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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
CITY OF BEAVER DAM :
and : AWARD AND OPINION
BARGAINING UNIT OF THE BEAVER :
DAM POLICE DEPARTMENT :

Case No. XXI
No. 23937 MIA-407
Dec. No. 16807-A

Hearing Date June 1, 1979

Appearances:

For the City Lindner, Honzik, Marsack,
Hayman & Walsh, s.c.,
Attorneys at Law, by
MR. ROGER E. WALSH

For the Union Gimbel, Gimbel & Reilly,
Attorneys at Law, by
MS. LINDA S. VANDER HEUVEL

Arbitrator MR. ROBERT J. MUELLER

Date of Award September 7, 1979

BACKGROUND

The above entitled matter came on for hearing before the undersigned who was selected as the sole arbitrator to hear the dispute from a panel furnished by the Wisconsin Employment Relations Commission. The parties were present at the hearing and were afforded full opportunity to present such evidence, testimony and arguments as they deemed relevant. Post-hearing briefs were exchanged through the arbitrator.

This is an arbitration proceeding pursuant to Section 111.77, Wisconsin Statutes. It was submitted to the arbitrator as a Form 2 proceedings under said statute by which the arbitrator is charged with selecting the final offer of one of the parties without modification.

STIPULATIONS OF THE PARTIES

The Employer's brief recites the stipulations of the parties in the concise and succinct manner as follows:

"During the negotiations which preceeded the arbitration matter, the parties had agreed to incorporate into the 1979 contract several language changes relating primarily to the grievance procedure, overtime pay computation (clarification language) and vacation scheduling and new provisions relating to

strike prohibition and a physical examination requirement. In addition, the parties agreed to the following economic improvements:

- a) an increase in the clothing allowance from \$150 per year to \$180 per year, and
- b) an increase in the maximum accumulation of unused sick leave from 84 to 92 days."

ISSUES IN DISPUTE

The Employer's brief contains a concise and objective recitation of the issues in dispute at pages 2 and 3 thereof as follows:

"There are four issues in dispute: Wages, holidays, life insurance and health insurance.

- "a) Wages - The City proposes a 6.2% wage increase.
 - The Association proposes a 7% wage increase.
- "b) Holidays - The Association proposes that an additional one-half holiday be granted by making Christmas Eve a full-day rather than a half-day holiday.
 - The City opposes any increase in the number of holidays.
- "c) Life Insurance - The City proposes a \$6,000 life insurance policy.
 - The Association proposes an \$8,000 life insurance policy.
- "d) Health Insurance - The City proposes that the City pays \$38.39 per month toward the single premium (which is the full amount) and that the City's payment toward the family premium be increased from 75% (which amounts to \$82.55 per month) to \$98.30 per month. (The full family premium is \$110.06 per month and there was no increase in premium between 1978 and 1979.)
 - The Association proposes that the City pays the full single premium (with no specification of any dollar amount) and that the City's payment toward the family premium be increased from 75% (which amounts to \$82.55 per month) to 90% (which amounts to \$99.05 per month). "

The total average monthly cost for all economic items (including wage, longevity, pension, holiday, vacation, health insurance and uniforms) as represented by the City's offer as amounting to \$115.28 or a 7.1% total percentage amount.

The Union's proposal based upon inclusion of and computation of the increases on all such items amounts to a monthly increase of \$132.31 or a percentage increase of 8.2%.

The total monetary difference between the two offers for 26 employees for the calendar year 1979 would then be in the approximate amount of \$5,300.00. Such sum would vary somewhat for the reason that the life insurance coverage as proposed in the offers of each party would take effect after the signing of the Collective Bargaining Agreement.

DISCUSSION

Both parties presented excellent briefs in which they addressed arguments and related the evidence submitted into the record to those factors specified in the statute under Wisconsin Statutes 111.77(6), which factors are to be considered and applied by the arbitrator in determining the dispute.

Discussion of Factors:

- (a) The lawful authority of the Employer.
- (c) The interest and welfare of the public and the financial ability of the unit of the government to meet these costs.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and the conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment.

In its brief, the Employer combined its argument as directed at the above three factors. First, it contends that the arbitrator should afford substantial consideration and deference to the 7% voluntary wage and price guidelines as issued by the president. They contend that employers, employees and arbitrators have an obligation to make every effort to comply with such guidelines and that departure should be taken therefrom only where it is necessary to avoid gross injustice or inequity.

