

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In The Matter of The Arbitration)	
of A Dispute Between)	
CITY OF SOUTH MILWAUKEE,)	
)	
Employer,)	ARBITRATOR'S DECISION AND AWARD
)	
and)	Case XXVI
)	No. 22115
SOUTH MILWAUKEE PROFESSIONAL)	MIA 328
POLICEMEN'S ASSOCIATION,)	Decision No. 15989-A
)	
Union.)	
)	

GENERAL

This dispute and consequent arbitration arises as a result of an impending collective bargaining agreement between the City of South Milwaukee (Employer) and the South Milwaukee Professional Policemen's Association (Union). An impasse occurred in the aforesaid bargaining and, on October 6, 1977, the Union filed a Petition with the Wisconsin Employment Relations Commission requesting compulsory, final and binding arbitration pursuant to Sec. 111.77(3) of the Wisconsin Statutes. In keeping with the provisions of the above, the WERC dispatched its mediator, Douglas Knudson, to conduct an informal investigation of the situation. After finding that the conditions for the initiation of final and binding arbitration had been met, the WERC directed the parties to select an impartial Arbitrator from a panel submitted by the Commission.

Attorney Milo G. Flaten was selected and appointed by the Commission and a hearing was held in Milwaukee at the Red Carpet Inn, on February 22, 1978.

A court reporter recorded the proceedings and after ten days provided the parties and the Arbitrator with a typewritten transcript of testimony.

For the Employer appeared Francis W. Cathlina, City Attorney and for the Union appeared Attorneys Richard E. Reilly and Franklyn M. Gimbel, both of Milwaukee. The hearing took one complete day which resulted in 217 typewritten pages of testimony, 27 exhibits containing factual data were admitted into the record by the parties.

Prior to the arbitration hearing and in keeping with the time constraints of the aforesaid Statute, the parties submitted their respective final offers from which the Arbitrator is to select one and issue an Award incorporating that offer without modification. In the City's final offer it itemized other benefits which had been agreed upon so that the only two issues before the Arbitrator concerned wages and the duration of the employment Contract.

The parties submitted duplicate simultaneous briefs to the Arbitrator who sent copies to the respective opposing counsel. The parties agreed to submit rebuttal briefs within one week after receipt of the initial brief if they chose. By letter dated May 2, 1978, the Union did file an additional memorandum supporting its position.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties submitted pursuant to law are set forth hereafter in their entirety. However, for ease of understanding, these offers are summarized as follows:

1. The Union offered to sign an employment Contract for a two year period in which there would be a wage increase for the year 1977 of 6.5% over the 1976 base wage, including the cost of living adjustment for 1976, and an additional 6.5% increase for the year 1978.
2. The City offered an increase in wages in the proposed employment Contract by using a cost of living formula from the U.S. Consumer Price Index for a three year period, 1977, 1978 and 1979.

The specific final offers which the parties submitted read as follows:

FINAL OFFER
SOUTH MILWAUKEE PROFESSIONAL
POLICEMEN'S ASSOCIATION

The City of South Milwaukee and the South Milwaukee Professional Policemen's Association are in complete agreement as to the content of their next collective bargaining agreement except for the following provisions, all effective January 1, 1977:

DURATION

This agreement shall become effective January 1, 1977 and shall remain in full force and effect up to and including December 31, 1978.

WAGES

Effective January 1, 1977, the monthly wages for Police Department employees covered under the terms of this Agreement shall be increased 6.5% over 1976. The 1976 base upon which the 1977 6.5% wage increase is computed shall include 1976 wages as set forth in Article VIII (1)(a) and (b) of the 1976 agreement and the 1976 cost of living adjustment set forth in Article VIII (2) of the 1976 Agreement.

Effective January 1, 1978, the monthly wages for Police Department employees covered under the terms of this Agreement shall be increased 6.5% over 1977.

The Association's 1977-1978 final offer wage proposals applies to all five (5) Patrolman classifications, as well as to Sergeants and Detectives.

