

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

RECEIVED

NOV 8 1982

*
In the Matter of the Petition of the *
*
OCONTO PROFESSIONAL POLICEMEN'S UNION,*
AFSCME, AFL-CIO *
*
To initiate Mediation-Arbitration *
Between Said Petitioner and *
*
THE CITY OF OCONTO *
(POLICE DEPARTMENT) *
*

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Case XVI
No. 29555, MIA-672
Decision No. 19800-A

APPEARANCES

Ms. Cindy S. Fenton, Staff Representative, Oconto City Professional
Policemen's Union, AFSCME, AFL-CIO, for the Union;

Mr. Donald A. VanderKelen, Labor Relations Consultant, City of Oconto, for
the Employer.

ARBITRATION AWARD

On August 19, 1982, the Wisconsin Employment Relations Commission appointed
the undersigned as Mediator/Arbitrator pursuant to Section 111.77 (4) (b) of
the Wisconsin Employment Relations Act, in the matter of the impasse
existing in the City of Oconto between the City Government, referred to
herein as the "Employer," and the Oconto City Professional Policemen's
Union, AFSCME, AFL-CIO, referred to herein as the "Union." Pursuant to the
requirements of Section 111.77 of the Wisconsin Statutes, the undersigned
conducted mediation proceedings between the parties on September 15, 1982,
and again on September 16, 1982, at the City Hall, City of Oconto,
Wisconsin, over matters at impasse between the parties as set down in the
final offers filed with the Wisconsin Employment Relations Commission. An
impasse remained at the conclusion of the mediation proceedings on those
issues shown below under the "FINAL OFFERS." All parties to the impasse
waived all further written notice, and proceeded to Arbitration on September
16, 1982. At that time the parties were present and given full opportunity
to present oral and written evidence and make relevant argument. Neither
party requested a transcript and none was made. The proceedings were
recessed on September 24, 1982, with briefs to be submitted with a postmark
no later than October 24, 1982. Upon receipt and exchange of briefs on
October 25, 1982, the record was closed.

FINAL OFFERS OF THE PARTIES

STIPULATED TO BE INCLUDED IN THE 1982 AGREEMENT:

The holiday pay shall continue to be \$50.00,

The following wording shall be added to the paragraph on emergency leave,
"Sick leave may be used for required attendance at serious illness of
immediate family,"

A new section shall be added to the agreement stating, "It is understood
that the employer may adopt and shall publish reasonable work rules and
regulations. The union has the right to grieve any unreasonable and/or
punitive application of said rules."

THE UNION FINAL OFFER:

Wages be increased by 8% effective January 1, 1982, and additionally increased by 2% effective July 1, 1982.

Clothing allowance remain at \$300 per year.

The amount of longevity be increased from \$.50 to 1% (one percent).

THE EMPLOYER FINAL OFFER:

Wages be increased by \$111.00 effective January 1, 1982, and additionally increased by \$30.00 effective August 1, 1982.

Clothing allowance be increased to \$315 per year.

The amount of longevity be unchanged.

STATUATORY CRITERIA

Section 111.77 of the Municipal Employment Relations Act in Subsection (6) states: In reaching a decision the arbitrator shall give weight to the following factors:

- (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.

FINDINGS OF FACT

1. The City of Oconto Government is the lawful employer of all members of units cited herein as "City of Oconto" departments. The Oconto Professional Policemen's Union, AFSCME, AFL-CIO is the certified representative of the nonsupervisory personnel of the Oconto City Police Department.

2. In the 1981 Agreement between the parties these salaries and benefits are pertinent to the instant matter:

Longevity; after five (5) years of service, each employee shall receive longevity pay in an amount equal to fifty cents (\$.50) for each month of employment with the City. Such longevity shall be paid in the month of December of each year.

Salary:

	1-1-81	7-1-81
Captain	\$1399	\$1427
Sergeant	\$1368	\$1395
Patrolmen	\$1337	\$1364

...Each employee shall be allowed to draw three hundred dollars (\$300) towards the purchase of uniforms each year....

