

STATE OF WISCONSIN

ARBITRATION AWARD

In the Matter of the Petition of
VERNON COUNTY SHERIFF'S DEPARTMENT
LOCAL 2918, WCCME, AFSCME,
AFL-CIO
for Final and Binding Arbitration
Involving Law Enforcement Personnel
in the Employ of
VERNON COUNTY (SHERIFF'S DEPARTMENT)

Case XXXV
No. 21204
MIA-291
Decision No. 15259-B

Appearances:

Walter J. Klopp and Robert Chybowski, District Representatives, Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, appearing on behalf of Local 2918, AFSCME, AFL-CIO.

Steele, Smyth, Klos and Flynn, Attorneys at Law, by Jerome Klos, appearing on behalf of Vernon County.

ARBITRATION AWARD:

On March 8, 1977, the undersigned was appointed impartial arbitrator to issue a final and binding arbitration award in the matter of a dispute existing between Vernon County Sheriff's Department, Local 2918, WCCME, AFSCME, AFL-CIO, referred to herein as the Union, and Vernon County (Sheriff's Department), referred to herein as the Employer. The appointment was made by the Wisconsin Employment Relations Commission pursuant to Wisconsin Statutes 111.77(4)(b), which limits the jurisdiction of the arbitrator to the selection of either the final offer of the Union or that of the Employer. Hearing was conducted on May 11, 1977, at Viroqua, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence, and to make relevant argument. No transcript of the proceedings was made; however, briefs were filed in the matter which were exchanged by the Arbitrator on June 1, 1977.

THE ISSUES:

The issues are set forth in the final offers of the parties as set forth below.

FINAL OFFER OF THE UNION:

1. WAGES 1/1/77 - \$50.00 per month increase
1/1/78 - \$50.00 per month increase
2. WISCONSIN RETIREMENT FUND
1/1/77 Increase Employer's contribution of employees' share of state retirement from 4% to 5%.
1/1/78 Increase Employer's contribution toward employees' share of state retirement from 5% to 6%.
3. Include a provision in the Agreement for check off of Union dues.

4. HOSPITAL AND SURGICAL INSURANCE

1/1/77 Employer to pay 60% of the premium for family coverage

1/1/78 Employer to pay 65% of premium for family coverage

5. VACATIONS

Effective 1/1/77 vacation schedule to provide for one week after one year; 2 weeks after 2 years; 3 weeks after 10 years; 4 weeks after 20 years.

FINAL OFFER OF THE EMPLOYER:

1. WAGES 1/1/77 - \$50.00 per month increase

1/1/78 - \$60.00 per month increase

2. WISCONSIN RETIREMENT FUND

1/1/77 Increase Employer's contribution toward employees' share of state retirement from 4% to 4 1/2%.

1/1/78 Increase Employer's contribution toward employees' share of state retirement from 4 1/2% to 5%.

3. DUES CHECK OFF - The Employer opposes language providing for dues check off.

4. HOSPITAL AND SURGICAL INSURANCE - The Employer proposes to continue to pay 50% of the premium for family coverage for both years.

5. VACATIONS - The Employer proposes to continue the vacation schedule which provides for 1 week after 1 year; 2 weeks after 2 years; 1 additional day per year after 10 years, to a maximum of 16 days.

In addition to the issues which are in dispute as set forth above, the parties agree to the following modifications of the prior Collective Bargaining Agreement:

1. OVERTIME - Effective the first year of the Agreement add a provision to provide time and one-half compensation for all hours worked beyond the daily work schedule and the weekly work schedule.

2. Increase the part time hourly rate from \$2.50 per hour to \$3.00 per hour, effective 1977.

3. Increase the number of days of sick leave accumulation from 90 days to 96 days.

4. Term of Agreement 1/1/77 to and including 12/31/78.

DISCUSSION:

From the issues as set forth in the final offer of the parties above, the undersigned notes that all of the issues in dispute have economic impact with the exception of the Union position on check off. The undersigned will first address the issue of check off, and then proceed to a consideration of the issues which have economic impact.

CHECK OFF

With respect to check off, the Union has presented evidence which shows that of the ten surrounding counties law enforcement contracts provide for a Union Security Provision in six of the counties. The evidence further shows that the four counties without Union Security provisions are not unionized. Of the six counties with Union Security provisions; Adams, Crawford, Jackson and Richland

Counties provide for a fair share agreement in addition to check off. Monroe and Sauk counties provide for dues check off but have no fair share agreement.¹ Of the seven represented counties Vernon County stands alone in that it provides for neither dues check off or fair share. LaCrosse County, although in the approximate vicinity of Vernon County, has not been included in the Union comparisons by reason of the Union contention that LaCrosse County is more highly industrialized and not comparable. The undersigned agrees that for wage and cost comparisons the exclusion of LaCrosse County is appropriate. However, for the purposes of comparing practices with respect to Union Security the undersigned feels that comparison is appropriate with LaCrosse County and notes that the LaCrosse County agreement provides for neither dues check off or fair share, and the undersigned further takes notice that the issues of fair share or check off are neither in dispute between the parties for their 1977 Collective Bargaining Agreement, nor is there agreement with respect to check off. Obviously LaCrosse County provides for no Union security in its law enforcement contract.