FINAL OFFER OF THE CITY OF SOUTH MILWAUKEE FOR
IMPROVEMENTS TO THE AGREEMENT WITH THE SOUTH
MILWAUKEE PROFESSIONAL POLICEMEN'S ASSOCIATION

1. TERM - 3 Years - extending from January 1, 1977 to December 31, 1979
2. Incorporate present cost of living formula into base salary. (\$52.00 per month)
3. Cost-Of-Living
 - A. During the term of this agreement, cost of living adjustments shall be made in accordance with the following provisions:

1. The cost of living adjustment shall not be considered an increase in the wage rates. However, during the term of this agreement, the cost of living adjustment shall be included in the wage rates for all hours worked and shall also be included for the computation of the following benefits: vacations, sick days, terminal leave and holidays, only.

2. The amount of the cost of living adjustment shall be determined and redetermined quarterly on the basis of changes in the United States Government, Bureau of Labor Statistics Consumer Price Index - U.S. City Average for Urban Wage Earners and Clerical Workers on all items, 1967 = 100.

The Cost-Of-Living adjustments shall be paid as follows:

<u>Date of Cost of Living Adjustment</u>	<u>Period of Index Change</u>	<u>Publication Dates</u>
January 1, 1977	August 1976 to November 1976	September 1976 to December 1976
April 1, 1977	November 1976 to February 1977	December 1976 to March 1977
July 1, 1977	February 1977 to May 1977	March 1977 to June 1977
October 1, 1977	May 1977 to August 1977	June 1977 to September 1977
January 1, 1978	August 1977 to November 1977	September 1977 to December 1977
April 1, 1978	November 1977 to February 1978	December 1977 to March 1978
July 1, 1978	February 1978 to May 1978	March 1978 to June 1978
October 1, 1978	May 1978 to August 1978	June 1978 to September 1978
January 1, 1979	August 1978 to November 1978	September 1978 to December 1978
April 1, 1979	November 1978 to February 1979	December 1978 to March 1979
July 1, 1979	February 1979 to May 1979	March 1979 to June 1979
October 1, 1979	May 1979 to August 1979	June 1979 to September 1979

3. Quarterly adjustments set forth in subsection (b) shall be made to the base salary in effect on the following dates:

<u>Date of Cost of Living Adjustment</u>	<u>Base Salary</u>
January 1, 1977	1976 base salary adjusted to include prior cost-of-living adjustments as described in Item 2 above.
April 1, 1977	1976 base salary adjusted to include prior cost-of-living adjustments as described in Item 2 above.

<u>Date of Cost of Living Adjustment</u>	<u>Base Salary</u>
July 1, 1977	1976 base salary adjusted to include prior cost-of-living adjustments as described in Item 2 above.
October 1, 1977	1976 base salary adjusted to include prior cost-of-living adjustments as described in Item 2 above.
January 1, 1978	1977 base salary which is the 1976 base salary set forth above, adjusted to include cost-of-living adjustments made on January 1, April 1, July 1 and October 1, 1977.
April 1, 1978	1977 base salary which is the 1976 base salary set forth above, adjusted to include cost-of-living adjustments made on January 1, April 1, July 1 and October 1, 1977.
July 1, 1978	1977 base salary, which is the 1976 base salary set forth above, adjusted to include cost-of-living adjustments made on January 1, April 1, July 1, and October 1, 1977.
October 1, 1978	1977 base salary, which is the 1976 base salary set forth above, adjusted to include cost-of-living and adjustments made on January 1, April 1, July 1 and October 1, 1977.
January 1, 1979	1978 base salary which is the 1977 base salary set forth above, adjusted to include cost-of-living adjustments made on January 1, April 1, July 1 and October 1, 1978.
April 1, 1979	1978 base salary which is the 1977 base salary set forth above, adjusted to include cost-of-living adjustments made on January 1, April 1, July 1 and October 1, 1978.
July 1, 1979	1978 base salary which is the 1977 base salary set forth above, adjusted to include cost-of-living adjustments made on January 1, April 1, July 1 and October 1, 1978.
October 1, 1979	1978 base salary which is the 1977 base salary set forth above, adjusted to include cost-of-living adjustments made on January 1, April 1, July 1 and October 1, 1978.

