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In the Matter of the Petition of *
*
City of DePere *
For Final and Binding Arbitration *
Involving Police Personnel in its *
employ and *
DePere Police Benevolent Association *
*

Case XIII
No. 22234
MIA-336
Decision No. 16013-A
Edward B. Krinsky, Arbitrator

Appearances: Condon & Hanaway Ltd. by Donald J. Hanaway, for the City
Parins & McKay, S.C. by Thomas J. Parins, for the Association

On January 20, 1978, the Wisconsin Employment Relations Commission appointed the undersigned as Arbitrator under Section 111.77 Wis. Stats. to select the complete final offer of one of the above-captioned parties. An arbitration hearing took place at DePere, Wisconsin, on March 30, 1978. No transcript of the hearing was made. Both parties had full opportunity to present evidence, testimony, and arguments. The parties each submitted a post-hearing brief and an exchange of briefs was made by the arbitrator on July 18, 1978.

On March 30th, prior to the hearing, the parties informed the arbitrator that a lengthy arbitration hearing had taken place earlier that week between the City and the DePere Professional Firefighters Association and that much of that hearing was devoted to a question of whether there was an agreement made between the parties in 1976 regarding a "catch-up" plan. Counsel was the same in the Firefighter case as in the Police case and agreed that the bargaining history was the same in this regard for both units. In order to avoid the necessity of rehearing the testimony concerning bargaining history the parties in the case before the undersigned stipulated at the suggestion of the undersigned that he should be bound by the decision issued by Arbitrator Bellman concerning the alleged "catch-up" agreement, and weigh that decision as it is appropriate to the facts of this case.

Arbitrator Bellman issued his decision on October 30, 1978. It stated, in relevant part, the following concerning the alleged "catch-up" agreement:

The hearing in this matter was almost entirely devoted to the parties' dispute over whether the City should be compared to its larger nearby neighbor, Green Bay. The Association, contrary to the City, contends that in recent years the City has indicated an intention to accept such comparison, and thereby to attempt to minimize certain wage disparities between Green Bay and DePere employees.

...

During the pertinent years the DePere Professional Firefighters Association and the DePere Police Benevolent Association, which represents a bargaining unit comprised of police personnel employed by the City, have both been represented in collective bargaining by Attorney Thomas J. Parins. To accommodate all concerned, these labor organizations and the City have negotiated substantially simultaneously. The City has been represented by counsel, the City Administrator, the Mayor, and the members of the City Council Finance Committee.

In the negotiations for 1976 collective bargaining agreements, Mr. Parins proposed an agreement whereby police and firefighting personnel employed by the City would "catch-up" with their Green Bay and Brown County counterparts over a three-year period. This would be accomplished by ordinary wage increases plus

additional increases to overcome the substantial disparities between the DePere and Green Bay and Brown County personnel. The City's Attorney and Administrator discussed this proposal with Parins and prepared a draft of a provision for a five-year plan to overcome such disparities. However, at a January 12, 1976, Finance Committee meeting where said City officials presented their draft, it was unanimously rejected.

By mid-April, 1976, the parties still had not reached 1976 agreements and a Wisconsin Employment Relations Commission mediator entered the negotiations. The City continued to reject the labor organizations' proposals for a "catch-up" agreement, and the mediator apparently persuaded the employee organizations that, whereas the Finance Committee members would not agree to bind future Finance Committees, a non-contractual letter of intent to minimize the disparities in issue might be obtained from the Mayor, who also serves as the Committee's chairman. The organizations accepted this arrangement and a letter dated April 14, 1976 was drafted, with wording chosen by the mediator, and signed by the Mayor. That letter stated, in material part as follows:

'During the past two years in Labor Negotiations, the City has recognized that the compensation paid the employees of the Emergency Services Departments of the City is somewhat below that granted some other employees in the County with substantially the same training and job requirements. To minimize the compensation differential, I submit to you the following offer for increased wages and benefits for the year 1976.

. . .

I am hopeful that this proposal is acceptable to your Bargaining Unit. In future negotiations I will make every effort to continue to minimize this compensation differential as we have shown in this proposal.'

The instant parties' eventual wage settlement for 1976 was a \$91.00 per month increase, \$20 of which was termed "catch-up."

As stated, the 1976 Finance Committee members, other than the Mayor, could not be persuaded to enter any writing respecting such disparities. They were opposed to doing so on a number of grounds, including reluctance to bind their future counterparts. However, according to their testimony herein, at least two of them left the meeting with the understanding that there were such disparities, and that in years to come reasonable efforts should be made to overcome them. They did not understand, however, that they had agreed to any particular method or timetable for doing so, or that they had compromised their statutory collective bargaining rights, or that any strict parity agreement had been reached. Rather, they believed that their future efforts toward approximate parity would be affected by the City's fiscal abilities and whether or not Green Bay wage rates were reasonable by conventional standards.

