

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of
MENOMINEE COUNTY PUBLIC EMPLOYEES
LOCAL 2062, WCCME, AFSCME, AFL-CIO
For Final and Binding Arbitration
Involving Law Enforcement Personnel
in the Employ of
MENOMINEE COUNTY (SHERIFF'S DEPARTMENT)

Case XXI
No. 28995 MIA-673
Decision No. 19988-A

In the Matter of the Petition of
MENOMINEE COUNTY PUBLIC EMPLOYEES
LOCAL 2062, WCCME, AFSCME, AFL-CIO
To Initiate Mediation-Arbitration
Between Said Petitioner and
MENOMINEE COUNTY (DEPARTMENT OF
SOCIAL SERVICES)

Case XX
No. 28994 MED/ARB-1479
Decision No. 19948-A

Appearances:

Ms. Cindy S. Fenton, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of Union.

Lindner, Honzik, Marsack, Hayman & Walsh, S. C., Attorneys at Law, by Mr. Eugene J. Hayman, appearing on behalf of Employer.

ARBITRATION AWARD:

On October 29, 1982, the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator in the matter of a dispute existing between Menominee County Public Employees Local 2062, WCCME, AFSCME, AFL-CIO, referred to herein as the Union, and Menominee County (Sheriff's Department), referred to herein as the Employer, pursuant to Wis. Stats. 111.77. Thereafter, on November 17, 1982, the Wisconsin Employment Relations Commission appointed the undersigned as Arbitrator in the matter of a dispute existing between Menominee County Public Employees Local 2062, WCCME, AFSCME, AFL-CIO, also referred to herein as the Union, and Menominee County (Department of Social Services), also referred to herein as the Employer, pursuant to Wis. Stats. 111.70 (4)(cm) 6.c. through h. By agreement of the parties proceedings in these matters were combined, and mediation was conducted on December 13, 1982, over the issues remaining at impasse in this matter. Mediation efforts failed to produce settlement, and pursuant to prior notice, evidence in arbitration proceedings was taken on December 13, 1982, as well. The evidentiary arbitration proceedings were consolidated for both cases, and the parties were present at hearing and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs were filed in the matter, which were exchanged by the Arbitrator on February 28, 1983.

THE ISSUES:

The issues in dispute are reflected by the final offers of the parties, which read as follows:

EMPLOYER FINAL OFFER:

The County's final offer on wages to settle the above Departments' 1981 Contract (Social Services and Sheriff's Department) is a one time supplemental payment of \$500.00 for each employee in the bargaining unit.

UNION FINAL OFFER: (Sheriff's Department)

1. Wages - 8% January 1, 1981, 2% July 1, 1981
2. Effective the date of the Arbitration Award, the Employer to increase their contribution on full family hospitalization from 50% to 75%. The Employer to continue paying 100% of the single premium of hospital and surgical insurance.

UNION FINAL OFFER: (Social Services)

8% across the board effective January 1, 1981

DISCUSSION:

The jurisdiction of the Arbitrator in the two proceedings combined in this Award is covered by two separate sections of Chapter 111 of the Wisconsin Statutes. For the Department of Social Services, the Arbitrator is instructed by reason of the provisions of the statutes at 111.70 (4)(cm) 7 to consider criteria set forth in subparagraphs a through h in making his decision. With respect to the dispute involving the Sheriff's Department, the undersigned, pursuant to Section 111.77, (6) subparagraphs a through h, is directed to consider the same criteria. Therefore, in reaching the decision in this matter the Arbitrator will give weight to the criteria as set forth in the foregoing sections.

The Employer primarily grounds his case in this matter, particularly with respect to the Sheriff's Department dispute, on an inability to pay as found in Section 111.77 (6) (c). The Employer also grounds his case in part, with respect to the Social Services Department dispute, on the same criteria as found at 111.70 (4)(cm) 7, subparagraph c, the financial ability of the unit of government to meet the costs of the proposed settlement. The facts in these two separate disputes are somewhat distinct and, consequently, the undersigned will first discuss the Sheriff's Department dispute.

