

CITY OF MARINETTE (POLICE DEPARTMENT)

and

TEAMSTERS UNION LOCAL NO. 328, a/w
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS
OF AMERICA

ARBITRATION AWARD

Case XXVIII
No. 29328
MIA - 654
Decision No. 19625-A

INTRODUCTION

The parties in this case are the City of Marinette, Wisconsin (Police Department), and Teamsters Local No. 328, the bargaining representative of the law enforcement personnel of the Municipal Employer. The parties will be referred to as the City and the Union.

BACKGROUND

The dispute concerns the contract between the parties for 1982 and for 1983. Negotiations were held on January 6, 1982 and on February 15, 1982. The Union petitioned for final and binding arbitration on February 18, 1982. The parties met on March 31, 1982 with Edmond J. Bielarczyk, Jr., a member of the staff of the Wisconsin Employment Relations Commission. Further collective bargaining and mediation did not resolve the issues and investigator Bielarczyk reported to the WERC that an impasse existed. The WERC on May 24, 1982 ordered the initiation of compulsory final and binding interest arbitration pursuant to 111.77(4)(b) Stats. The parties selected Gordon Haferbecker of Stevens Point as the arbitrator and he was notified of his appointment on June 14, 1982.

The arbitration hearing was scheduled for August 4, 1982. The City was represented by Thomas P. Schwaba, City Attorney for Marinette and the Union was represented by Howard Smale, Business Agent for Teamsters Local 328.

The parties agreed to attempt to resolve the dispute by mediation before proceeding to a formal hearing. The mediation was not successful in finally resolving the dispute but both parties did revise their final offers by mutual agreement.

A formal hearing concerning the revised final offers was held on the same day, August 4. The parties presented witnesses and exhibits. They agreed that briefs would not be filed. The City agreed to send the arbitrator data on the cost differences between the Union and the City final offers for 1982. The City sent the data on August 23 and the Union responded on August 30.

ORIGINAL FINAL OFFERS, MAY 5, 1982

The City of Marinette's final offer was as follows:

1. A two year contract commencing January 1, 1982.
2. An increase in wages of 4% effective January 1, 1982 and 7% effective January 1, 1983.
3. An increase in shift premium to \$.10 for the 3 P.M. to 11 P.M. shift and \$.15 for the 11 P.M. to 7 A.M. shift.
4. An increase of \$20 in the clothing allowance.
5. An increase of \$.25 on the police science credit.

All other terms and conditions of the existing contract between the parties to remain the same.

The Union's final offer was as follows:

Eight percent (8%) in wages to be applied across-the-board retroactive to January 1, 1982.

All other terms and conditions of the existing contract to be maintained by City.

REVISED FINAL OFFERS, AUGUST 4, 1982

The City of Marinette's final offer was as follows:

1. A 5% pay increase retroactive to January 1, 1982.
2. A 7% pay increase effective January 1, 1983.
3. An increase in the City's contribution to family dental insurance to \$16 effective January 1, 1982 (had been \$13). The City's 1983 contribution to dental insurance to be 45% of the premium in 1983.
4. A reduction in the accumulation of sick leave from two days to one day per month effective January 1, 1983. (This does not affect past accumulations.)

The Union's final offer:

1. An 8% salary increase effective January 1, 1982.
2. An 8% salary increase effective January 1, 1983.

STATUTORY STANDARDS

In reaching a decision, the arbitrator shall give weight to the following factors (from 111.77 Wis. Stats.):

- (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 employees, 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.

MAJOR ISSUES

The major issues in this case are ability to pay and wage comparisons. There was no dispute concerning the lawful authority of the Employer. There were no stipulations. The parties did not give any emphasis to cost of living as a major issue. Union Exhibits 5 and 7 showed that as far as overall compensation was concerned, employee fringe benefits for various municipalities were very similar. The Employer did not dispute the data.

Police fringe benefits are very similar to other City employees except that the Police are not asking for an increased contribution to dental insurance for 1982. This has been awarded to other City employees.

The arbitrator finds that overall compensation of employees is not a major issue here. Both the Employer and the Union proposal seem reasonable as far as recent cost of living trends are concerned.

Neither the Union nor the City presented any data on wages in private employment. This is not unusual since law enforcement employees are difficult to compare with most other kinds of local employment.

SETTLEMENTS WITH OTHER MARINETTE CITY EMPLOYEES

The City has settled contracts with its other unions. These contracts all provide for a contingency increase as of July 1, 1982 (may be paid later when legal matters are resolved).