The Employer contends that such guidelines were recognized and exerted a substantial influence on contract settlements involving numerous other employers and employees, and that the wage settlements for 1979 involving other employees of this Employer all fall within and are in conformance with such guidelines. The Employer presented evidence indicating that the City bargains with five different groups of employees, to-wit: the Police Department, which is involved in this proceedings, the Fire Department, Public Works/Waste Water Plant/Clerical Unit of Employees, Water Treatment Plant Employees, and a unit of Engineering Techs. The settlement involving the water treatment plant employees consisted of a wage increase of 5.4% and was the settlement for the second year of a two-year contract. The engineering tech unit is also in the second year of a two-year agreement and the 1979 settlement with such unit consisted of a wage increase of 6.3%. The public works/waste water plant/clerical unit of employees settled upon a total settlement for 1979 of 7%. The fire department employees settled for a wage increase of 7%, which when computed from the standpoint of a total package increase, amounted to a gross settlement of 6.7%.

The Employer contends it is in the best interest of the public and of the unit of government and consistent with the lawful authority of the Employer for it to stay within the wage guidelines and to treat all of its employees as consistently as possible. They contend that the total package increase of 7.1% offered by the City to the police unit exceeds that highest settlement with any other unit and while it is slightly in excess of the guidelines, it is more consistent with the purpose of such statutory factors and the guidelines.

Lastly, the City contends that the police have shown no compelling necessity which would justify their exceeding the wage guidelines while other City employees accepted wage increases within such guidelines.

The Union contends that it is first necessary to recognize that the guidelines established by the Council on Wage and Price Stability are merely voluntary standards or guidelines and they are not binding on the parties. Secondly, the Union contends that the primary objective of the statutory scheme of collective bargaining and arbitration has as its goal the resolution of labor disputes and that voluntary guidelines should not be used to frustrate or prevent such process.

The Union further contends that the guidelines provide for exceptions to compliance where gross inequity or undue hardship is found, and they contend that such exceptions apply to this case.

With respect to the interest and welfare of the public, the Union contends that it is of importance and concern to the public to maintain good morale in the department and to retain as many of its current officers as possible. They contend that if the disparity between the level of pay and benefits received by the employees becomes too great as compared to other comparable police departments, the turnover of employees will increase and the morale of department employees will be lowered. They argue that the Association's offer would serve to minimally improve the disparity which exists and serve to be in the best interests of the public.

In considering the various arguments of both parties as they relate to the statutory factors involved, it is the considered judgment of the undersigned that the arguments of both parties consist of reasonable bases and are meritorious each in their own right. The arbitrator is unable to find that one or the other offers would not contribute to the interest and welfare of the public.

With respect to the application of the voluntary wage guidelines as it relates to the lawful authority of the Employer, the undersigned is of the judgment that such guidelines are basically voluntary. As such, they are to serve as a point of reference and receive consideration along with all other specific factual considerations which are applicable to a given case. The undersigned considers the factors as expressed in the Wisconsin Statutes as being the principal frames of reference within which a particular case must be considered and reviewed and that the wage guideline thereafter be considered and applied and balanced with such statutory considerations. The undersigned finds general agreement with that observation expressed by Arbitrator Frank Zeidler in Pecatonica Area Schools and the Pecatonica Education Association, Decision No. 16742-A wherein he stated as follows:

"Since the wage and price guidelines cited by the district are not mandatory but advisory only, and

since the Wisconsin Statutes governing the dispute call for comparability, the factor of comparability is predominant when it (the final offer) does not conform with the wage and price guidelines."

An additional matter that is considered relevant is the fact that the wage and price guidelines were presumably formulated in conjunction with what was anticipated and projected as being the probable cost of living increase that would develop during 1979. The cost of living projections which the guidelines were intended to have reference to have proven to be much higher than anticipated. For such reason, it would seem that where the underlying premise and basis for setting the guidelines err substantially, that the guidelines then also become less valid and worthy of lesser consideration and deference.

Discussion on Wisconsin Statutes 111.77(6)(d)&(f):

"(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

1. In public employment in comparable communities.
2. In private employment in comparable communities.

"(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."

The majority of the evidentiary materials and arguments made by the parties in this case was directed toward developing their respective cases within the application of the above two factors.

The principal matter that is in dispute between the parties and which requires resolution by the arbitrator involves the question of determining which communities constitute the most appropriate group of communities to which comparison should be made. In that respect, the parties have addressed their evidence and argument to those other public employment communities which each regarded as most appropriate.

The Employer contended that for the past number of years the parties had mutually agreed to utilize for comparative purposes those municipal employers located in Dodge County, being the cities of Horicon, Mayville, Watertown and Waupun. The wages and benefits of employees in the Dodge County Traffic Department were also referenced throughout their historical negotiations, not as a direct comparable, but from the standpoint of retaining a consistent relationship with the county.