The Employer opposes check off, philosophically contending that the label "Union Security" is a misnomer.

While the Arbitrator does not share the Employer's philosophical opposition to fair share; and while the prevailing practice in the surrounding communities among unionized departments, with the exception of LaCrosse County, is to include dues check off as part of the agreements; and while the Arbitrator rejects any consideration of the Employer argument that other counties such as Juneau had provisions for Union security in earlier contracts and have refused to add the provisions in later contracts because of bad experiences, because there is no proof in the record to support any bad experiences in Juneau or other counties; the undersigned believes that Union security provisions should be matters agreed upon between the parties rather than imposed upon them by a third party. Consequently, the undersigned will not consider Union security in determining whether the final offer of the Employer or the final offer of the Union should be adopted. If the considerations of the economics in this case compel a finding for one or the other of the parties then the issue of Union security will either be included or excluded from the parties' agreement, based on the economic considerations herein.

ECONOMIC ISSUES

The Arbitrator notes that the economic issues in dispute fall into two categories, direct wage payments and fringe benefits. For the purposes of this discussion the Arbitrator will consider the wage issues and the Wisconsin Retirement Fund contribution by the Employer as direct wage issues. The fringe issues in dispute; the Employer's contribution to hospital and surgical insurance, and the improved vacation schedules; will be discussed separately.

DIRECT WAGES

As indicated above the Employer's contribution to the Wisconsin Retirement Fund and wages will be considered in the same discussion. A recap of the parties' positions on these two issues is set forth below:

	<u>Union</u>	<u>Employer</u>
First year wages	\$50	\$50
Second year wages	\$50	\$60
First year WRF	1% increase	1/2% increase
Second year WRF	1% increase	1/2% increase

The Employer has advanced several arguments with respect to his position on wages and WRF. The principal arguments involve 1) the comparison with the WRF contributions made on behalf of other employees of the Employer, and 2) the philosophical position that employees ought to contribute something toward their retirement.

With respect to the comparisons of the employees in law enforcement involved in these proceedings to other county employees, the undersigned does not find the Employer argument compelling. From Union Exhibit #6 the undersigned is satisfied that the surrounding counties provide 100% payment of the employees' share of Wisconsin Retirement Fund, with the exception of Jackson County, which provides 83.3% of the employees' share (Union Exhibit #6 also shows LaCrosse County, which the Arbitrator is not considering in this comparison for the reasons mentioned earlier in this discussion.) Wisconsin Statutes 111.77 (6)(d) provides criteria to which an Arbitrator shall give weight, in arriving at his decision. The first criteria listed is a comparison of public employment in comparable communities. Since the comparison with surrounding communities with respect to Employer payment of WRF clearly shows the prevailing practice to be 100% contribution of the employees' share; and since the respective costs, coupled with wage demands of the two offers of the parties shows the Union position to be less costly; and because the Employer contribution to Wisconsin Retirement Fund results in more favorable tax treatment to the employees, which nets higher take home pay, the undersigned concludes that the position of the Union with respect to wages and Wisconsin Retirement Fund is the most appropriate.

With respect to the Employer's argument that he is philosophically opposed to 100% payment, the undersigned rejects said argument. The Employer has argued that 100% payment of the employees' share of WRF would be analogous to a private employer paying 100% of the employee's social security payment. The Arbitrator does not consider the Employer argument in this regard to have validity, in view of the advice from the Wisconsin Department of Employee Trust Funds that Vernon County employees are covered by social security, resulting in the employees involved in the instant case making a social security contribution just as private employees do. It is common in the private sector for employers to fully fund the retirement plans of their employees, and the undersigned views a full funding of the Wisconsin Retirement plan to be consistent with the practice in the private sector, particularly where both the private sector employees, as well as the employees of this Employer, are making contributions to social security in their own behalf.

FRINGE BENEFITS: VACATIONS AND EMPLOYER HOSPITAL/SURGICAL CARE PREMIUM CONTRIBUTION

The Employer's principal arguments with respect to maintaining the present arrangement for vacation and hospital/surgical care premium participation, is uniformity with other employees of the County. The undersigned is persuaded that the unit involving the employees is entitled to bargain its own fringe benefits separately and apart from the fringe benefits of other employees of the County. The Union position with respect to Employer participation in health insurance premiums and with respect to vacations is impressive in light of the data supplied in Union Exhibit #4, comparing these benefits with surrounding counties. However, the undersigned is persuaded that for fringe benefits a comparison with other employees of the same employer is more appropriate than a comparison with law enforcement employees of comparable employers. There is considerable arbitrable authority to the point that law enforcement personnel should be compared with other law enforcement personnel, and that fire fighting personnel should be compared with other fire fighting personnel. The undersigned agrees with arbitral opinion in this regard on wage matters. However, on matters of fringes, such as those involved in the instant case, this Arbitrator does not consider fringes to be peculiar to law enforcement personnel; but rather common to all employees of the Employer. Since there is no showing in the record that law enforcement personnel of the Employer in the instant case are entitled to superior fringe benefits than other employees of this Employer, the Arbitrator would decide the fringe benefit issues in favor of the Employer.