The City apparently would like to give employee increases of about 8% in 1982 but it has cash and budget problems. It has some trust funds in escrow which it hopes to get released and it is awaiting the outcome of a similar legal case involving the City of Chippewa. The City has agreed to July 1, 1982 increases for the other City employees, contingent upon the City winning its case and getting trust funds released.

The Office and Clerical employees have settled for a 3% increase effective 1-1-82, a 5% contingent increase on 7-1-82 and a 9% increase on 1-1-83.

The Department of Public Works (DPW) and the Fire Department unions settled for 4% on 1-1-82, a 4% contingent increase on 7-1-82 and an 8% increase on 1-1-83.

Department heads (non-union) have received 4% on 1-1-82 and may receive a contingency increase of 4% for 7-1-82.

The other employees are also receiving the increase in the City's monthly contribution to family dental insurance from \$13 to \$16.

The City is offering the Police a 5% increase January 1, 1982 and a 7% increase January 1, 1983 and the same dental insurance increase as given to the other unions. The City feels that its offer of 5% for 1982 and 7% for 1983 is fair because the Police did not agree to a 1982 contingency increase as the other unions did. In view of the City's 1982 budget problems, 5% is as far as the City feels it can go.

It is difficult to compare the City's offer to the Police with that to the other unions because of the contingency increase. If the contingency increase is eventually paid, the other City employees will receive 16 to 17% increases in base pay over the two-year period, compared to 12% for the Police under the City's offer and 16% for the Police under the Union offer.

If the contingency increase never comes about, the other unions will receive 12% over the two-year period, compared to the City's offer to the Police of 12% and the Union's request of 16%.

In some respects the City's offer to the Police is inferior to what it has offered the other local unions. The other unions all have the possibility of more than 12% increases over the two-year period. The Police do not. They do not get anything above the 12% in recognition of their not having a contingency increase in their contract.

However, the Union offer does not make any 1982 percentage concession in spite of the fact that its offer does not include any contingency money. The other unions with their contingency offers are giving more consideration to the City's 1982 financial problem.

It should be noted that the City's 1982 offer to the Dept. of Public Works and the Fire Dept. would cost the City about 6% if the contingency takes effect, four percent on January 1 and four percent July 1. The latter four percent amounts to about two percent for the whole year.

The City is offering the Police 5% on January 1, 1982 which would be less than the 6% cost to the City for the other unions if the contingency increase is paid. On the other hand, the Union is asking for 8% on January 1, 1982 which would be a greater budget cost to the City than the 6% to the DPW and the Fire Dept. employees.

For 1983, the City's 7% offer to the Police is below the 8% offered to the DPW and the Fire Dept.

The City's offer includes a reduction in future accumulated sick leave. I understand that other City unions have granted this previously. From the Union's point of view this is giving up part of a previous benefit. The Union does not feel it is getting any new benefit in return for this sacrifice. The Union apparently does not regard the dental insurance increase as an adequate offset.

COMPARISONS WITH OTHER POLICE UNITS

City Position. City Exhibit 1 compared the average salary of police in eight Wisconsin communities ranging in population from 10,018 to 14,402. The figures used were from the 1981 Wage and Benefit Survey prepared by Community Management Services in cooperation with the League of Wisconsin Municipalities. The City took the mean of the salary range set forth in the survey.

The cities compared were Monroe, Menasha, Ashwaubenon, Kaukauna, Marinette, Menominee (WI), Middleton, and Two Rivers.

The average of the salaries of the eight cities in 1981 was \$15,899, compared to \$16,105 for Marinette. Thus, Marinette did not rank below the average.

Union Position. The Union, also using the League of Wisconsin Municipalities survey, compared 26 cities in the 10,000 to 38,999 population category.

Union Exhibit 3 shows that these 26 cities averaged \$18,978 in the 1981 top pay for a patrolman. Marinette's pay of \$16,105 as reported in the survey was \$2,873 or 17.8% below the average. Marinette was below every city on the list. The Union's requested increase would still leave Marinette 9.8% below the 1981 average of the 26 cities.

In a 1977 arbitration involving the City of Marinette and the Police, the arbitrator used a list he prepared of what he thought were comparable cities. These were Antigo, Beaver Dam, Manitowoc, Marshfield, Menominee (Michigan), Stevens Point and Wausau. The Union has prepared its Exhibit 5 showing 1982 salaries for the top patrolmen in those communities. The average salary for the seven is \$17,988, compared to Marinette's \$16,255. Thus, Marinette Police are 10.6% lower than average. The Union's proposal of an 8% increase would still leave it below the average.