The communities selected by the Association which they contend are the most comparable consisted of the cities of Oconomowoc, Fort Atkinson, Sun Prairie and Monona in addition

to the four utilized by the City. The Association contends that such communities were selected for the reason that they are geographically located within a 35-mile radius of Beaver Dam, are generally residential but have an industrial base, and are comparable in population and police department size. In addition to such communities, the Association utilized the Dodge County Sheriff Department and Dodge County Traffic Department.

The City contends that they were in fact surprised when the Association changed its list of comparable communities for the first time through presentation of its exhibits at this arbitration hearing. They contend that prior to the arbitration hearing itself, the parties had not discussed such other cities as is now claimed by the Association as being comparable.

The City states as follows in its brief at page 10:

"The Association's abrupt change of position also amounts to 'dirty pool'. In the negotiations for the 1978 Agreement, the Association was pushing hard for a different work schedule which would at least reduce the number of days they had to work per year. In 1977, they worked a 6-2, 6-2, 5-3 schedule, or 259 days per year. The Association pointed to the traditional group of comparables as justification for their position. Horicon, Mayville, and the Dodge County Traffic Department had all recently reduced their work schedules to 243.5 days per year and the Association argued, with persuasion, that a majority of the communities had a better work schedule. If the Association, in the 1978 negotiations, had used the list of comparables it is attempting to utilize this year, the Association would have been unable to make the same claim. Only the Dodge County Traffic Department (the Dodge County Sheriff's Department cannot be viewed as a separate comparable), Monona and Sun Prairie, a minority of the communities, had the 243.5 day work year."

At page 17 of its brief, the Association addresses such matter as follows:

"It is patently clear that the common threads -- population, police department size, residential base and geographic proximity -- which unite the communities which the Bargaining Unit selected, are lacking when an examination is made of the communities selected as comparable by the City. These communities neither share the common characteristics which were discussed earlier, nor do they share any community of interest with the City of Beaver Dam. The mere fact that the City's communities were used in past negotiation sessions as indicators of wage and benefit packages of patrolmen in the geographic area of Beaver Dam does not make these communities comparable under the mandates of Wis. Stats. 111.77(6)(d). In view of these facts, the Arbitrator should disregard the exhibits and related arguments made by the City. Before the City's exhibits can be found to have any meaning under the statutory analysis, the communities cited must be shown to be 'comparable'."

The undersigned recognizes that there is a general natural tendency and strategy on the part of bargainers to attempt to focus attention and comparison to those areas that are most

favorable to their respective positions. It appears that both parties have sought to so structure their cases based, to some degree, on such motivation. The undersigned is of the judgment that the statutory reference to the factor of comparison to comparable communities contemplates that comparability be determined on the basis of objective comparative similarities and that motivations on the part of the parties be excluded. It has been generally recognized and accepted by most arbitrators that the factors which go into determining comparability involve such matters as size and population, area proximity, comparable makeup and tax base, and such other characteristics as yield themselves to comparable similarities.

In the matter of population, Beaver Dam is shown to have a population of 14,558. The City utilized Watertown, 17,158, Waupun, 8,099, Mayville, 4,466, and Horicon, 3,631. Clearly, Mayville and Horicon are substantially smaller than Beaver Dam.

The Association utilized other municipalities within a 35-mile radius which included Oconomowoc, 10,759, Fort Atkinson, 9,7778, Sun Prairie, 13,178, and Monona, 9,785.

On the basis of proximity and population, it would seem that the four additional municipalities sought to be compared by the Association, are more appropriate than are the cities of Mayville and Horicon.

The record contains no evidence concerning the number of police department employees employed by Mayville or Horicon, but of the remaining municipalities referred to by both parties, the number of employees ranges from 15 at Waupun to 30 at Watertown, with Beaver Dam having 26 employees.

It is the considered judgment of the undersigned that the most appropriate group of comparables to the City are those of Oconomowoc, Fort Atkinson, Sun Prairie, Monona, Watertown, and Waupun. In deference to the past practice and history of the parties in likewise using Mayville and Horicon as comparables, the undersigned would include such two municipalities within the above group in order to arrive at an analysis and determination as to comparability.

Using the patrolman top rate as a basis from which to make a comparison, the exhibits indicate the following as being the annual base salary (wages only) that would be in effect at the following municipalities for the calendar year 1979.