3. Nonsupervisory members of the Oconto City Fire Department had the same base pay, longevity, and clothing allowance for 1981 as did police personnel. In 1982 the base pay for the firefighters is:

	1-1-82	8-1-82
Captain	\$1538	\$1568
Lieutenant	\$1506	\$1536
Firefighter	\$1475	\$1505

This base pay along with longevity and the uniform allowance are the same as the Employer Final Offer in the instant matter.

4. The base pay of police officers presumes an average 40 hour week. For firefighters the presumption is 56 hours average per week. There has been a parity in base pay of the two unions since 1977. Before that time they bargained as one unit.

5. Both firefighters and police officers are treated as protective occupations under Wisconsin Statutes. Although they are different occupations, both are hazardous, filled with stress. Both involve extensive, professional training and a high degree of skill. Both work around the clock, holidays, subject to call in. Both have a high degree of involvement with the public under situations of high anxiety.

6. The hourly base pay to the employees of the Oconto Public Utility for 1982 is:

	1-1-82	8-1-82
Class A	\$7.56	\$7.77
Class B	7.25	7.46
Class C	7.15	7.36
Class D	6.94	7.15
Part Time	5.77	5.98

7. The members of the Oconto Public Works Department receive this hourly base pay for 1982:

	1-1-82	8-1-82
Working Foreman	\$7.56	\$7.77
Equipment Operator	7.25	7.46
Mechanic	7.25	7.46
Truck Driver	7.15	7.36
Laborer	6.94	7.15
Part Time	5.77	5.98

8. Neither Public Works nor Utility employees are paid longevity. Their base pay has been at parity for at least two years.

9. The Employer has settled all City contracts except this Union's at their guidelines of 8.5% distributed in steps on January 1 and August 1, 1982.

10. The City of Oconto has expenses in excess of the 1982 budget of \$530,731.

11. Workers at the following local employers received no pay increase for the year 1982: Cruise Tops (16 employees), Oconto Metal Finishers, Oconto Thermoform, Bond Pickles (75 employees), W. B. Richter, Cruisers Inc. (40 employees).

12. Great Lakes Shoe Company, another local employer has been on short work weeks all summer.

13. Two firms have closed in Oconto while at the same time Noroco and New London Shoe have taken steps to locate new facilities in Oconto.

14. On February 13, 1981, Mr. Clark Longsine was appointed Chief of Police of Oconto. Chief Longsine came from the ranks of the Oconto County Police Department. He has qualifications suitable to the position.

15. Neither the Captain nor the Sergeant qualify as "supervisory" under 111.70 (1) (c) of the Wisconsin Labor Relations Act nor is there any action pending to decertify them.

16. In negotiations from 1977 to 1981 the Police Union settled contracts first followed by the firefighters who accepted the same agreements.

17. The City of Green Bay maintains wage parity between the Police and Fire Units as to monthly base pay. Testimony shows that that parity is desirable to the respective unions as well as the employers.

18. The City of Milwaukee has had an historical parity between the Police and Fire units broken by an arbitration in 1979. That parity is in the process of being restored. The Union objected to the presentation of this fact as heresay. In as much as Mr. Ernest Johnson, Personnel Director of the City of Green Bay, appeared as a witness expert on wage and benefits of public employees and has the credentials to sustain that expertise, and in as much as Mr. Johnson has access to such information through professional channels and his connections with the City of Milwaukee, his prior employer, there is not sufficient reason to reject his testimony on this matter as merely heresay.

19. The Consumer Price Index of the Bureau of Labor Statistics, U. S. Department of Labor, for recent months is:

Month	Year	Index	12 Month Increase
July	1981	274.6	10.71
August	1981	276.5	10.88
September	1981	279.1	10.81
October	1982	279.7	10.1
November	1981	280.4	9.4
December	1982	281.1	8.7
January	1982	282.1	8.2
February	1982	282.9	7.4
March	1982	282.5	6.5
April	1982	283.7	6.3
May	1982	286.5	6.5
June	1982	290.1	6.9
July	1982	291.8	6.3

20. Base pay for comparable police positions in other similar communities as submitted are:

Community	Captain	Sergeant	Patrolman	Longevity
Oconto Falls	\$1800	\$1520	\$1495	--
Oconto County	1649	1519	1474	3%
City of Algoma	-----	1583	1571	--
Village of Niagara	-----	1497.60	1450.80	\$15 per year after 7 years
Marinette County	-----	1480	1408	After 4 years \$60 plus \$15 for each additional year

It should be noted that Marinette is shown in Union Exhibit No. 9 as a 1981 agreement.