Arbitrator's Comments. I question the City's approach in taking an average of the high and low salary for each community. Most communities require only a short period--typically one or two years to reach the top patrolman salary (apart from longevity). I looked over the contracts for Stevens Point, Wausau, Marshfield, Beaver Dam, Antigo, and Marinette (Union Exhibits) and the period to reach the top patrolman salary ranged from 6 months to 3 years. Therefore, top salaries would likely represent a high proportion of the average municipal police force. I have had a number of police arbitrations in the past few years and usually the parties have compared the top salaries for patrolmen rather than the average salary.

The Union's comparison of 26 cities ranging in population from 10,000 to 39,000 might be questioned because some of the larger cities are three times as large as Marinette. However, the comparison is still valid because every city in the comparison, small or large, paid a higher top patrolman salary in 1981 than did Marinette.

It is difficult to come up with a list of comparables in Marinette's case because there are few cities of Marinette's size in the nearby area. Marinette is also unusual in that it has a sister city, Menominee, Michigan, immediately adjacent making the total urbay community over 22,000.

Of the various comparisons proposed, I find the 1977 list of Arbitrator Feinsinger to be very useful. As the Union points out in its Exhibit 5, Marinette is 10.6% below the average of the 7 in the 1982 salary paid to the top patrolman. It should be noted that two of the communities have provided for further salary increases on 7-1-82.

Both the Union's 8% and the City's 5% 1982 salary proposal would leave the Marinette patrolmen below the seven-city average but the Union's proposal would come closer to the average.

The Union's comparisons are more persuasive than those of the City, and it is apparent that a 1982 increase of 8% is more reasonable than 5% in bringing up Marinette's ranking among comparable cities. It would be only a modest improvement.

ABILITY TO PAY

City Position. The City is in a difficult financial position in 1982. It had to enact a high property tax increase late in 1981. It had to borrow money to finish the year. The City did not commence 1982 contract negotiations until January of 1982 because state aids were received later than usual and because of a 1981 reassessment of all property.

At the hearing, the Comptroller reported that the City presently has only \$43,000 in the contingency fund. The snow removal account is \$22,000 overdrawn, unemployment insurance is \$18,000 overdrawn. The auditors say that a city like Marinette should have about \$300,000 in its contingency account.

Part of the 1982 budget difficulties occurred because the first payroll for January came out of 1982 funds instead of 1981 which had been the past practice.

The City does not contend that it would be impossible to pay the Union's proposed increase but it would be very difficult. Layoffs might be necessary. The City would have liked to give 8% increases for 1982 and 1983 but its cash position made this almost impossible. Therefore, the other unions settled for smaller cash increases for 1982 with the possibility of a contingency increase if and when funds became available to the City.

Union Position. The Union states that the City refused to meet prior to January 1, 1982 and now tells the Union that its budget does not accommodate the increase requested by the Union. Collective bargaining can hardly be meaningful if either of the parties refuse to meet prior to formulating a budget and this case exemplifies why a binding arbitration law has become a necessity.

Union Exhibit 1 is the police department budget for 1982. The combined total wages of the Sergeants and Patrolmen are budgeted at \$310,215. Assuming that the difference between the City's offer and the Union request is 4%, this would mean that the dollar amount in question is approximately \$12,400.

Union Exhibit 2 shows that the Police Department has operated shorthanded for the first seven months of 1982. It has not had a full complement of patrolmen and sergeants. The Union estimates the savings at \$19,947.

These savings could provide funds for the Union's requested salary increase.

The City of Marinette has made political decisions which have placed it in the position of being able to say, "We can't afford to pay." For example, the City of Marinette has not chosen to levy charges for Waste Water Treatment sufficient to amortize costs. This is a political decision which affects its ability to treat employees fairly.

Even after a budget is enacted, priorities change. A budget is a projection which is, at least to some extent, fluid and changeable.

Arbitrator's Comments. There is no doubt that the City of Marinette is in a difficult financial situation at this time in 1982. Whether the Police get a 5% or 8% increase will probably not be the determining factor in whether the City has to borrow money as it did in late 1981 to meet current expenses.

On August 23, City Clerk Westphal sent the arbitrator a cost breakdown of the difference between the Union and City offers for 1982 (City Exhibit 2). The arbitrator had requested this at the hearing. This showed a total budget cost to the City of \$406,557.50 under the City 5% offer for 1982 and \$420,803.55 under the Union's 8% offer, a difference of \$14,246. The figures include fringe benefits such as retirement, social security and health insurance.

