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CITY OF MARINETTE (POLICE DEPARTMENT))
) ARBITRATION AWARD
-and-)
) Case XVI
TEAMSTERS UNION LOCAL NO. 328, a/w) No. 21466 MIA-311
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,) Decision No. 15461-A
CHAUFFEURS, WAREHOUSEMEN AND HELPERS)
OF AMERICA)
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I. INTRODUCTION

The Parties herein are the City of Marinette, Wisconsin, (Police Department), the Municipal Employer, City Hall, 1901 Hall Avenue, Marinette, Wisconsin, 54143 and Teamsters Union Local No. 328 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union), c/o Mr. Ken Davis, P.O. Box 605, Escanaba, Michigan, the exclusive collective bargaining representative of the law enforcement personnel of the Municipal Employer.

II. FACTS AND BACKGROUND

On March 14, 1977 the City filed a petition with the Wisconsin Employment Relations Commission (WERC) alleging an impasse in collective bargaining between the Parties and requesting initiation of final and binding arbitration pursuant to §111.77(3) of the Wisconsin Statutes. An Order was issued by the W.E.R.C. for final and binding (final offer) arbitration to resolve the impasse. The undersigned was appointed as Arbitrator to hear and decide the dispute.

A hearing was held at Marinette, Wisconsin on June 1, 1977. The Municipal Employer was represented by its attorney, Mr. F. H. Jabas. The Union was represented by Mr. Ken Davis, Business Agent for the City Bargaining Unit.

III. RELEVANT STATUTORY PROVISIONS

Section 111.77(4)

"There shall be 2 alternative forms of arbitration: (a) Form 1. The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment. (b) Form 2. The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator at the time that the investigation is closed. Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification."

Section 111.77(5)

"The proceedings shall be pursuant to form 2 unless the parties shall agree prior to the hearing that form 1 shall control."

Section 111.77(6)

"In reaching a decision the arbitrator shall give weight to the following factors:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
 2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

IV. RELEVANT 1975-1976 COLLECTIVE BARGAINING CONTRACT PROVISIONS

Article III SICK LEAVE: , etc., Page 2, provides in part:

"SICK LEAVE: Each employee shall be allowed two(2) days of paid sick leave for each month of his continuous employment for personal illness or injury incurred off the job, except that no more than ninety (90) working days of such paid leave shall be accumulated at any time. The Department Head may verify the nature or extent of illness or injury, a doctors' certificate is necessary for illness or injury extending over a three (3) day period.

"Employees shall receive payment for one-half of all accrued sick leave earned, not to exceed thirty (30) days, on leaving the employment of the City, because of disability or retirement.

"Apparent abuse of sick leave shall be referred to disciplinary committee for appropriate action."

Article VII VACATIONS, Page 6, insofar as relevant provides:

"VACATIONS: (a) Vacation leave with pay will be granted to all permanent full-time employees who have completed one year of service; said vacation to be credited to the employee on each anniversary date of City employment.

(b) Effective January 1, 1976, vacations with pay will be granted on the following schedule:

- 1st anniversary date- - - - -Seven(7) working days.
- 3rd through 5th anniversary dates- - Twelve(12) working days.
- 6th through 7th anniversary dates- - Thirteen(13) working days.
- 3th through 17th anniversary dates- -Eighteen(19) working days.
- 18th through 24th anniversary dates- Twenty-three(23)working days.

Article XII LONGEVITY PAY, page 3, provides:

"LONGEVITY PAY: After completing three(3) full years of service as of December 31st, each employee receives annually, on the pay day closest to January 1st, longevity pay of one percent (1%) of the base monthly salary times the number of years of service up to seven(7) years. After seven(7) years the employee shall receive two percent(2%) of the base monthly salary times the number of years of service."

V. ISSUES

The Parties stipulated that as of the time of the Hearing on June 1st, all issues with the exception of the three following had been settled by the Parties:

1. Accumulation of Sick Leave
2. Vacations
3. Longevity Pay

VI. POSITIONS OF THE PARTIES

A. UNION

1. SICK LEAVE

The Union asks that the Sick Leave paragraph shall provide that Police Officers may accumulate up to 100 days instead of 90 days sick leave. To support its request, it has presented as exhibits several contracts between various industrial establishments in the area which it claims provide vacation schedules superior to that of the City and Police Officers of Marinette. The Union also cites as comparable Wisconsin public employment contracts that of the State of Wisconsin "plan for its employees which allows them unlimited accumulation of sick leave [which] upon retirement or death the employee receives [as] paid up health insurance according to the amount of days [he or she has] built up "adding that the Union here requested a similar plan but were refused. 'Under such circumstances,' the Union says, 'it feels that its present demand for an accumulation up to 100 days is not excessive and must not be viewed as "in any way unreasonable."