SUMMARY

From the foregoing discussion it is obvious that if the undersigned were free to choose issue by issue, he would decide in favor of the Union on the issue of wages and Employer's contribution to Wisconsin Retirement Fund; and he would decide in favor of the Employer with respect to fringe benefits. Since the Arbitrator is precluded from deciding on an issue by issue basis he must now decide whether the wage issue or the fringe issue is more compelling. In arriving at a final decision the undersigned will consider the Employer's argument with respect to cost impact, and will combine the cost impact of wages and fringes.

The Employer has argued that in view of the Employer's position with respect to adjusted gross per capita income (Employer Exhibits #2 and 3), compared to surrounding counties, the Employer offer is the most reasonable because it is comparable to settlements in counties which are similarly situated with respect to per capita income, and very close to the settlements in counties with higher per capita income. The Employer has further urged that sophistication would require the Arbitrator to consider what impact the adoption of the Union position would have on other employees of the County over and above the immediate cost of the differences of the two positions involving the 11 employees in the law enforcement unit. The Union on the other hand has argued that the Employer has the ability to pay and has not exhausted his potential to tax.

The Employer has supplied, at the request of the Arbitrator, an exhibit which calculates the Employer's proposal in this case to cost \$16,204.00 versus the Union's proposal at \$18,418.00, a difference of \$2,214.00 for the two year term that this Agreement will run. Expressed as a percentage the amount of increase represents 6.9% in the first year for the Employer proposal versus 8.9% for the Union proposal. In 1978 the Employer proposal represents an 8.1% increase and the Union proposal represents an 8.15% increase. For the purposes of this discussion the Arbitrator will consider the 1978 Union proposal to be an 8.1% increase, since 8.1% by calculation of the undersigned represents a consistent rounding practice with the other percentages being compared here. From the foregoing the percentage of increase in the second year of the proposed agreements is the same. The first year Union proposal represents a 2% greater increase than the Employer offer. Combined, then, the total Union proposal is 17% for two years versus the Employer's 15% for two years, a difference of 1% per year. Since one of the statutory criteria to be considered by the Arbitrator, at 111.77 (6)(e), is the average consumer price for goods and services commonly known as the cost of living; and since subsection (g) of the same statutory provision directs the Arbitrator to consider changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; the undersigned will look to the cost of living index as a guide. The Arbitrator notes from the cost of living data as reported by the United States Department of Labor, Bureau of Labor Statistics, that the cost of living in April, 1976, was 168.2 and the cost of living in April, 1977, was 179.6, representing a 6.8% increase in the cost of living for these 12 months.² The Arbitrator further notes that the same source reports an increase of cost of living from 174.3 in December, 1976, to 179.6 in April, 1977. The increase for the first four months of 1977 annualizes to a rate of 9.1% for the first four months of 1977. Since the Statutes direct the Arbitrator to consider cost of living and any changes therein during the pendency of the proceedings, the undersigned concludes that the 17% total increase proposed by the Union is closer to the rate of cost of living escalation for the first four months of this year than the proposal of the Employer.

The undersigned rejects the Employer's argument that the improved fringes will become too costly by reason of its impact on the other 200 employees, because he considers that impact to be speculative in nature. Whether the additional fringes will be negotiated for the other units will be determined by the bargaining with those units at the time their agreements expire. Furthermore, there is nothing in the record on which the undersigned can evaluate what the actual impact of costs would be, assuming the same fringes were extended to the other 200 employees of the County. If the improved fringes involved in the matter at issue here were extended to all other employees of the Employer, there is no question that there would be significant cost impact to the Employer. Since the undersigned has no data available to judge those costs; and because the question of whether those fringes will

2) CONSUMER PRICE INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS, U.S. CITY AVERAGE, ALL ITEMS (1967 = 100)

be extended to the other units is speculative, the undersigned rejects the Employer position in this regard, since the difference of cost for the eleven employees involved in this unit is small.

From the foregoing discussion it follows that the Arbitrator considers the wage and Wisconsin Retirement Fund issues of the Union to be more compelling than the fringe benefit issues, particularly in view of the trends of cost of living in the first four months of 1977. It, therefore, follows that the Union position is to be adopted, and based on the entire record, the arguments of the parties, and the foregoing discussion the Arbitrator makes the following:

AWARD

The final offer of the Union shall be incorporated into the Collective Bargaining Agreement for the contract term beginning January 1, 1977, and ending December 31, 1978.

Dated at Fond du Lac, Wisconsin, this 16th day of June, 1977.

Jos. B. Kerkman /s/
Jos. B. Kerkman,
Arbitrator