21. Sgt. Woodworth reported that the officers do not generally use their full allotment of \$300 per year for clothing as it is, and he sees no immediate need to raise that figure by \$15.

DISCUSSION AND CONCLUSIONS OF LAW

The primary issue in the instant matter is which final offer is just and most suitable to the situation as indicated by the facts. There are secondary issues proffered by the parties: 1). whether the longevity is more appropriate as is or as offered by the Union; 2). whether this decision should uphold the historic parity between the Union and the firefighters of Oconto and whether that historic parity is real wage parity; 3) whether these factors contribute to the primary issue; and, 4). whether the clothing allowance is at all significant to the determination as to suitability of the final offers.

The final issue of clothing allowance is not of significant value in influencing the acceptance of the final offer of either party. It is an increase in the Employer offer. It is also to the benefit of the Employer to have members of the uniformed services dressed adequately in the performance of their duties. Nor are the uniforms advantageous to the employees outside of their duties since they are not the type items that an employee would use in family outings, social affairs, or other such private events. Once the uniform allowance reaches the threshold amount for acquisition and maintenance in a service like police work, additional allowances for clothing take on minimal value to the officers. Sergeant Oren Woodworth testified in Fact 21 that the officers already carried over a part of the \$300 from one year to the next.

The resolution of the other issues rests in a setting of economic conditions, comparability, historic patterns, public welfare, and overall needs of the employees. Of the economic conditions, the cost of living is listed in the Statutory Criteria as a specific consideration. Neither party made an issue of that criterion other than to enter it into the record as Union Exhibit No. 2. Merely for the record, it should be noted that the Consumer Price Index as shown in Fact 19 is at such a level between January 1 and July 1, 1982, (the last Index published prior to the hearing) that neither offer would penalize the employees within that framework. The Union offer of 9% net and the Employer offer of 8.5% net seem to be at least sufficient in terms of meeting an increase to cover the cost of living.

The Union maintains that their offer is more just than the Employer's offer on a number of grounds. The wage package the Union proposes in base pay amounts to \$48.24 more than the Employer's offer, spreading the increase on a percentage basis. While the patrolmen get less under the Union offer, the sergeant and captain fare better. The Union then adds an increase and change in longevity to create a 1% "roll up" instead of the flat \$.50 now paid. They show in Union Exhibit 9, Fact 20, that three of the five comparable units submitted have higher longevity schedules. The other two units have none at all. It should be noted for purposes of using Fact 20 that the schedules and items listed therein are taken at face value. Since there is nothing in the record to the contrary and no clear argument or testimony to the contrary, where that fact shows a schedule or rank, it will be assumed that the item is parallel to the Oconto situation. Where there is an ellipsis it is assumed that no similar item exists. Thus, the captains where shown in other units are presumed to be nonsupervisory as in Oconto. In units where no longevity is shown, the presumption must be that none exists. The exhibit will be taken as an integral whole.

The Union points out that the longevity payment has not been increased since 1977 and is certainly in order for a change. Even with a change as proposed by the Union, the longevity schedule would not equal those of the three comparable units. In further defense of this change, the Union suggests that it would compensate for the lack of upward mobility in the higher ranks. The chief, previously appointed from the ranks, was appointed from outside the unit this last time. Sergeant Woodworth would have the parties accept that there should be some "appreciation of service" due in longevity to offset this new situation.