The Union responded on August 30 and pointed out that Mr. Westphal's projections included wages and fringe benefits for supervisors who are not in the bargaining unit. Eliminating the salaries and fringe benefits of the supervisors would reduce the cost difference between the Union and City offers for 1982 from \$14,246 to \$10,237. The Union also noted that the City did not include any estimated saving resulting from the City's take-away proposal on sick leaves.

The parties agreed that the Police Department operated shorthanded during the first seven months of 1982 but there was no agreement on the approximate savings. The Union had estimated these at nearly \$20,000.

Mr. Westphal, testifying for the City, stated that as of June 30, 1982, the City had \$223,292 left in the 1982 Police Department salary account. The total salary budget was \$412,534 so at mid-year, 54% was left. This 4% "saving" would be \$16,501 of the original salary budget. These savings may or may not be real because of the timing of payroll periods and the time when certain salary adjustments are made, such as longevity.

The arbitrator concludes that there were some police salary savings in 1982 because the department operated short-handed but the exact amount may not be known before the end of 1982. The Union points out that the existing personnel had an increased work load. On the other hand, the citizens did not receive as much service. The City also may have been trying to reduce its 1982 budget problem.

ANALYSIS AND CONCLUSION

Both parties in this case have made reasonable final offers. The revisions of their original last offers have brought their offers closer together and have provided for two-year contracts in both offers.

As has been shown the principal issues in this case have been comparisons with the other Marinette City settlements, comparisons with other police departments, and the City's ability to pay.

As indicated earlier, the comparison with the City's other union settlements is difficult because they all include a contingency increase and the Police offer does not. The other unions all have the possibility of getting more than 12% base salary increases over the two-year period. Under the City's offer the Police would get no more than 12% (5% in 1981, 7% in 1982) even though the other unions will get 16% or 17% in base salary increases if the contingency comes through. Mr. Westphal, testifying for the City at the hearing, indicated there was a good probability of the contingent increases being paid. The cost to the City budget if the contingency is paid to the DPW and the Fire Dept. employees is about 6% for 1982 and over 8% for 1983, for a total of over 14%. The DPW and Fire Dept. budgets would need to rise more than 8% in 1983 over 1982 because of the two-step increase in 1982.

This 14+ percentage increase compares to the 12% offered to the Police by the City and to the 16% requested by the Police.

The arbitrator finds neither final offer very satisfactory on this issue. The City's offer to the Police is a little low. The Union's final offer for 1982 is a little high in comparison to what the other City unions will get in dollars in 1982.

The arbitrator's decision will therefore be based more largely on the comparisons with other police departments.

Comparisons with other Wisconsin police departments clearly show that the Union final offer is more reasonable than that of the City. In 1981 Marinette had a lower top patrolman salary than any other Wisconsin city in its population class based on the survey cited. The Union's proposed increase would make only a modest change toward a more equitable salary for Marinette Police.

On the issue of ability to pay, there is no doubt that 1982 is a difficult year for the City. Whatever the outcome of this arbitration the City may be faced with borrowing some

funds or reducing services or some combination. I do not find, however, that the Union's request is so unreasonable and so costly as to justify its rejection in comparison to the City's offer. No evidence was presented to indicate that the City's financial problems are due to its being too generous to its police or other employees. The Union offer is about \$10,000 above the City's--in 1982 cost. This is offset in part by substantial salary savings because the department has not operated at full staff in the first seven months of 1982.

In summary, I find the Union final offer more reasonable overall than the City's final offer for the following reasons:

1. While the Union offer is a little higher in 1982, in comparison to the cost to the City of the other union settlements, it does not raise the base pay of the Police by more than the increase for the other unions, if the contingency increase is paid.

2. The pay of Marinette Police is low in comparison to other police departments and the Union's proposals for 1982 and 1983 would provide a modest improvement in its standing. An increase a little larger than that paid the other City unions is well justified.


3. The City does have serious 1982 budget problems but the amount of the cost difference between the City offer and the Union offer is not so great as to justify a settlement that would be unfair to the Police. Also, as indicated earlier, the \$10,000 cost difference is offset to some extent by 1982 police salary savings due to the department being undermanned for over half of 1982.

Having reviewed the statutory criteria and having reviewed the evidence presented in this case, the arbitrator concludes that between the two final offers, the Union offer is more reasonable.

DECISION

The Arbitrator selects the Union's final offer and orders that it be incorporated in the 1982, 1983 collective bargaining agreement between the City of Marinette and Teamsters' Local No. 328.

September 3, 1982


 Gordon Haferbecker, Arbitrator