

In the Matter of Interest Arbitration)
Between)
CITY OF PLYMOUTH POLICE DEPARTMENT)
EMPLOYEES, LOCAL 1749D, AFSCME, AFL-CIO)
and)
CITY OF PLYMOUTH POLICE DEPARTMENT)

W.E.R.C.
Case XVI
No. 22728
MIA-377
Decision No. 16236-A

INTRODUCTION

On March 30, 1978 the undersigned was notified that he was selected under Wisconsin Employment Relations Commission procedures to serve as the sole arbitrator to issue a final and binding award. His jurisdiction was limited by virtue of applicable Wisconsin statute to selecting either the final offer of the Union or that of the Employer.

After consultation with the parties a hearing was held at Plymouth, Wisconsin on May 10, 1978. No Certified Reporter was present. The arbitrator took his own notes and received a number of exhibits.

The Union filed a post hearing brief on June 12, 1978. The Employer filed a brief at the time of the hearing but declined to file a post hearing brief.

The case presented only one issue -- an issue having to do with the specification of hours of work. The statement relative to the final offers of the party will clarify the issue.

THE FINAL OFFERS

Of the Employer:

7.01 The average work week shall consist of forty (40) hours, for an annual total of 2,080 hours.

Of the Union:

ARTICLE SEVEN: Maintain present 6-2, 6-2 work week schedule which results in three (3) men per shift except for one (1) day per week, when there are only two (2) men. (42 hours work week)

The Union is; therefore, requesting that the present contract language of 1977 be maintained which reads as follows:

ARTICLE SEVEN

Work Day and Work Week

7.01 The normally scheduled work week of the officers shall consist of the following cycle for a total of 2184 hours;
six (6) consecutive days on duty
two (2) consecutive days off duty.

7.02 The standard work day shall consist of eight (8) hours with a paid thirty (30) minute lunch break.

7.03 The standard work week shift schedule shall be as follows:

First Shift	7:00 a.m. to 3:00 p.m.
Second Shift	3:00 p.m. to 11:00 p.m.
Third Shift	11:00 p.m. to 7:00 a.m.

During periods of vacations or sick leave, in order to provide sufficient coverage on the second and third shifts, management may schedule an Employee to work an 8:00 p.m. to 4:00 a.m. shift.

7.04 In addition to the schedule work day and work week, Employees shall be required to work additional times as requested by the Employer.

APPEARANCES

For the Employer -- Ronald W. Damp
City Attorney, Plymouth, WI

For the Union ----- James L. Koch, Representative
2301 Church Road, RR2
Fond du Lac, WI

THE BASIC POSITIONS OF THE PARTIES

The Employer argued that comparisons with surrounding communities revealed that the present 42 hour a week work schedule left it in an inequitable position. It contended that 40 hours was more equitable.

The Union did not deny that many law enforcement units in surrounding areas did work 40 hours per week and in some cases even a few hours less. It, however, stressed that in no case did the negotiated agreement lack a negotiated schedule which specified a cycle of hours to be worked and days off.

FINDING OF FACTS AND DISCUSSION

Concededly the facts demonstrated that in surrounding communities with which both parties felt it reasonable to make comparisons a pattern of 40 hours or somewhat less for a work week was discernable.

However, the facts are just as clear that the comparisons do show, as the Union argued, that the negotiated agreements do contain a schedule which specified a cycle of hours to be worked and days off.

The following areas were shown to have a 40 hour or somewhat less work week but to also include a negotiated schedule which made reference to cycle of hours to be worked and days off: City of Beaver Dam, Calumet County, Fond du Lac County, City of Hartford, City of Horicon, City of Kewanee, City of Kiel, City of Mayville, City of New Holstein, City of Ripon, Sheboygan County, and City of Waupan. Practically all of the areas were on the list the Employer used to demonstrate that 40 hours or less was the pattern of length of work week.

The Union presented a very rational reason for wanting some specification as to schedule of hours of work. It presented facts to establish that under the 1977 Agreement and past pattern in Plymouth the work schedule made it possible for two patrolmen to be on duty most of the time with a sergeant also on each shift. In contrast the Union brought out that the Employer had not been able to assure it that under the 40 hour work week and the total personnel (10 employees including the Captain and the Chief) the pattern would be other than 2 employees scheduled per shift and in many instances only one employee per shift.

The evidence indicated that on many occasions during negotiations the Employer had failed to give answers to the following questions:

1. What happens when Employees request vacation?
2. What type of schedule are we going to be on?
3. How many days must we work before we will have days off?
4. Are the days on and off going to be consistent?
5. Will there be a sergeant scheduled for each shift?
6. What happens when someone gets sick?
7. What happens when Employees request to switch days?
8. How many weekends will be scheduled off per month or year?
9. What happens when we are in situations that require more than one (1) man?
10. What happens to the safety of the Employee when they request a back up?
11. What happens when an Employee needs a day off for personal reasons?

12. How will holidays be scheduled?
13. How many days will we be required to work in a row?
14. Who will be in charge and responsible on a particular shift?
15. Will there still be a swing shift?

The Union presented evidence as to the number and type of crimes committed in the Plymouth area. Argument was made that in a great number of instances it would be dangerous to send a police officer out on his own to investigate many types of situations. The Employer made no persuasive effort to convince that such was not a fact.

In response to questioning by the arbitrator as to whether the Employer could make any commitment along specific schedule lines the attorney representing the Employer was only able to say "he had no such authority."

The evidence bore out the Union assertion that at negotiations the Employer when asked to be specific about scheduling and to present something which would give the employees the protection to which they felt entitled would merely reply "it's a management problem -- we will have to work something out."

A statement was made by the Employer's Attorney at one point in the hearing that the present Chief and Captain were soon to retire and that contra to what seemed to be the present pattern the Captain and Chief would be working on Saturdays and Sundays. The implication was left that somehow this would enable the Employer to work out schedules which would be satisfactory from all aspects, including providing the necessary back up in investigations that called for a two man team. But when the arbitrator pressed the Attorney for the Employer for some sort of a guarantee the response was that he had no authority to so act.

In view of the state of the record the arbitrator is convinced that he has no alternative but to hold that the offer of the Union should be accepted and incorporated into the Agreement.

It may be possible that if a new Chief and Captain are required to work on week-ends a schedule could be devised that would satisfy the employees. However, neither the employees or the arbitrator were shown evidence that this would be an actual fact. The arbitrator is unwilling to find for the Employer on the mere statement that "it is a management problem which we will have to work out." Management was unwilling to guarantee that the problems which concerned the employees would be worked out.

The employees demonstrated that they had valid reasons for wanting to know the specific terms of a schedule. The facts are utterly clear that schedules are commonly part of negotiated terms in contracts in use in comparable communities.

THE AWARD

The Union offer is selected over that of the City of Plymouth Police Department. It should be incorporated into the current Agreement.

DATE June 22, 1978

SIGNED Reynolds C. Seitz /s/
Reynolds C. Seitz
Impartial Arbitrator
1103 West Wisconsin Avenue
Milwaukee, WI 53233