The Union maintained a stance that the second increment of the pay increase has historically been July 1 rather than August 1 as the Employer offers. That is true. At the same time, the Union does not accept the argument that the parity between the police and fire units is in any sense parity. Nor does the Union feel that parity even if it were in place would be their problem. They suggest that they cannot bargain for other units as parity would presuppose nor can they subordinate the just needs of their representation to the needs of other units. In support of this position, the Union points out that Subsection (d) of the Statutory Criteria in Section 111.77 specifically excludes comparability between internal units and that exclusion is by legislative intent.

The Employer argues that the economic conditions of Oconto are such that any increase in pay to the employees beyond a justified amount as they propose would be detrimental to the public welfare. The City's unbudgeted expenses of \$1/2 million along with industry holding to no increase in pay for the non city workers in Oconto mandate a posture by the City of strict austerity. At the same time the City says in brief that their offer even including longevity does exceed the comparables in the vast majority of the cases while somewhat limiting only the captain position. Using the Union Exhibit 9 the Employer also notes that three comparable units of five do not even offer an opportunity for promotion beyond sergeant.

The Employer does not accept the argument of the Union that longevity should be increased as "an appreciation of service," choosing to liken it to a gratuity out of tune with a doctrine of equal pay for equal work. A salary schedule that places weight on the lower end of the pay scale better meets the needs of the City in recruiting new officers.

The Employer also has attempted to maintain a wage parity between the base monthly wage paid the police and fire personnel while recognizing that fire personnel work an average 56 hour week and police work 40 hours on the average. In support of that position they cite parity in other units such as Green Bay and Milwaukee. They also point out that the statutory criterion on comparables is ambiguous when it seems to use comparables exclusive of internal comparables. The Employer feels that the statute is inclusive and not intended to exclude the obvious internal relationships in bargaining. In the updated version of the same criteria applied to municipal bargaining in general in Section 111.70 (4) (cm) which includes the words "...with other employees generally in public employment in the same community..." Since arbitration is to follow the reasonable practices normally used to settle contracts equitably, it seems unthinkable that the protective services would exclude brothers and sisters in the same government as comparables. No one would deny the employers the right to

maintain guidelines in bargaining for labor peace that in the broadest sense are a form of parity. In fact, the Employer argues that they would be criticized by the unions if they made a wide range of settlements saving the biggest pot for the last one to settle. And, no one would ever settle first.

The Employer rejects the Union argument that an increase and change in longevity is warranted because the new Chief was chosen from without the Union thus limiting upward mobility for the Union members. Sections 62.13 and 111 of the Wisconsin Statutes mandate the method in which the Chief shall be chosen. Those sections further exclude that process from bargaining. It does not seem reasonable to the Employer that there should be a penalty for judiciously exercising an exclusive right under the statutes.

The Employer suggests that the date of July 1 for the second increment is not sacred. In offering the salary increase that they do, management representatives feel that it becomes more palatable if the second increment is postponed one month to relieve the total dollar output in favor of increments that might be higher than warranted by the Consumer Price Index for 1982. Since that period was already accepted in the other three City contracts, the Employer cannot change for the Police without breaking good faith with the other unions.

All in all the Employer states that it can recognize the need of the Union members to seek improvement. But, the Employer also states that the package must be considered as a whole. Some bargainers prefer increases in longevity or other benefits while sacrificing some of a salary increase while others prefer the pay upfront with limited benefits. The Employer suggests that the Union Final Offer and sustaining argument is not realistic in this regard. That offer seeks everything at once with no offset.

Representatives of the Employer show that the officers and sergeant ranks actually fare better against the vast majority of similar positions in other units submitted as comparable. While the captain position may not fare as well, there is not even that opportunity in three of the comparable units. Again it is argued that the Union is willing to sacrifice nothing to improve this position.

The Undersigned does not wholly accept the Employer's rejection of improving longevity as a gratuity accruing solely to the employees and not to management. While Sergeant Woodworth's testimony may have been an oversimplification, longevity does compensate for more than being alive. Employees with years of good experience do contribute by better understanding of their jobs, better understanding of the public, quicker mental reactions to situations. The stable employee of experience will find easier ways to perform more efficiently. That employee will gain stature and recognition in the community reflecting goodwill on the employer. The employee also sacrifices a degree of personal mobility by being tied to an employer over a period of time.