In addition, the Union points out that "there is no cost factor here. . . when a sick day is used by one officer, then the schedule is changed so [as] to cover that particular shift [and] no one is called in to work on off time." This means, it claims, that "an older officer who has been dedicated [and] loyal to the City is being penalized by losing his sick leave once the accumulated amount has been reached" because he has not used his full sick leave accumulation of 90 days as provided in the current Agreement. The result is that when the 90 day accumulation is reached "he then loses two(2) days every month, which reverses back to the City, because this employee is giving steady employment to his employer, without missing any work days because of illness. . . ."

2. VACATION SCHEDULE

The Union requests a change in the vacation schedule to make it read:

Anniversary date

- Step 1. 1st year- - 7 days
- Step 2. 3-7 years- - 14 days
- Step 3. 8-13 years- -19 days
- Step 4. 14-17 years- 20 days
- Step 5. 18-24 years- 24 days

This change, the Union claims, "would put us more in line with other Departments our size [and] with factories in our area. There is no additional cost to the City. . . as the work schedule is merely changed to replace the man on vacation; no one has to be called in. ." The Union adds that it is asking merely "for a more correct spread between the years of service from one step to another and a slight increase of one day in step two and also in step three bringing us more in line with other police departments and factories." The Union notes that at the present time there is no one in the numbers 4 and 5 positions.

3. LONGEVITY PAY

The current Contract provides for longevity pay on the pay day closest to January first. It requires longevity pay of 1% of the base monthly salary rate after three(3) full years of service as of December 31st and 2% of the base salary rate after seven(7) full years of service. [See Part IV above].

The Union proposes that the longevity rates in the new Agreement be calculated and paid on the individual employee's anniversary date, noting that under the present Contract an employee may lose almost a year of longevity pay. The Union requests:

1% after 3 years

3% after 7 years

B. CITY

1. SICK LEAVE

The City stands firm on retention of the provision of the present Agreement for a 90 day versus 100 day limit on accumulation.

2. VACATION SCHEDULE

The City's final offer on vacation provides the following schedule:

Step 1. After 1st year - - - 7 days

Step 2. After 3rd year - - - 12 days

Step 3. After 6th year - - - 13 days

Step 4. After 8th year - - - 18 days

Step 5. After 14th year - - - 19 days

Step 6. After 18th year - - - 23 days

The Mayor, who was present at the Hearing, stated that the City is not in a financial position to provide additional benefits to its Police Officers without the imposition of additional taxes.

3. LONGEVITY

The City's last offer as outlined to the Arbitrator at the June 1 Hearing is to change the current longevity contract provisions as follows:

1% after 3 full years of service

1 1/2% after 5 full years of service

2 1/2% after 7 full years of service

VII. STATUTORY REQUIREMENTS GOVERNING DECISION

The Arbitrator has considered and given weight to all the factors enumerated in Wisconsin Statutes §111.77(6) [See Part IV above].

The City has lawful authority. The Stipulations of the Parties are noted in Part V above. The interests and welfare of the Public are best satisfied by a well-paid police force with good morale. The current pay provided by the City compares favorably with that in Marinette private enterprise. However, the Arbitrator feels that the fringe benefits and job stability in Municipal employment are so superior to those in private employment as to render a comparison here of very little use.

A copy of the 1976 Agreement between Marinette County and its County Court-house Employees Union was made available to the Arbitrator. It provides for Accumulation of Sick Leave and Longevity Pay, as follows:

1. Sick Leave may be accumulated up to 80 days to be paid in cash with the option of one(1) month's hospitalization and life insurance.

2. Vacations

- 1 week during 1st year
- 2 weeks during 2nd through 7th years
- 3 weeks during 8th through 14th years
- 4 weeks during 15th through 19th years
- 5 weeks during 20th year and thereafter

3. Longevity Pay is to be paid in a separate check on the pay day closest to December 1st. After 4 years employment by December 1st, an employee is entitled to \$40.00. Thereafter, bonus payments must be increased by \$10.00 for each additional full year's employment.

Although the vacation benefits are superior to those offered by the City to its Policeman, the duties and responsibilities of Courthouse employees have very little relation to those of a City Police Force. In addition, the taxing capacity of the County is not shown and has a different and wider base. It does not appear that County Courthouse employees are clearly comparable to City Police. In general, County employees' remuneration is greater than that of City employees. For these reasons the Arbitrator finds this particular comparison not to be feasible here. The same reasoning applies to the County Sheriff's Department. The duties of Sheriffs are clearly different from those of City Police. Finally, while an exhibit showing the 1976 wages paid to the Sheriff Department was presented to the Arbitrator, it should be considered by him only insofar as it bears on §111.77(6)(f). The Parties have not supplied the Arbitrator with adequate information for the purpose of §111.77(6)(f), so little use may be made of this single piece of evidence. The matter of wages is not before the Arbitrator, so the evidence is not of value on the issue of wages.

