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In the Matter of the Petition of \*

SUPERIOR LOCAL NO. 27, WISCONSIN \*  
PROFESSIONAL POLICE ASSOCIATION \*

AWARD OF ARBITRATOR

For Final and Binding Arbitration \*  
Involving Law Enforcement Personnel \*  
in the Employ of \*

Case XXXVII  
No. 20444 MIA-244  
Decision No. 14613-A

CITY OF SUPERIOR (POLICE DEPARTMENT) \*

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GENERAL

This dispute and consequent arbitration arises under Sec. 111.77 of the Wisconsin Statutes. That Statute is designed for the "settlement of disputes in collective bargaining units composed of law enforcement personnel and firefighters."

Part (4) of that Statute provides for 2 alternative forms of arbitration. In Form 1 the Arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment. Form 2 provides that the parties shall submit their final offer in effect at the time that the Petition for Final and Binding Arbitration was filed. Under Form 2 the Arbitrator shall select the final offer of one of the parties and shall issue an Award of Arbitrator incorporating that offer without modification. If the parties do not agree that proceedings under Form 1 shall control, the proceedings shall be conducted pursuant to Form 2 which was the case in the instant dispute.

BACKGROUND

City of Superior, Local No. 27, Wisconsin Professional Police Association (hereafter, Union) filed a Petition with the Wisconsin Employment Relations Commission on April 14, 1976, requesting compulsory final and binding arbitration pursuant to the above-mentioned Statute, Sec. 111.77. Thereafter on May 7, 1976, the Wisconsin Employment Relations Commission ordered Final and Binding Last Offer arbitration proceedings pursuant to said Statute and a neutral Arbitrator was selected.

On May 17, 1976, the WERC was sent a statement of the position of the City of Superior as of February 9, 1976, and on May 21, 1976, the Union submitted its final offer. Both final offers were submitted pursuant to the above-mentioned Order from the WERC which requested the parties to submit its final offer as of February 9, 1976. Those final offers were sent to the selected Arbitrator on May 24, 1976. Hearing date for the matter was scheduled for July 7, 1976, in the City of Superior. The announcement of the selected date was made via a letter from the Arbitrator dated June 1, 1976.

Subsequently, on June 29, 1976, the City of Superior, by its City Attorney, wrote the WERC and complained that 1 of the 2 issues to be decided had not been seriously negotiated by the parties and, "since the City has not had an opportunity to negotiate this with Local No. 27, that an impasse does not exist with regard to this issue." In its letter the City requested an Amended Order specifically stating that an impasse did not exist with respect to the pay schedule for the police communications employes.

On the day of the Hearing, Morris Slavney, Chairman of the Wisconsin Employment Relations Commission, ruled that the City's request for further mediation was denied, (even though further mediation had not been requested). He further ordered the parties to proceed with the arbitration. The ruling was in the form of the following telegram:

"Last Mediation meeting was held on February 9. Petition for arbitration was filed April 14. May 7 commission issued order requiring arbitration and on same date provided parties with

arbitration panel. By May 17 parties submitted their final offers and indicated that they had selected Flaten as arbitrator.

Commission issued order on May 24 appointed Flaten as arbitrator to issue final and binding award. Under such circumstances your request for further mediation on police negotiations is denied and therefore the parties have an obligation to proceed to arbitration.

Morris Slavney chairman  
Wisconsin Employment Relations Commission"

#### POSITIONS OF THE PARTIES

The City at the Hearing and in its Brief continued to take the position that there was virtually no negotiation concerning Communication Center employees until the Union membership objected to the offer concerning holiday pay. Thereafter, the Union began using the Communication Center workers issue for the purpose of having an impasse declared. The City feels such tactics constitute a case of "using a tail to wag the dog." It feels the Union is actually being rewarded for not negotiating on all the issues.

For its part, the Union did not concern itself with the question of failure to bargain or the tactics involved in getting the dispute to a compulsory final and binding arbitration. Instead, it devoted its Brief and argument to the 2 questions, pay for communications employees and holiday pay.

#### THE FACTS

Communication Center employees is the term the parties use in denoting what are usually called "dispatchers" in other cities. (Both terms will be used hereafter.) Those employees operate the Superior Communication Center by means of 7 radios, 3 emergency phones, 1 private emergency phone and 1 PX 12 fireline phone. Their principle duty is to take and dispatch all emergency communications traffic. The Communication Center employees operate and monitor various security doors and the jail cage and the elevator to the jail. As dispatchers, they must be fully acquainted with the community, its roads, landmarks and businesses. They must keep abreast with road construction to help with traffic flow, know the location of railroad lines and broadcast and monitor the Douglas County sheriff's radios. If all city and county units are operative, they must be responsible for communications to 39 squad cars. They must know how to reach all officials of surrounding towns and order all wrecker service for county use. These employees must keep up to date on the list of stolen vehicles, arrest warrant lists and keep a status card on all city and county squad cars. They have numerous other duties too numerous to enumerate here but requiring equal skill and responsibility.

