

STATE OF WISCONSIN

ARBITRATION AWARD

In the Matter of :
: CITY OF БЕЛОIT (POLICE DEPARTMENT) : Re: Case XXIX
: and : No. 20210
: POLICE PATROLMEN'S ASSOCIATION OF БЕЛОIT : MIA-229
: Decision No. ~~14421-A~~
: 14429-A

APPEARANCES

For the City of Beloit, herein called the Employer, Mr. Neil M. Gundermann, Consultant, 6617 Seybold Road, Madison, Wisconsin 53719; and Mr. Larry Tyler, Jr., Personnel Director, City of Beloit, 220 West Grand Avenue, Beloit, Wisconsin 53511.

For Police Patrolmen's Association of Beloit, herein called the Association, William F. Donovan, Esq., Noll & Donovan, Attorneys at Law, 315 West Grand Avenue, Beloit, Wisconsin 53511.

A hearing was held in this matter on April 27, 1976 at the Beloit Municipal Center, 220 Grand Avenue, Beloit, Wisconsin. The parties presented evidence from witnesses and in the form of documents. A transcript was made of the proceedings. At the conclusion of the hearings it was agreed that briefs would be sent to the arbitrator within four weeks after receipt of the transcript and that they would be exchanged by the arbitrator. The briefs were exchanged on June 13, 1976.

This dispute involves negotiations of a renewal of an agreement between the parties for the year 1976. The Association represents a unit of patrolmen including patrolmen and sergeants employed by the City of Beloit. Bargaining over the renewal of the 1975 agreement had begun in the autumn of 1975. When these negotiations were not successful the Association filed a petition dated February 25, 1976, requesting arbitration pursuant to Section 111.77(3) of the Wisconsin Statutes. After an informal investigation by a member of the staff of the Wisconsin Employment Relations Commission the Commission decided on March 12, 1976 that an impasse existed within the meaning of the statute and submitted a panel of arbitrators to the parties. Subsequently the parties selected the undersigned as the arbitrator and he was so informed by a letter dated March 22, 1976 from Morris Slavney, Chairman, Wisconsin Employment Relations Commission.

THE ISSUES

There appeared to be agreement at the hearing that the positions of the parties were accurately set forth in an Employer exhibit, appended to this report as Addendum

The Association has proposed to add two days of bereavement pay for "non-immediate family," i.e., brothers-in-law and sisters-in-law. When this was proposed, the Employer's counter-offer was to provide the two days for non-immediate family but to reduce the present four days for bereavement pay for deaths in the immediate family to three days.

The Employer would increase the present uniform allowance by \$25 annually. The Association would increase the annual figure by \$50.

POSITIONS OF THE PARTIES

The Association's principal rationale is a comparison of the Beloit wages and these allowances and premiums with those for the Janesville Police Department and for the Rock County Sheriff's Department. The Association argues that "these two governmental units have become, in the past several years, the primary comparables used in bargaining between the parties to this arbitration matter." At the time of the hearing, however, neither unit's 1976 agreement had been settled. Therefore, the Association introduced evidence to show what the City of Janesville and Rock County had offered. This was on the theory it would be unlikely that those offers would turn out to be less than any final settlement and because both offers were better than the final offer of this Employer. These comparisons tended to indicate a rough equivalency between the Association's final offer on wages in this case and the final offers of the other two employers. If the two other employers' offers and the Association's offer in this case were to become effective, resultant rates would also be roughly equivalent. A demonstration of this was produced in an exhibit by the Association which is reproduced here as Addendum No. 2.

In support of its holiday payment proposal the Association points out that Janesville policemen have eight paid holidays annually and they receive doubletime for holidays worked and compensatory days off for holidays that are not worked. Rock County deputy sheriffs receive compensatory days off for ten holidays per year, whether or not they fall on work days. Both holiday policies are said to be more liberal than the present Beloit policy.

On the bereavement pay issue the Association believes that adoption of the Employer offer would result in diminution of the benefit for the reason that there would be fewer occasions to use the days off for deaths among the ranks of in-laws for the reason that they tend to be about the same age as members of the unit who would be affected. Thus the only improvement of this benefit would result from adoption of the Association's proposal.

The Association argues that both Janesville and Rock County have better uniform allowance conditions than Beloit. Janesville does not have a specific annual allowance, but the initial uniform is paid for by the City of Janesville as well as replacements. In addition, dry cleaning and laundering is provided. Rock County deputies receive an annual uniform allowance of \$150 plus \$85 per year for laundry and dry cleaning. New deputies employed after January 1, 1975 also receive an initial uniform allowance of up to \$250. Since Beloit police do not receive any separate laundry and dry cleaning allowance, it is argued that the \$175 per year allowance proposed by the Employer is still less than adequate when compared with the other two jurisdictions.