City Exhibit #2 shows 1976 wages for Marinette Fire and Police Departments as well as for the Police Departments of Peshtigo and Menominee. The matter of 1977 wages for the Marinette Police Department was settled prior to the holding of the June 1 Hearing, so will not be considered again in this case.

The Parties presented no other exhibits concerning the wages, hours and conditions of employment of "other employees performing similar services in public employment in comparable communities" with the exception of the 1976 Wisconsin Municipal Employee Salary and Benefit Survey prepared cooperatively by the League of Wisconsin Municipalities, the Department of Local Affairs and Development and The Department of Administration. The publication notes at the outset that when analyzing and comparing positions, functional comparison should be considered as well as wage comparisons. The salary data in the survey has been standardized by using 2,080 hours annually (the same hours provided for in Marinette). Of equal importance, it states, are the fringe benefits provided for employees, since such programs involve considerable expense to the Municipality [and, the Arbitrator adds, a considerable addition to the employees' remuneration]. Marinette is shown in this Publication to have had a population of 12,309 in 1976.

The Arbitrator has carefully studied the relevant material in the Survey presented by the Union as an exhibit and described above. He has also used a Wisconsin 1976 Official State Highway Map to determine the factors of population and location of Wisconsin cities which might be classified as "comparable" under §111.77(6)(d). 1. Wisconsin Statutes [see above Part IV]. As for the exhibits the Union presented to show the remuneration of employees in private enterprise (wages, hours and conditions of employment) the Arbitrator must reject this evidence. The material does not show comparability, lacking as it does the job security and fringe benefits commonly known to exist in public employment.

The Survey did not include pertinent figures for comparison purposes respecting some of the Municipalities selected by the Arbitrator under the criteria enumerated above, so these could not be included in the list attached as Appendix A. The figures were not available in the Survey either because there had been no information supplied or because at the time the figures were gathered for the Survey, the employees and employers were engaged in negotiations for the 1976 contract.

These Municipalities included Merrill, Whitewater, Chippewa Falls and Wisconsin Rapids. As for those figures which do appear there may be differences among the cities which in fact lessen their value. For instance, there is no information as to the duties and local conditions which would have a direct effect on the salary schedule. There is also no showing by the Parties as to the crime factor existing in the various cities. This factor also has a direct effect on salary and even on fringe benefits. The list of cities selected by the Arbitrator as apparently "comparable" under the material made available to him will be found in attached Appendix "A".

The Arbitrator has taken into account several factors shown below. From his studies of materials presented to him in other cases under §111.77, he takes arbitral notice that in general, the larger the city the higher the policeman's salary. Close proximity of a small community to a large city also affects its salary and fringe benefit schedules toward the direction of these items in the larger city because there is a certain "spill over" in crime rate and population ability to pay which reflects the use of the small community as a suburb and the jobs and salaries available to workers living in the smaller community. Therefore, the Arbitrator has not included such cities as "comparable" to Marinette.

It should also be noted that the statistics quoted in the Survey are not accurate in the case of Marinette. [See Appendix "A"]. We must assume that such inaccuracies occur also in statistics relating to other cities in the Survey. A more valuable source of information would be available had the Parties secured the comparisons needed directly from the various departments in those cities which they believed to be "comparable". The selection of cities as "comparable" could also have been supported by the Parties and used to advantage by the Arbitrator. The list, in Appendix "A", was compiled from the material which was presented to the Arbitrator by the Parties.

The Union presented a 1975-1977 Agreement between AFSCME Council 24 Wisconsin State Employees Union, AFL-CIO and the State of Wisconsin. Section 5-Sick Leave begins on page 56. It includes the employer's agreement to abide by subsections 16.30 (2m) and 40.16(3) of the 1973 Wisconsin Statutes which provide for accumulated unused sick leave to be converted at current value, credited to the employee's account and used to offset the cost of health insurance premiums under 40.16(3) 1976 Wisconsin Statutes.

The Contract also provides at pages 62-63 for vacations:

10 days after 1st full year of service
15 days after 5th full year of service
17 days after 10th full year of service
20 days after 15th full year of service
22 days after 20th full year of service
25 days after 25th full year of service

There appears to be no provision for Longevity Pay. Even though the Agreement for State employees is to a considerable extent governed by statute and therefore not strictly comparable, the disparity between the Marinette policeman's Contract on the matter of sick leave and vacations and the State employees' Contract discussed above, except where governed by statute, is not great. Also, there is some question in the Arbitrator's mind as to the usefulness of comparing State or County employees' contracts with Municipal (employees') contracts in view of the differences in duties, practices and the like.

Section 111.77(6)(e), (f) and (g) need not be considered in this case since there is no issue of wages or salary, except insofar as the Arbitrator must take notice that the increase in the Consumer Price Index(CPI) has been considerably slowed during 1977 and does not support a claim that the 8% increase in salary already granted by the City to the Police is not effective to maintain an adequate balance in the overall compensation of the employees.