Example of Cost-Of-Living Adjustment Calculation:

November 1976 Index	173.8
February 1977 Index	177.1
Percentage Difference	.01916

POSITIONS OF THE PARTIES

As was noted above, the City offered to grant wage increases based upon the Bureau of Labor Statistics, Consumer Price Index - U.S. City Average for Urban Wage Earners and Clerical Workers, 1967=100. However, by its offer the City specified that these cost of living adjustments "shall not be considered an increase in the wage rates".

The City states its offer is more reasonable than the Union's offer. It bases its rationale on comparisons of the proposed wages with the earnings paid to public employees in comparable communities, with the wages paid other employees of the City, and with fringe benefits paid by private sector employers in the City of South Milwaukee. Additionally, the City states that its offer is more in keeping with the interest and welfare of the public.

In comparing the wages and fringe benefits of employees performing similar services in public employment, the Employer presented evidence of the compensation paid by all communities within Milwaukee County. It stated that a common thread ran between these communities because they are all wholly within one governmental unit, namely, Milwaukee County.

On the other hand, the Union submitted comparisons of the wages of the South Milwaukee employees with other employees in the entire metropolitan Milwaukee area.

The City contends that it limited its scope to comparisons only in Milwaukee County because the various police departments therein are generally confronted with similar law enforcement problems and are required to follow the same policies and procedures of the Milwaukee County Courts in the enforcement of the law. Further, these communities are subjected to the same fiscal and taxing policies of the County. It points out that the non-Milwaukee County communities in Ozaukee and Waukesha Counties are almost totally residential, with little industry and with higher per capita earnings than South Milwaukee.

In its comparison with other employees within the City of South Milwaukee, the Employer stated that it wanted to treat all of its employees as equitably as possible so it offered its policemen the same salary increases that it proposed for its other employees. It contends that its goal is to unify the fringe benefits and yearly adjustment of salary for all of its employees. For instance, the City points out that its Contract with the Firemen's Union was of three years duration and included a cost of living formula similar to that offered to the Union.

To this, the Union argues that the wage packages are really not all that similar. It acknowledges that in the Contract with the Firefighters, the City pays a cost of living escalator similar to the one offered to their Union. But, contends the Union, the Firefighters wage agreement first adds 2.5% to the base year of 1976 before any of the cost of living adjustments are made. The Union contends therefore, that South Milwaukee's firemen are not only receiving quarterly increases for cost of living, they are receiving an additional 2.5 increase over their 1976 salary.

Regarding the portion of its offer which rides on the Cost-of-Living Index, the City contends that great weight should be given to its formula. In fact, the City contends that the single most significant factor bearing on the case is the cost of living formula. It infers that by keeping abreast of the Consumer Price Index, the employees will be receiving increases nearly exactly corresponding to the inflationary price increases.

On the other hand, the Union contends that the formula offered by the City would not really keep up with the spiraling index of costs but would constantly lag behind. It argues that while the 1977 Consumer Price Index showed a cost of living increase for the year 1977 of 6.8%, the City's proposal only grants patrolmen a 4% increase. It further points out that even the Union's own proposal of a 6.5% increase also fails to meet the 6.8% 1977 increase as shown in the Consumer Price Index.

In its argument that the interest and welfare of the public would be best served by the award of the City's offer, the City points out that South Milwaukee is a manufacturing community with a predominantly blue collar labor force. It argues that South Milwaukee is near the limits of its residential development and that the per capita income of its citizens is the fourth lowest of all Milwaukee County communities. Yet, its citizens pay the 8th highest general property taxes. Thus, argues the City, it is paying wages to the Union which are substantially higher than the per capita income of its citizens.

By contrast, the Union points out that the City not only has the ability to pay the Union's demands, but has actually reserved funds for making such payments back to January 1, 1977.

Finally, the Union argues that the City's wage proposal is so complicated that its adoption would lead to future problems and disputes in interpretation.