<u>City</u>	<u>Patrolman (top rate) 1979 Annual Base Salary</u>
Oconomowoc	\$16,586
Fort Atkinson	14,772
Sun Prairie	14,652
Monona	13,956
Horicon	14,136
Mayville	14,412
Watertown	14,556
Waupun	14,352

Average - \$14,681

Beaver Dam (City offer) \$14,400 (\$281.00 below the average)
 Beaver Dam (Association Offer) \$14,509 (\$172.00 below the average)

In making comparison of the same comparables on the overall compensation factor, the arbitrator has utilized the computations supplied by the City which includes shift differential, longevity, holidays, pension, clothing allowance, health insurance, life insurance and vacation.

<u>City</u>	<u>1979 Total Compensation</u> <u>(Assumes a patrolman with 12 years seniority)</u>
Oconomowoc	\$20,823
Fort Atkinson	18,763
Sun Prairie	19,036
Monona	18,398
Horicon	18,097
Mayville	18,979
Watertown	18,683
Waupun	18,454
Average	- \$18,904

Beaver Dam (City offer) \$18,569 (\$335.00 below the average)
 Beaver Dam (Association offer) \$18,773 (est.) (\$131.00 below the average)

If one makes the same computation of the annual base salary at the top patrolman rate for the year 1978, one finds that the average annual base salary of the eight municipalities is \$13,664. The annual base salary of the top patrolman at Beaver Dam for 1978 was \$13,560.00. Under such comparison, the Beaver Dam patrolman was then \$104.00 below the average. It is clear from an examination of the 1979 computation as compared to the 1978 computation, that the relative position of the Beaver Dam policemen based on annual base salary of wages only, is placed at a lower comparative position under both the City offer and the Association offer. Such result, however, is somewhat misleading for the reason that a portion of the offers of both parties is attributable to benefits other than wages. In order for a more accurate comparison to be made, one must then analyze the total compensation received by Beaver Dam policemen during the year 1978 and equate that figure to the total compensation realizable under the 1979 offers of the respective parties.

Using the same total compensation approach utilized by the City one then finds that the Beaver Dam policemen were \$310.00 below the average of the eight comparables in the year 1978. In comparing that result against the two offers submitted for 1979, one finds that under the City's final offer, Beaver Dam employees would be \$335.00 below the average which would create a disparity slightly greater than that which existed in 1978 in the sum of \$25.00. Under the Association offer, the differential would not become greater but would be narrowed so that the disparity would place them at \$131.00 below the average, thereby constituting an improvement over 1978, bringing them \$179.00 closer to the average.

Even if one were to remove the highest comparable, being that of Oconomowoc, and the lowest, being that of Horicon, the average total compensation for 1979 would be \$18,718.00. In comparing the offers of the two parties to such average, one finds that the City's offer would be \$88.00 below the average while the Association's offer would be \$55.00 above such average.

In reviewing the issue of holidays specifically, one finds

that the number of holidays afforded employees at the other eight comparables ranges from seven to ten holidays. It appears that Monona affords seven holidays, Sun Prairie eight, and the balance provides ten holidays. The Association offer which requests an additional one-half holiday bringing the total to nine and one-half, would appear to be a reasonable request.

The respective positions of the parties concerning the health insurance and life insurance issues are both reasonable and no preference can be based in favor of one over the other. It appears to the undersigned that the specific issues involving holidays, health insurance, and life insurance are more appropriately then accounted for in the total compensation analysis and comparisons hereinabove undertaken:

Discussion on Wisconsin Statutes 111.77(6)(e) and (g):

- "(e) The average consumer price for goods and services, commonly known as the cost of living.
- "(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings."

Application of the cost of living factor to this dispute overwhelmingly favors the Association proposal. The cost of living increase from January, 1978 to January, 1979 was 9.56%. The cost of living increase from May, 1978 to May, 1979 was 15.1%.

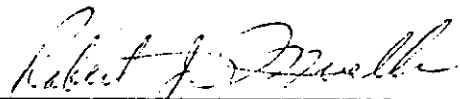
Conclusions:

On the basis of the above analysis, determination of those communities deemed to be the most appropriate comparables, and applying the factors specified by the Wisconsin Statutes to the evidence and record in this case, it is the considered judgment of the undersigned that the Association's final offer is the more reasonable and it therefore is awarded as follows:

AWARD

That the final offer of the Association is hereby adopted as and for the terms of settlement of the labor agreement for the calendar year 1979, and the parties are directed to implement said final offer according to its terms along with those previously agreed upon and stipulated terms and conditions of the labor agreement for the year 1979.

Dated at Madison, Wisconsin this 7th day of September, 1979.



Robert J. Mueller
Arbitrator