offer one and one-half hours in compensatory time off, while five offer one hour and seven allow none.

On the other hand, the Union's position is that the wage rate increase is not 15.6 percent but 11.77 percent based on an annualized monthly salary over the biannual increases of 8 percent and 7 percent. This average wage rate contained in the Union proposal, argues the association, is below that of four (4) of the eight (8) wage rates received by police bargaining units in surrounding communities.\*

The Union further notes the decline in the comparative position of the Brookfield Police Department with respect to patrolmen's salaries. In 1974, the maximum monthly wage rate for Brookfield patrolmen, was only \$6 less than the average salary received in the metropolitan area. In 1975, the Brookfield rate, contends the Union, plunged to \$46 less than the average (mean). This is evidenced by the fact that the police department received an increase of only 6.2 percent, the lowest increase of all internal departments in the City of Brookfield. The average salary increase for supervisory police personnel on the other hand has been 12.31 percent argues the Union.

The applicable Statute Sec. 111.77 requires that comparisons of this type be made in relation to "comparable communities." The statute, however, does not define "comparable communities."\*

The City has chosen to compare its offer to the Milwaukee metropolitan area. This area is so diverse in many respects that it can hardly be said that all the communities within it are "comparable." The Union on the other hand has been more realistic by its attempt to regionalize the comparison by selecting surrounding communities. Geographic proximity is one of the criteria that would support the selection of a community for comparison purposes.

Because the final offers for 1976 of both parties are structured on bi-annual wage increases it is difficult to compare them with the annual figures of most, if not all of the communities offered for comparison. The City's comparisons are based on the wage rates at year end, while the Union's comparisons are based on annualized figures. The Arbitrator is of the view because of the split year arrangement that the annualized figures are more representative of the actual situation and therefore more proper for use for comparative purposes.

In this context a comparison of wage figures leaves one with the impression that the City of Brookfield has fallen behind in comparative position. In 1974, the compensation in terms of wages offered to patrolmen was only \$6 less than the mean. In 1975, the figure dipped to \$46 less than the mean. In response to this the City's final offer would lift the comparative position to \$33 below the mean. It is obvious that this offer will not restore the comparative position enjoyed in 1974. Granted the 9.8 percent increase offer of the City represents a substantial gain, but more would be required to make up for the decline occasioned by the previous two year contract terms.

The Union's final offer on the other hand would push the ultimate wage rate to \$29 more than the mean and place the City of Brookfield in a much higher position as far as wage rates are concerned. The advance would be evidenced even more strongly in total employment costs because of the fringe benefits already agreed upon.

#### As to The Cost of Living

Exhibit No. 15 shows that in February, 1975, the rate of increase in the consumer price index (cost of living) reached a high of 9.5 percent. Since that time the rate of

Both the City's offer of 9.8 percent and the Union's annualized figure of 11.77 percent for 1976 meet and exceed the cost of living increase.

As to Interests and Welfare of Public and Ability  
of City to Meet Demands

In its brief the City offers some argument to the effect that the offers must be considered in the context of both the growth of municipal expenditures and limited municipal financial resources. The City cites rapid expansion in population and the need for capital expenditures, the lack of a large commercial or industrial base from which to draw revenue and the tax levy limitations as contributing to a "dreary revenue picture" for the City of Brookfield. The City does not allege outright inability to pay and the Union contends that the City has not substantiated any claim to poverty.

Certainly the record fails to disclose inability to pay wage increases by the City. The evidence is to the contrary. The City is relatively financially healthy, is growing in population\* and economy. The median family income in 1970 was \$16,052. Equally the assessed value of taxable property is growing. The effect of the Tax Levy Limitations Act, (Chap. 90 Laws of 1975) might be offset by taking advantage of available exemptions, or by referendum. Brookfield citizens have experienced higher taxes in previous years. In short the City has failed to document any indicators such as a diminishing contingency fund, borrowing for operating expenses, extreme net tax rates, etc., which would substantiate an inability to pay argument.

As to the welfare and interests of the public, the City contends that approval of the Union compensatory time off proposal will create scheduling problems as the policemen already work less than a forty (40) hour week. This it is claimed may in turn cause the City to be faced with inadequate protection at times. The Union refutes that advancing the argument that the scheduling of the time off would be exclusively within the discretion of the Chief of Police to administer.