DISCUSSION

Both parties presented persuasive evidence in comparing their offer to the pay of other communities. This is nothing new to arbitration. It would be an unusual case indeed where a party to interest arbitration did not present his most favorable comparison. Both sides made telling points in this case.

WAGES

While it is true that Ozaukee and Waukesha Counties have very little, if any, heavy industry and are populated by largely upper income people compared to South Milwaukee, the Union comparisons from the entire Milwaukee metropolitan area are not entirely invalid. County boundary lines are completely artificial and inflation marches across these lines with impunity.

On the other hand, there is some validity to the City's argument that only Milwaukee County communities should be considered. This is especially true when one considers that police in the City must eventually deal almost exclusively with Milwaukee County Courts in the administration of the law. Equally persuasive is the fact that communities in the same county pay the same county taxes and are subjected to the same fiscal policies.

While the Employer seeks to simplify its overall employment policy by paying the same salary increases for all employees, the evidence showed it was well nigh impossible for it to do so completely. The Union accurately pointed out that though the other city wage packages appear to be the same they are really not identical and specifically identifies the Firefighter's Contract.

Economics Professor Richard Perlman, testifying for the Union, persuasively showed that the police officers would have to labor 3/4 of each year before attaining the maximum wage rate for that particular year.

Both the Union and the Employer made comparisons to the private sector. However, the Union compared private sector wages while the Employer compared private sector fringes.

It is interesting to note that neither side emphasized the relative stability and security afforded governmental employees as compared to a private sector employee, however. This is a factor which probably should be considered as well as bare wages and fringes.

In that same vein, the City's contention that the per capita income of its citizens is comparatively low does not take into consideration the amount of taxes that its heavy industry contributes to the coffers of the South Milwaukee Treasury.

While I am forced to admire the attempt by the City to be as precise as possible in matching the march of inflation stride by stride, I feel that its pay structure formula is inordinately complicated.

Nevertheless, in their own ways, counsel for both sides were articulate and persuasive. I am hard put to decide that one wage offer is more reasonable than the other.

LENGTH OF CONTRACT

In the area of duration of the Contract, however, that I find no such perplexity. The City's offer would tie the Union down to a Contract for three years. This aspect of the City's offer imposes a duration unreasonably long to enable the parties to periodically review the ever-changing conditions of police work. This is equally true

for the City. For example, three years experience with its present hospital and health insurance may reveal that the City's percentage share of hospital costs has skyrocketed completely out of sight and an adjustment is necessary.

Further, 26 of 27 police contracts in the metropolitan Milwaukee area are of one or two year's duration. I agree with the President of the Milwaukee County Deputy Sheriff's Association that police contracts of three year's duration are too long. The Union's offer of two years would provide a timely review of wages, hours and conditions, yet this duration does afford a measure of stability for fiscal planning.

DECISION

Based on all of the above and upon the factors as listed in Sec. 111.77(6), of the Wisconsin Statutes, it is my decision that the duration of the City's contract proposal makes its overall offer more unreasonable than the final offer of the Union. I therefore select the Union's Final Offer as the more reasonable.

AWARD

That the employment contract between the City of South Milwaukee and the South Milwaukee Professional Policemen's Association shall become effective January 1, 1977, and shall remain in full force and effect up to and including December 31, 1978, and that effective January 1, 1977, the monthly wages for Police Department employees covered under the terms of this agreement shall be increased 6.5% over 1976. The 1976 base upon which the 1977, 6.5% wage increase is computed shall include 1976 wages as set forth in Article VIII (1) (a) and (b) of the 1976 agreement and the 1976 cost of living adjustment set forth in Article VIII (2) of the 1976 Agreement.

That effective January 1, 1978, the monthly wages for Police Department employees covered under the terms of this Agreement shall be increased 6.5% over 1977.

That the Association's 1977-1978 final offer wage proposals shall apply to all five (5) Patrolman classifications, as well as to Sergeants and Detectives.

Dated this 5th day of May, 1978.

Milo G. Flaten /s/
Milo G. Flaten, Arbitrator