SHERIFF'S DEPARTMENT DISPUTE

The evidence at hearing credibly established the following facts:

1. By reason of the split governmental units found in Menominee County, i.e., tribal government and county government, Menominee County is unique and not comparable to any other county in the state. (Stipulation of the parties)
2. All 1980 Labor Agreements, including those in dispute here, were settled for the year 1980 by paying employees a \$500.00 bonus which was not included in or added to the salary structure.
3. In 1981 two other bargaining units in the employ of the Employer voluntarily accepted the identical Employer proposal contained in Employer's final offer here.
4. The assessed valuation in Menominee County is almost \$100,000,000.00 less than the next lowest assessed valuation in surrounding counties. (County Exhibit No. 1)
5. The per capita total general property tax assessment for the year 1979 is the lowest among the surrounding counties. (County Exhibit No. 2)

6. The aids received by the County for the year 1979 in the amount of \$325.30 per capita is three times the next highest per capita state aid received among surrounding counties. (County Exhibit No. 3)

7. State payments to Menominee County for property tax relief and shared revenue for fiscal 1979-80 totaled \$289,946.00, \$6,000.00 less than the next lowest state payment to surrounding counties. (County Exhibit No. 4)

8. Tax delinquencies for the 1981 year in Menominee County were at 13.8% of taxes levied. (County Exhibit No. 5)

9. The adjusted gross per capita income for the year 1979 for residents of Menominee County was \$1,082.00, approximately \$2600.00 lower than the next lowest per capita gross income for that year. (County Exhibit No. 6)

10. Unemployment percentages in Menominee County averaged 24.4% for September, 1982, and for the first nine months of 1982 averaged 32.4%, 13% higher than the next highest unemployment rate among surrounding counties when considering the first nine month average for the year 1982. (County Exhibit No. 7)

11. Per capita welfare expenditures for Menominee County were \$818.97 for the calendar year 1979, approximately \$500.00 per capita higher than the next highest welfare expenditures per capita among surrounding counties. (County Exhibit No. 8)

12. 21.43% of the County's residents in February, 1980, were receiving public assistance, compared to the next highest percentage of population receiving public assistance in surrounding counties at 5.48%. (County Exhibit No. 9)

13. 26.05% of the residents of Menominee County received medical assistance pursuant to Wis. Stats. Chapter 590, Laws of 1965, whereas the next highest percentage of medical assistance among surrounding counties was 17.55%. (County Exhibit No. 10)

14. Annual earnings for 1981 for Menominee County Deputy Patrolman will total \$12,119.04, which ranks Menominee County 7th out of 8 counties in the surrounding area, inclusive of Menominee County. (County Exhibit No. 13)

15. All monies budgeted for the year 1981 have been expended, and the County has initiated austerity programs whereby only items absolutely necessary are purchased; the Employer has consolidated jobs, and any further layoffs would result in lack of service to the community. (Sworn testimony of David E. LeMay, Chairman of Personnel and Finance Committee of the County Board)

16. Menominee County ranks highest in crime statistics, alcoholism statistics, drug dependency statistics; and by reason of the foregoing has asked for additional state financial aid; additionally the County has sought Federal legislation to grant the County Federal relief; as of the date of hearing no relief has been experienced. (Sworn testimony of David E. LeMay)

Initially it should be noted that the undersigned considers the wage proposal of the Union in this matter to be a reasonable proposal. When comparing salary levels of Sheriff's Department employees in the instant county with those of surrounding counties, even though the parties stipulate that the surrounding counties are not comparable, the Union offer is certainly a defensible position. Consequently, the undersigned has no hesitation to grant the Union proposal, unless the Employer has made a compelling case that he does not have the ability to meet the settlement proposed by the Union here.

T/ The Union disputes data contained in Employer Exhibit No. 13 which shows 1981 annual salaries for deputies at \$12,119.04, and alleges that the proper annualization for deputy patrolman should calculate to \$11,656.16. The undersigned concludes it unnecessary to resolve this discrepancy in view of the findings contained in this paragraph.