These understandings varied in degree from that of the Mayor, who was willing to indicate a commitment to approximate parity in the "shortest period of time possible," given prudent fiscal policies.

In the Arbitrator's judgment it was reasonable for the organization representatives present at this mediation meeting to conclude, based upon the expressions of the City representatives, that the City was aware of the disparities under discussion, and shared the belief that they should be minimized. The City's representatives had indicated that the comparisons to Green Bay emphasized by the organizations were not only appropriate but would operate in the future as wage levels were determined.

When the same parties settled their 1977 collective bargaining agreements, the Mayor stated at the final negotiations meeting that the City construed the wage settlement as providing some further narrowing of the aforesaid disparities, and that he hoped that the 1978 settlement would minimize the gap. He expressly reiterated his commitment to work toward approximate parity; and no City official in attendance, including Finance Committee members, dissented.

Thus, in the Arbitrator's view, the parties have developed an informal, non-contractual and fairly vague commitment to work toward approximate parity at a reasonable and prudent rate. This consensual arrangement is neither legally binding nor precise in its terms. However, it should be regarded as compelling, in the Arbitrator's judgment.

. . .

Thus, it is the view of the undersigned that Arbitrator Bellman determined the existence of an agreement by the City of DePere with its police and fire unions, to reduce the wage differences between the City and Green Bay and Brown County over a period of years. Given the parties' stipulation that the undersigned is to be bound by Arbitrator Bellman's determination, it is the judgment of the undersigned that the Association's final offer which serves to further reduce those wage differences should be implemented unless there is compelling reason in the final offers or supporting evidence to not do so. To take a contrary view would be to allow the City to use the arbitration process to reverse an agreement which it reached in collective bargaining, a result which in the arbitrator's view would reduce the likelihood of good faith collective bargaining in the future.

The final offers certified to the undersigned by the WERC were as follows:

(City)

Final Offer

Police Benevolent Assoc.

1. Article 20: Sick Leave Language

"Sick leave" means any physical or mental disability not wilfully or intentionally provoked by the employee preventing the performance of his regular and usual duties. Sick leave benefits should be carefully guarded and not dissipated or abused. Abuse of sick leave occurs when an employee misrepresents the actual reason for charging an absence to sick leave, or when an employee uses sick leave for unauthorized purposes. Abuse of sick leave shall be grounds for disciplinary action, including removal.

2. Salaries

\$80.00 a month increase for all classifications.

3. Shift differential

\$5.00 a month increase to \$30.00 for 11 PM to 7 AM.

4. Medical & Hospitalization Insurance

City to pay 100% of premium for single plan.

5. Retirement Contribution

City to contribute up to a maximum of \$70.00 of employee's contribution to the Wisconsin Retirement Fund.

Don Hanaway
J. J. Smith
& Finance Committee

Except as set forth in the above final offer all of the other terms and conditions of the 1977 labor agreement between the parties shall be incorporated in the 1978 labor agreement.

(Association)

DePere Police
Benevolent Association
Final Offer

Wage Schedule

ptm	Min	1/2 yr	1 1/2 yr	2 1/2 yr	3 1/2 yr
	\$880	\$1053	\$1123	\$1168	\$1213
Asst. Dir.	1240	\$1265			
Sgt.	1258	1316			
ChInv	1258	1316			

Holiday Pay

Officers working on holidays will receive an additional 4 hours comp time so as to give them an effective rate of time & 1/2 for holidays worked.

Sick Leave

That each member be paid 1/4 of any accumulated and unused sick leave upon normal or disability retirement as defined by Chap. 41 Wi. Stats.

Retirement

That the City contribute up to \$80 of the employee's contribution to the Wisconsin Retirement fund.

Remainder of Contract

Except as set forth in the above final offer all other terms and conditions of the 1977 Labor agreement shall be incorporated into the 1978 Labor Agreement.

DePere Police Benevolent Assoc.

In their briefs the parties stipulated that they had reached agreement on language of the sick leave clause and that was no longer an issue.

Most of the City's presentation and evidence was devoted to demonstrating why the City should use communities for comparison other than Brown County and Green Bay. While objectively there may be some merit to the City's arguments in that regard, the undersigned does not accord those arguments great weight in light of Arbitrator Bellman's decision.