In further support of the Union's request for increased compensation it cites the favorable track record in terms of crime rates and arrest statistics and the unique service of having the police personnel train for and carry out police ambulance service to all of the citizens of Brookfield. Generally, in other communities citizens are called upon to pay private ambulance operators for such service, but not in Brookfield.

CONCLUSION

The legislation which gives rise to the instant procedure, Section 111.77 Wis. Stats., is of recent vintage (1971). Its purpose is to provide full opportunity for collective bargaining to employes engaged in police work with their municipal employer and at the same time deprive them of the right to strike and shutdown such essential community service.

The rationale behind final and binding arbitration of the type we deal with is best set out in the recent case of Milwaukee Deputy Sheriffs Association v. Milwaukee County, 64 Wis. 2d 651 (1974).

The case quotes with approval from Arvid Anderson's article in The Impact of Public Sector Bargaining, 1973 Wisconsin Law Rev. 986,1012:

"The purported rationale...is that final offer selection will induce bargaining since the parties will not make exorbitant demands for fear that the other party's more reasonable position will be adopted as the arbitrator's award."

Again the court cites 27 Industrial & Labor Relations Review (1974), 186, 190, where the theory of the final-offer arbitration and its practical effects in Eugene, Oregon is discussed:

---

\*Figures released by State of Wisconsin Administration Department in August shows Brookfield with a 10.1 percent gain over 1975 showing a population of 34,980.

"The overriding purpose of the final-offer procedure...is to induce the parties to make their own compromises by posing potentially severe costs if they do not agree. In other words, a successful final-offer procedure is one that is not used; one that induces direct agreement during the proceedings; or, using a less rigorous definition of success, one that substantially narrows the area of disagreement. And when the procedure is used, the function of the operator is to operationalize its potential costs by deciding against the party that advocated the less reasonable offer(s). In other words, the final-offer mechanism is intended to promote the give-and-take of good-faith bargaining by acting as a 'strikelike' substitute rather than to serve as a mechanism by which arbitrators may exercise their discretion." (P. 202).

We reason therefore that the parties did in fact engage in good faith bargaining and that the respective final offer of each was the last effort to narrow the area of disagreement.

Unfortunately the aforementioned purpose was not attained as evidenced by the disparity in the 1976 salary proposals. Thus the arbitrator must decide which of the two final offers is more reasonable and should be incorporated into the labor agreement between the parties.

The City's offer will do little to restore Brookfield's comparative position, if accepted. And what gains might be shown for 1976 could well be lost in 1977 as the salary proposal is only 5.9 percent for the subsequent year. This figure is well below the increases that have been granted in recent years to other area departments and below anticipated cost of living rise.

Two elements in the negotiations of the parties have created the conception that the offers of the parties border upon unreasonableness, the biannual wage factor and the two-year length of the agreement. The normal approach in such matters is for a labor contract to include a wage reopener clause within the contract year so as to give the parties an opportunity to reassess their needs. But the parties have chosen otherwise and we must accept the situation as we find it.

The Arbitrator has no power to refashion the final offers or any provision of the labor contract. It is sufficient for the Arbitrator to find one final offer more reasonable than the other.

The Union's offer is admittedly more than a "catching up" process. The wage rate increase is 11.77 percent based on an annualized monthly salary over the biannual increases of 8 percent and 7 percent, and is an effort to keep abreast of the maximum salaries paid policemen in the communities which geographically surround the City of Brookfield. The 1977 salary increase in the Union's offer and the compensatory time off aspects are within reasonable limits and the 1976 wage increases are not so imposing as to render the final offer of the Union unacceptable.

In the light of the evidence presented and in view of the obligation under the statute, the Arbitrator is constrained to conclude that the final offer of the Brookfield Professional Police Association is more reasonable under the circumstances as a whole and more reasonably responds to the criteria requirements under the Municipal Employment Relations Act.

#### AWARD

The terms of the applicable "final offer" contained in the Association letter to the Wisconsin Employment Relations Commission shall be incorporated in the final agreement between the City of Brookfield and the Brookfield Professional Police Association without modification.

Dated this 17th day of August 1976.

Max Raskin /s/  
\_\_\_\_\_  
Max Raskin - Arbitrator