VIII. ARBITRATOR'S DISCUSSION

Section §111.77(6)(h) provides that the Arbitrator shall give weight to "such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

These are the usual standards employed in arbitration of other than §111.77 disputes. This case would be very simple if the above were the sole standard under §111.77(6) which he can or must apply.

The power of the Arbitrator is such that the parties may wish to think twice before deciding to take the risk of "all or nothing." There are relatively few cases in which compromise or "trade-off" is not used as a means of settlement or decision. When the "last offer" concept of the Statute is selected the Arbitrator does not usually have the same latitude as he traditionally and normally uses in other interest disputes. However, one suspects that many arbitrators are currently deciding §111.77 cases by the "old" methods in spite of the language of the Statute and that they are justifying their decisions by arguments made under the language of Section 111.77(6).

Arbitration under §111.77 is still a new "ball game" and one cannot foretell how a particular Arbitrator is going to react to or interpret the Statute. I believe that the Arbitrator may unconsciously look for means of supporting his "visceral reaction" when he or she chooses the most "reasonable and fair" last offer. Both final offers in this case are reasonable and fair, but the Arbitrator must select the one which, in his judgment, is more reasonable and fair. Someone else might have made a different selection.

1. SICK LEAVE.

Simple fairness seems to dictate that in the event that the basic sick leave intended by the parties is not taken by an officer he be otherwise compensated for the time he has thereby given to the employer—the community. If one views the provision for sick leave as insurance only and not as a basic allowance of free time to which each employee is entitled, no accumulation would be justified. The most desirable approach to this problem would be through negotiations between the parties. But insofar as the employee has supplied required service beyond what he has bargained to render, compensation in the form of accumulation should be granted.

2. VACATIONS.

The City did not dispute the Union's statement that the City experienced no financial cost as a result of the Police vacation program. The Union claimed that the non-vacationing part of the Force filled in as necessary and performed the duties of the the absent officers. Presumably, however, the public does experience some lack of protection or service under such circumstances. If not of any import it would appear that the usual force is larger than necessary. It may not be ignored that the size of the force may have a direct bearing on the remuneration which should be paid. With a smaller police force, compensation should be higher, depending upon the facts. In making up for a vacation-caused shortage of staff, the remaining officers may be temporarily overworked.

3. LONGEVITY.

The Union's request provides for measuring longevity pay by reference to the individual employee's anniversary date, thus eliminating the inequity under the present Contract due to the uneven loss of a portion of the first year's longevity pay.

According to the Arbitrator's calculations, the police officer up to his eighth year could (except for the discussed "anniversary date" issue) be better paid under the City's Offer because of the extra step increase. At the eighth year of employment this would change because of the larger percentage of the salary rate requested by the Union.

By the end of his 21st year, the Arbitrator figures, an officer would have received approximately \$600.00 more under the Union's offer. This, of course, assumes that the current relationships continue.

4. COMMENT.

The foregoing discussion clearly has a direct bearing on the essential consideration in this case-the public welfare in Marinette. The question to be considered by the Arbitrator is, "Will an improvement in the police officers' remuneration tend to create a more effective and adequate police force which will justify the cost to the taxpayers"?

IX. AWARD

Having reviewed the evidence presented in this case the Arbitrator concludes that as between the two offers he must select the Union's Offer as more reasonable and fair than the City of Marinette's Offer and orders that it be incorporated into the 1977 Agreement.

N. P. Feinsinger /s/

N. P. Feinsinger
Arbitrator

Madison, Wisconsin
September 19, 1977

ARBITRATOR'S LIST OF COMPARABLE CITIES FRINGE BENEFITS SHOWN IN SURVEY

<u>City</u>	<u>Population</u>	<u>Police Officer 1976 Salary</u>	<u>Sick Leave Accumulation</u>	<u>Vacations</u>	<u>Longevity</u>
1. Antigo	9,003	\$9,744	None shown	None shown	None shown
2. Beaver Dam	14,265	\$12,144	None shown	None shown	None shown
3. Manitowoc	33,430	\$9,048	None shown	1 year=7 days 5 years=15 days 15 years=21 days 20 years=26 days	Yes, but no rates shown.
4. Marshfield	15,619	\$11,580	Per year-30 days	None shown	None shown
5. Marinette	12,696	\$10,603	24 days per year 75 days accumulation	1 year=7 days 5 years=13 days 10 years=18 days 20 years=23 days	Yes
6. Menominee	11,275	\$11,580	None shown	1-5 years=5 days After 5 years=10 days	None shown
7. Stevens Point	23,479	\$11,436	None shown	None shown	None shown
8. Wausau	32,806	\$11,460	126 days	None shown	None shown