There are 4 Communication Center employees operating around the clock, only one per shift. Their salaries are paid by equal contributions from the City of Superior and Douglas County.

The duties and responsibilities of Communication Center employees has been constantly increasing, especially during the summer months.

They are the lowest or at least nearly the lowest paid employees in the City.

Up until 1975, the Police Department was paid holiday pay for 8 1/2 City-observed holidays at the rate of double pay. In order to qualify for holiday pay, the employee must have worked not only on the holiday but on the day prior and the day after the holiday. Subsequently, the parties agreed to a new holiday approach whereby the money for 8 1/2 paid holidays was simply totaled and added on to the base amount of the wages whether the officer worked on the holiday or not. In other words, the amount equivalent to what an officer would have earned working all holidays in 1974 was added to the base pay for everyone on the force.

The Communication Center employee's salary was discussed only lightly during the negotiations for the 1975 contract. It was not until the Union membership refused the city's offer regarding holiday pay that the wages for the Communication Center workers became an issue of serious negotiation.

Agreement on the 1976 contract was reached by the respective bargaining representatives in October. However, the Union membership voted to turn down the proposed agreement when it was brought to them for ratification by its bargaining team. Thereafter the Union submitted a counter-offer which was accepted by the city. Then after acceptance, astoundingly, the revised contract containing the Union's counter-offer, was again refused by the Union as a whole. In other words, the Union reneged on its counter-offer.

During all of the negotiations mentioned above, the plight of the Communication Center workers was virtually ignored and for all practical purposes was never discussed. Although the Communication Center employees are in the police bargaining unit, none of the individual dispatchers belong or pay dues to the Union.

Firefighters in the City of Superior also receive the aforementioned holiday pay (which was really an addition to the base pay inasmuch as all employees receive it regardless of whether they work on the holiday) and, additionally, receive double pay for holidays actually worked.

#### DISCUSSION

In its final offer the City offers to pay holiday pay only at the same rate as in the 1975 contract. That is, an employee receives time and one-half for holidays he works and nothing for holidays if he does not work except that the 1974 wage equivalent of 8 1/2 paid holidays is included in the base salary.

The Union offer proposes to change the base pay by including in it the wage for 8 1/2 paid holidays at the rate for the current year rather than at the 1974 rate.

With regard to the pay for Communication Center employees, both sides seem to agree that they are under paid in comparison to employees in similar occupations throughout the area and compared with other city employees.

Historically and customarily, Police Dispatcher duties are entrusted only to the most dependable and alert officers. In some cities such as Madison they are given the title and pay of an elevated position (such as Special Investigator) even though their dispatcher duties remain the same, in recognition of the responsibility and difficulty of the job. In Superior this does not seem to be the case. Clearly, the Communication Center employees are under paid and the final settlement offer of the Union is certainly not unreasonable.

On the other hand, I am inclined to agree with the City Attorney that the Union negotiated with less than good faith concerning holiday pay.

Naturally, the traditional goal of the police is to gain parity with the firefighters in terms of wages. A discussion of the merits of that subject will not be made here. It will be adequate to say that the rivalry for pay parity is at best, traditional and at worst, irrational. However, in attempting to achieve parity, the police went too far in my opinion. To propose a contract-settling counter-offer then, upon its acceptance, refuse to ratify the contract including the counter-offer, comes close to just plain chiseling in my view.

The good faith of the Union has to be questionable in my opinion.

Had it not been for the ruling of the Wisconsin Employment Relations Commission that the request to separate the issues was too late, the aforementioned bargaining tactics might have been enough to make me declare the Union's final offer unreasonable regarding holiday pay (for it was). It also appears that the Union was "laying in the weeds" with their issue concerning dispatcher's pay for the purpose of reaching an impasse so that holiday pay will be included as an issue in arbitration proceedings.

On the other hand, it cannot be said that the subject of pay for Communication Center employees was never on the table at all. The final offer of the Union specifically includes the demand in writing denoted as Paragraph 11 even though the record indicates a paucity of discussion on the subject. Its inclusion as a part of the Union's offer is there in black and white.

DECISION

In view of the WERC ruling that Communication Center employee's wages must be included in this arbitration and in recognition of the clear need for pay increases for these workers, I must rule that the final offer of the Union (including both issues) is more reasonable than the final offer of the City.

AWARD

Pursuant to Section 111.77 (3)(b) of the Municipal Employment Relations Act, I award the Union's final offer that the holiday pay for employees in the bargaining unit be based upon the wage rate for the current year, and

That pay for Communication Center employees in the bargaining unit be increased \$50 per month for the first 6 months of 1976, an additional \$50 per month on July 1, 1976, January 1, 1977, and July 1, 1977, in addition to the other wages and fringe benefits already awarded in the current contract.

Dated this 6th day of October, 1976.

Milo G. Flaten /s/  
Arbitrator