For all the reasons outlined above the Association argues that its final offer should be adopted as the award in this dispute.

The Employer's position is based squarely on the issue of ability to pay for the increases. The Employer calculates its own final offer as an increase of 6.55 per cent and the Association's as an increase of 12.34 per cent. These calculations, which were not disputed by the Association, are included in this report as Addendum No. 3 and Addendum No. 4. The City also emphasizes that the Association prevailed in an arbitration proceeding in 1975 and that the result was a settlement of more than 16 per cent. The City argues that a two year total increase of more than 28 per cent would be unwarranted and unreasonable.

Because the Association introduced evidence, based on testimony of the Employer's personnel director, that the firefighter unit had been offered a 4.7 per cent wage increase this year by the Employer, as compared with a 2.38 per cent increase for this unit, the Employer also has referred to the prospects for settlements for the firefighter unit over the two year period. In 1975 the Employer prevailed in an arbitration involving the firefighter unit. As a result, the total package in 1975 for that unit was 11.5 per cent. The somewhat larger wage offer this year to the firefighter unit was intended "to assure greater equity between the salaries received by firefighters in the City of Beloit and the salaries received by firefighters elsewhere."

To counter the Association's comparisons with Janesville and Rock County, which tend to show prospects for higher wages in those communities when their 1976 contracts are settled, the Employer argues that the Association does not take into account the total package of employment conditions. (The Employer, however, did not introduce any testimony to show such comparisons. Although the Employer points out that the Association could have applied the estimated 3.08 per cent increase in insurance to salaries, there was no testimony on how insurance compares among the three jurisdictions.)

The Employer's main support for its position was its argument that the financial situation of the City of Beloit did not allow it to pay for the increases proposed by the Association. The Employer introduced testimony of the Director of Finance-City Clerk which made the following points:

(1) The City of Beloit's unrestricted fund balance as of December 31, 1975 was about \$30,000. Testimony indicated that this was dangerously low. This situation was said to have been aggravated by what was characterized informally as the "cash flow law" enacted by the State Legislature, which shifts cash flow problems from the State of Wisconsin to cities and villages and requires that they maintain more working capital.

(2) The funding from the Law Enforcement Assistance Administration, which was \$117,000 in 1974 and \$44,000 in 1975, has been discontinued in 1976. The result of the loss of these funds was that the City Council reduced the allocation to the Police Department with the expectation that attrition would reduce the size of the force during the year and that further attrition would have to take place in succeeding years in order to reduce the size of the force from 68 sworn officers to 63.

(3) The level of the 1975 tax levy, collected in 1976, for the City of Beloit was at its maximum permitted under state law. Pursuant to this testimony the Employer stated in its brief that "it is not unwilling to pay a reasonable salary, but is simply incapable of paying the salary as proposed by the Association." (The emphasis is contained in the City's document.)

OPINION

On the issue of wages the Association has shown by its comparisons that adoption of the Employer's offer on this issue would result in a disparity between Beloit Police Department wages and the level of wages in the Janesville Police Department and the Rock County Sheriff's Department. On the other hand, there was no evidence introduced by the Association to support its assertion that "these two governmental units have become, in the past several years, the primary comparables used in bargaining between the parties to this arbitration matter." The Employer's argument that this comparison, "standing alone has no particular significance" would be more impressive if the Employer had followed that argument with what were asserted to be the necessary comparisons of "total packages."

If this were the only issue in this proceeding I would find neither position completely persuasive, but on balance I might decide that the Association had the better case.

It is more difficult to make a judgment on the issue of holidays. The Janesville and Rock County conditions appear to be better than the current Beloit conditions, but it is not possible to make a precise comparison. Janesville policemen are paid double-time for eight holidays if they work. With a five-three, five-two work schedule throughout the year, on the basis of probability two thirds of the eight holidays would fall on work days. The other one-third of the holidays would be compensated by paid days off. Rock county deputy sheriffs appear to get compensatory days off with pay for ten holidays each year whether or not the holidays fall on a work day or a day off. The Janesville policemen get on the average 5.33 days per year paid at doubletime, or about \$200 extra in their paychecks, and on the average 2.67 days of compensatory time off from the regular work schedule. Rock County deputies get ten compensatory days off but no extra money in their paychecks. Beloit policemen get \$190 extra in their paychecks but no compensatory days off. A rough comparison would indicate that Janesville police are better off than either of the other forces. It could be argued that adoption of the Association proposal in this case would make the Beloit police better off than either of the other two forces since they would then have \$380 more in their annual paychecks. But it is difficult to compare the value placed on compensatory days off for the Janesville and Rock County personnel.