Likewise, the Union Final Offer in base pay does tend to be fairer to the higher ranks while the Employer Offer on base pay tends to almost penalize the Captain. Quite possibly an offer somewhere between the two extremes submitted herein might have been better all the way around. However, final offer arbitration does not permit that luxury.

The Employer is absolutely correct in arguing that there need be no compensating offset for exercising an exclusive right in choosing the Chief. The effects of choosing a chief under 62.13 of the Statutes are no more the subject of bargaining than would be the election of a mayor. That choice and responsibility rests solely within the realm of management and the Police and Fire Commission.

The table below is constructed by comparing the officers in Oconto as to rank and years of employment and overlaying them on the other comparable units where those positions exist. The compensation includes monthly base pay and longevity divided into monthly increments and added to the base pay:

RANK	CAPTAIN SERGEANT PATROLMEN...					
	18	17	15	14	9	2
Union Offer	1595.58	1558.77	1520.78	1519.52	1513.26	1502.00
Employer Offer	1577.00	1544.50	1512.50	1512.00	1509.50	1505.00
Oconto Falls	1800.00	1520.00	1495.00	1495.00	1495.00	1495.00
Oconto County	1723.21	1583.56	1529.28	1491.50	1485.25	1481.37
Algoma		1583.00	1570.00	1570.00	1570.00	1570.00
Niagara		1518.25	1468.75	1468.30	1461.25	1450.00
Marinette County		1501.25	1426.75	1425.50	1419.25	1408.00

It becomes evident from the table that both offers maintain a very favorable position for a majority of the police personnel no matter which is chosen.

The Statutory Criterion in Section 111.77 is not grammatically clear with regard to the exclusion of internal comparables. It does not seem reasonable that the legislature would have adopted such a limited position with regard to protective comparables while expressing a completely different philosophy with regard to other public employees three years later. The Employer argument that internal comparables are as much a part of Section 111.77 as they are in Section 111.70 is the better interpretation. If not from the standpoint of comparables alone, it speaks to the public welfare and also to Subsection (h) dealing with "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,..." There is no doubt that base pay parity has been a tradition between the police and fire units in Oconto and in other units in the State. While the Union does not have to bargain or "hang" with all the others, both parties would have to bargain with an eye to settlements of the Employer with other units and especially with one in which the base pay and benefit package has been so closely linked. What is a valid position in bargaining is a valid position in arbitration.

There are attractive elements in the final offers of both parties. The Union Offer seems to spread the pay increase more equitably among the ranks. It does improve on the longevity system as to amount and as to the roll up feature. In the best of economic times the Union Final Offer might be suitable as a bargaining posture. But, in economic conditions like those prevailing in the City of Oconto, the Union might be expected to offer something to the Employer in terms of a lesser percentage of increase, a roll up to a percentage of longevity postponing the implementation of the dollar increase until later, accepting the August 1 date for the second increment in the raise, or some such feature. The Union does not offer any offsetting relief to the Employer in return for what would be a generous settlement and substantial improvement in the immediate and long range position of the Union. The Employer Offer, even though it is weak in certain regards, does meet the test of cost of living, comparability, and fairness. Moreover, the Employer's case with regard to wage parity between the police and fire units cannot be rejected without a finding that there is some benefit beyond what is shown in the Union's case for doing so.

It then follows from all of the foregoing and from considering the record in its entirety, from argument of the representatives, from statutory criteria, from briefs, from testimony and fact, that the Final Offer of the Employer is adopted in this impasse, and the Undersigned makes the following:

AWARD

The Final Offer of the Employer, along with all tentative agreements and stipulated inclusions entered into between the parties, as well as the terms of the predecessor Collective Bargaining agreement between the parties which remain unchanged, are hereby included in the Collective Bargaining Agreement between the parties for the year 1982.

Dated at Green Bay, Wisconsin, this 5th day of November, 1982.

Michael R. Monfils
Mediator-Arbitrator