From the facts as set forth in the initial section of the discussion portion of this Award, the undersigned concludes that the Employer here has made a compelling case for its inability to meet the Union's offer. All of the data which the undersigned deems extremely relevant indicates that the Employer has been placed in an intolerable financial position. The testimony of County Board member, LeMay, is credible with respect to the state of the 1981 budget as it goes to the possibility of finding additional monies to fund the Union offer and, therefore, the undersigned concludes that the Employer is unable to do so. The undersigned further concludes in view of the unemployment statistics and state aids statistics as stated in the preceding paragraphs of this Award, that the Employer has taken reasonable steps to examine means and methods to provide for a wage increase to the employees here. Most persuasive is the fact that two other bargaining units represented by this same Union have voluntarily agreed to the same Employer offer, which has been rejected in the instant unit. (Courthouse employees unit and highway department employees unit) Thus, the undersigned concludes that the Union committees in the other units recognized the financial plight of the Employer when they settled for the Employer proposal in those negotiations, which was the same as the Employer final offer here.

The undersigned has considered the possibilities of further reduction in force, however, after considering the austerity moves the Employer has already made, which included the consolidation and elimination of positions; and after considering the testimony of LeMay with respect to the adverse effects of further reduction of services to the community, particularly in light of the high crime, alcohol and drug statistics, wherein this county leads all other counties in the state; the undersigned concludes that reduction in force which would further reduce services in a law enforcement unit, would have serious adverse effects on the interests of the public served by this Employer. Consequently, the undersigned concludes that layoffs are not a proper means to look to to finance the Union's offer here.

For all of the foregoing reasons, the undersigned concludes that the Employer has established an inability to pay in the instant matter, and consequently, will find for the Employer final offer for the year 1981.

SOCIAL SERVICES UNIT

The facts as set forth in the discussion section of this Award dealing with the Sheriff's Department are also incorporated into this matter. There are, however, distinctions present in the Social Services Department compared to those found in the Sheriff's Department of the Employer. The principal distinction is the availability of state funds which are available in the Social Services Department which are not available in the Sheriff's Department. A review of the entire record, however, satisfies the undersigned that the Union offer should also be rejected here.

While the Employer has not made as compelling a case for inability to pay here, the undersigned concludes from County Exhibit No. 12 that employees for the year 1981 represented in the social services unit fall within salary ranges being paid among surrounding counties, even though the parties stipulate that these counties are not comparable. Therefore, while the Employer has not made as compelling a case for inability to pay in the Social Services Department, neither has the Union made as compelling a case for its wage proposal by reason of the comparative levels of salaries being paid among surrounding counties for similar positions.

The 8% proposed by the Union is not an unreasonable proposal, and obviously the failure of a wage increase for the year 1981 causes some erosion of salaries when compared to the salaries being paid in surrounding counties. Nevertheless, in view of the strained financial circumstances which this county experiences, notwithstanding state aids, restraint is warranted here, particularly where finding for the Union offer here would result in favored treatment of employees of the Social Services Department as compared to all other employees of the Employer. This Arbitrator concludes that favored treatment to these employees should be avoided.

Notwithstanding the availability of state monies, the undersigned is satisfied from the testimony of William F. Griffin, Director of the Bureau of Community Aids Administration, a division of the Wisconsin Community Services Department, Department of Health and Social Services, State of Wisconsin, that the amounts of money furnished by the State to the county for social service purposes has strings attached to them. Specifically, Griffin testifies that if the Employer is unable to match required funds according to the State's formula the county loses funding on a dollar per dollar basis. Therefore, the undersigned concludes that while the inability to pay data submitted by the Employer in the Social Services Department is affected by state aids formula, restraint is, nevertheless, both prudent and necessary as it goes to the dispute here. Consequently, the undersigned also finds for the Employer final offer in this matter as well.

CONCLUSIONS:

The record establishes to the satisfaction of the undersigned that the Employer final offer should be awarded in both matters after considering all of the evidence adduced at hearing, the arguments of the parties, and the statutory criteria and, therefore, enters the following:

AWARDS

1. The final offer of the Employer is to be adopted in the Menominee County Department of Social Services dispute, MED/ARB-1479, Decision No. 19948-A; and the final offer of the Employer is to be adopted in the Menominee County Sheriff's Department dispute, MIA-673, Decision No. 19988-A.

Dated at Fond du Lac, Wisconsin, this 23rd day of May, 1983.


Jos. B. Kerkman,
Mediator-Arbitrator

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