The other two issues appear to be relatively insignificant. Four days of bereavement pay is generous, especially when there is no requirement that the days come out of sick leave, as is the case for Janesville and Rock County. A reduction to three days, even if the Association thinks that the two days for deaths of in-laws is not a proper trade off, would not result in an important deprivation for these employees.

Nor is there a difference of any great importance between the parties on the uniform allowance. Both Janesville and Rock County currently have more generous conditions. Rock County's uniform and cleaning-laundry allowance is better than either of the final offers being considered here. The Janesville uniform allowance is qualified in terms of individual authorizations of expenditures by the Chief of Police or his designee and by the requirement that all uniforms remain the property of the City of Janesville.

So far I have discussed the two final proposals in terms of how they compare with the two jurisdictions with which the Association seeks to compare. Although the Association has not made as convincing a case as perhaps it could have made to show that employment conditions for the Beloit police should be determined by such comparisons, it has made a better case than has the Employer in arguing the contrary. If there were no question here of ability to pay I would be inclined to find for the Association on the basis of the evidence presented.

In my opinion, however, the financial position of the City of Beloit has overbearing importance in this dispute. I was impressed by the Employer's testimony that it was already taxing up to the levy limit set by law, that its funds available for expenditure to meet this settlement were precariously low, and that steps had already been taken to reduce by attrition the size of the force. The Employer has stated

The law provides no guidance to the arbitrator as to the relative weight he should give to the eight subparagraphs containing the factors that he is to consider. There is no indication that a finding in favor of one party under two or three of the factors described would outweigh a finding in favor of the other party under only one of the other factors. Although I cannot claim that "financial ability" is more important than other factors to be considered, I believe that we must look at the situation within the context of what we know about the precarious financial circumstances of many of our cities. While it may seem far-fetched to suggest that an award in favor of the Association would start the City of Beloit down the road that was taken by New York City, borrowing against future revenues, I think that an arbitrator is on very tenuous grounds if he makes a decision that may require a municipality to borrow funds. In this case I am unwilling that my award should require the Employer to take such action.

Conversely, I am concerned and distressed at the implications for collective bargaining in the public sector by the assertion that a city is incapable of meeting the payments imposed by an arbitration award. To the extent that municipalities can genuinely show inability to meet the costs of arbitration settlements, then collective bargaining and arbitration in the public sector become an empty charade with only one outcome possible: settlements imposed by employers. This could result in substandard employment conditions as compared with private employment in the community, in lowering morale of public employees, in strikes, or in all three.

My second comment is this: In this case I believe that the result (my choice of the Employer's offer) is mitigated by the fact that these employees received a generous settlement in 1975, one which the Employer estimated at more than a 16 per cent increase. It can also be argued in this case, as the Employer has, that adoption of the Employer proposal, estimated to cost 6.55 per cent of payroll, will not result in unreasonable conditions for policemen in Beloit.

My third comment is this: At the hearing the Association introduced statistics that purported to show that measurements of reported crime in Beloit are considerably higher than they are in the comparable jurisdictions with which the Association would compare Beloit. These statistics are shown in Addendum No. 5 and Addendum No. 6. I am not particularly impressed by the Employer's quotation of a paragraph from an arbitrator's award in 1975 which gives his opinion "that the evidence and arguments with respect to productivity are tenuous to say the least and of little or no value in judging the reasonableness of the respective last proposals of the Association and the City." Although I cannot disagree with the Employer and the previous arbitrator that such statistics are not by themselves an indication of the productivity of the police force in Beloit, they do create a presumption that Beloit policemen have a more difficult task facing them than appears to be the case in either Janesville or Rock County. No evidence was introduced as to the relative sizes of the forces in the three jurisdictions, the areas covered, the characteristics of the populations, or any other of the necessary facts upon which a judgment could be based as regards relative productivity of the three departments. But if the presumption expressed above is valid, then the situation calls for study by the City of Beloit and some answer to the Association other than a bald assertion that the City is incapable of paying more than it has offered.

There is no apparent provision in Section 111.77 providing for an arbitrator to maintain jurisdiction of a dispute following issuance of an award. If there were, I would be inclined to retain jurisdiction in this case with the intention of assisting the parties to undertake a joint study of ways in which the Employer and the Association can seek to establish employment conditions that are satisfactory to both parties but still within the fiscal capability of the City of Beloit.