The Association's final offer must be examined to see whether what is proposed moves closer towards the conditions existing in Green Bay and Brown County without exceeding them, and whether the costs of that offer do not exceed the bounds of reasonableness. Were the costs unreasonable then the City's offer might be preferable despite the fact that the result would not be a reduction of the wage differences between DePere and Green Bay and Brown County.

There is no contention by the City that the Association's offer would result in wages or benefits which exceed those paid to police in Green Bay or Brown County.

The parties' cost calculations differ somewhat, and the figures shown below make reference to their source.

	1977	City Offer ('78)	Assn. Offer ('78)
Wages	\$266,724	\$285,924	\$291,924
Wis. Retirement Fund (employer payment of employe share)	15,275	16,501	17,515
Hospitalization	13,141	13,231	13,144
Shift Differential	3,585	3,780	3,585

The wage and retirement costs are taken from Union schedules #3 and #4 which were attached to the Association's post-hearing brief, and which show the cost break-downs for each employe in the bargaining unit.

The costs of increased hospitalization and shift differential payments are taken from Exhibit #22. These are costs for additional benefits which were not sought by the Association in its final offer.

With respect to the two remaining items, there is considerable dispute about the cost calculations.

The Association requests an additional four hours of compensatory time off for work on a holiday, which it states is a no-cost item since these hours are not convertible to cash. The City argues in its brief that these hours are convertible to cash. The arbitrator's hearing notes reflect the understanding of employer witness Smits that this additional four hours of compensatory time would not be convertible to cash. Therefore, the arbitrator agrees with the Association that there is no direct cost of this benefit, except, of course, what cost would be attributable to the unavailability of these employes to perform services while they are taking compensatory time.

With respect to the sick leave payout upon retirement item, the Association calculates the cost for 1978 as \$970. This is an estimate which assumes an average of .54 retirements per year, times the daily rate paid in 1978 wages, times 30 days of accumulated sick leave. This assumes an even distribution of retirements by the twenty employes in the unit over a 37 year period of normal service prior to retirement. The Association points out that this cost would be reduced to the extent there was turnover of employes prior to retirement. The Association's calculations ignore the fact that the costs of this benefit will rise as wages rise. It also ignores the fact that the cost of this item may get lost in later bargaining if, as is frequently the case in bargaining, the union does not agree to allow the employer to take credit for the costs of an item which isn't "new" in the bargaining in the year in question.

For its part the City has greatly inflated the cost for 1978 of this item by calculating the cost in current wages for twenty employes, assuming the maximum payout, and putting the full cost in 1978 which it estimates as \$44,000.

If the costs shown above for wages, retirement, hospitalization and shift differential are totalled, and the Association's no-cost assumption about holiday pay is used, the City's offer is 6.96% and the Association's offer is 9.14% above 1977 costs.

Using the Association's cost estimate for sick leave payout, and recognizing that it is understated, but in the arbitrator's view more reasonable than the City's calculation, the Association's offer is an increase of 9.46%.

In the arbitrator's view both offers are reasonable. The City's offer is supported by its arguments in its brief concerning pay to comparable communities in addition to Green Bay and Brown County. It is also supported by the fact that the City in its offer for 1978 and when viewed over the past three years, has kept wage increases ahead of the pace of cost of living changes. However as stated above, it is the arbitrator's view given the parties' stipulation and the award of Arbitrator Bellman, that it is the comparisons with Green Bay and Brown County which must be viewed as most significant in this case.

There is no evidence that the costs of the Association's offer is beyond the bounds of reasonableness in view of the City's pledge to minimize the gap between the wages of its police and those of Green Bay and Brown County, and thus the arbitrator finds the Association's offer more reasonable under all of the circumstances in this case.*

Based on the above facts and discussion, and after careful consideration of the testimony, evidence and briefs of the parties, as well as the decision-making criteria in the statute, the arbitrator makes the following AWARD:

The arbitrator awards in favor of the final offer of the Association.

Dated this 4th day of December, 1978.

Edward B. Krinsky /s/
Edward B. Krinsky, Arbitrator

*One aspect of this case which has been considered by the arbitrator is the City's claim, made in its brief, that the Association did not discuss its sick leave payout demand in bargaining prior to submitting it in its final offer. The City did not bring this matter out in testimony at the hearing even though its negotiator was a witness, and thus the Association was not afforded the opportunity to rebut this assertion or cross-examine on this point. There is nothing in the record to indicate that the City raised any objection to this Association demand before the WERC at the time of the submission of final offers or prior to the appointment of the arbitrator. Given that this issue is being raised by the City for the first time in its post hearing brief, it is the arbitrator's decision not to give it weight nor to rule on the legal merits of such an argument.