AWARD

The final offer of the Employer is adopted as the award.

Dated: July 13, 1976

Signed: David B. Johnson /s/

David B. Johnson, Neutral
Arbitrator selected from
WERC panel

ADDENDUM NO. 1

Employer Exhibit #1

Positions of the Parties

1. Wages:

	<u>Present</u>	<u>City's Position</u>	<u>Union's Position</u>
Patrolman 1st yr.	\$830	\$ 855	\$ 830
2nd yr.	915	940	974
3rd yr.	1,000	1,025	1,065
4th yr.	1,015	1,040	1,080
5th yr.	1,110	1,135	1,182
10th yr.	1,125	1,150	1,198
Sergeant I		1,237.50	1,311.66
Sergeant II		1,262.50	1,311.66

2. Holiday Pay

<u>Present</u>	<u>City's Position</u>	<u>Union's Position</u>
\$20 per full holiday	as is	\$40 per full holiday
\$10 per half holiday	as is	\$20 per half holiday

3. Bereavement

<u>Present</u>	<u>City's Position</u>	<u>Union's Position</u>
Death in the immediate family up to 4 days	Death in the immediate family, up to 3 days Non-immediate family, up to 2 days	Add another category "Non-Immediate family" to be granted 2 days

4. Uniform Allowance

<u>Present</u>	<u>City's Position</u>	<u>Union's Position</u>
\$150 Annually	\$175 Annually	\$200 Annually

ADDENDUM NO. 2

1976 LAW ENFORCEMENT WAGES
PROPOSED BY EMPLOYERS

	CITY OF JANESVILLE	ROCK COUNTY DEPUTIES*	CITY OF BELOIT CITY	PPAB
1st yr.	\$ 927.50	\$ 896.66	\$ 855.00	\$ 830.00
2nd yr.	978.38	949.09	940.00	974.00
3rd yr.	1077.14	1040.04	1025.00	1065.00
4th yr.			1040.00	1080.00
5th yr.	1175.89	1162.02	1135.00	1182.00
9th yr.		1188.77		
10th yr.	1205.75		1150.00	1198.00
SERGEANTS I			1237.00	
SERGEANTS II		1291.49	1262.00	1311.00

*Note wage shown is that effective in December 1976 -- County's offer is 5% raise first six (6) months and an additional 2% second six (6) months.

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ADDENDUM NO. 3

Employer Exhibit #2

Cost of Employer Proposal

*Hospital Insurance	\$14,362	2.48%
*Life Insurance	3,477	.60%
Uniform Allowance	1,100	.19%
Wages	<u>13,800</u>	<u>2.38%</u>
	\$32,739	5.65%
Increased Employer Contribution to Retirement	<u>5,202</u>	<u>.9%</u>
Total	\$37,941	6.55%

1976 Payroll without wage increase = \$578,061

\$32,739 ÷ 44 bargaining unit personnel = \$744.07 annually

\$37,941 ÷ 44 bargaining unit personnel = \$862.30 annually

*Items previously agreed to and not in dispute.

Cost of Union's Proposal

*Hospital Insurance	\$14,362	2.48%
*Life Insurance	3,477	.60%
Uniform Allowance	2,200	.38%
Wages	37,837	6.54%
Holidays	<u>8,360</u>	<u>1.44%</u>
	\$66,236	11.44%
Increased Employer Contribution to Retirement	<u>5,202</u>	<u>.90%</u>
Total	\$71,438	12.34%

1976 Payroll without wage increase = \$578.061

\$66,236 ÷ 44 bargaining unit personnel = \$1,505.36 annually

\$71,438 ÷ 44 bargaining unit personnel = \$1,623.59 annually

*Items previously agreed to and not in dispute.

ADDENDUM NO. 5

REPORTED CRIMES
January 1975 - December 1975

Municipality	CRIME INDEX OFFENSES	VIOLENT CRIMES	PROPERTY CRIMES
Beloit	2958	112	2846
Janesville	2245	38	2207
Rock County	860	34	826

Source: Crime In Wisconsin
Preliminary Annual
Release 1975

Wisconsin Department
of Justice Crime In-
formation Bureau

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ADDENDUM NO. 6

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REPORTED VIOLENT CRIMES
January 1975 - December 1975

Municipality	MURDER	FORCIBLE RAPE	ROBBERY	AGGRAVATED ASSAULT
Beloit	3	12	60	37
Janesville	2	4	26	6
Rock County	1	7	8	18

Source: Crime In Wisconsin
Preliminary Annual
Release 1975

Wisconsin Department
of Justice Crime In-
formation Bureau

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