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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

* * * * *
* In the Matter of the Petition of *
* MARINETTE COUNTY SHERIFF'S DEPARTMENT *
* EMPLOYEES UNION LOCAL 1752B, WCCME, *
* AFSCME, AFL-CIO *
* for Final and Binding Arbitration *
* Involving Law Enforcement *
* Personnel in the Employ of *
* MARINETTE COUNTY *
* * * * *

Case LVI
No. 31451 MIA-772
Decision No. 20877-A

I. APPEARANCES

On Behalf of the Union: Cindy S. Fenton, Staff Representative,
Wisconsin Council 40, AFSCME, AFL-CIO

On Behalf of the County: James E. Murphy, Corporation Counsel

II. BACKGROUND

On April 18, 1983, the Union filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, with regard to an impasse existing between the parties with respect to wages, hours and conditions of employment of law enforcement personnel for the year 1983. An investigation was conducted on June 29, 1983, by a member of the Commission's staff; and the investigator advised the Commission on July 19, 1983, that the parties were at an impasse on the existing issues as outlined in their final offers transmitted along with said advice and that said investigator closed the investigation on that basis. The parties did not establish mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining. The parties did mutually agree that the arbitration should be limited to the last and final offers of each of the parties.

Subsequent to the close of the investigation, the Commission ordered the parties to select an arbitrator. The undersigned was selected and appointed to serve by the Commission on August 17, 1983. The parties were contacted by the Arbitrator on August 22, 1983, and proposed that a hearing be held on September 8, 1983, or November 16, 1983. The parties chose to meet November 16. A hearing was held that day with testimony and exhibits being received into evidence. The parties agreed to submit briefs no later than December 16, 1983. They also reserved the right to submit reply briefs within five (5) days after receipt of the initial briefs.

On March 5, 1984, the Arbitrator wrote the representatives indicating he had not received briefs from either party. On April 30, 1984, the Arbitrator again wrote the parties to ascertain the status of the briefs. On May 15, 1984, the Union representative wrote the Arbitrator indicating she had not received the March 5, 1984 letter which had been addressed to her former address, although it was the address of record. She also indicated she had previously forwarded a copy of her brief with a cover letter on January 20, 1984. She, in her May 15, 1984, letter, sent a copy of her brief and a copy of a cover letter dated January 20, 1984. On

June 4, the Arbitrator, in a letter to the parties, acknowledged receipt of the Union brief and inquired again as to the whereabouts of the Employer brief. On June 22, 1984, the Arbitrator wrote the Employer via - Certified Mail Return Receipt Requested - indicating if he did not receive a copy of the Employer brief by June 29, 1984, he would proceed to make a decision based on the record as it stood at that time. The Arbitrator later received a brief dated June 28, 1984. Based on the evidence, the arguments of the parties, and the criteria contained in the relevant statute, the Arbitrator renders the following award.

III. ISSUES

The Employer's final offer relates to wages only. The Union submitted a final offer which in addition to a wage proposal, proposed changes and additions to contract language concerning "Article XXIV - Disciplinary Action - Suspensions With Pay" and proposed to increase the shift differential for dispatchers.

With respect to wages, the following reflects the final offers for the 1983 contract:

<u>Employer</u>	<u>Union</u>
3% Across the Board	3% Across the Board effective 1/1/83 2.5% Across the Board effective 7/1/83

With respect to shift differential, the Union proposes to increase the present .09¢/hour differential for dispatchers to 12.5¢/hour for the 3 p.m. to 11 p.m. shift to 18.75¢/hour for the 11 p.m. to 7 a.m. shift.

With respect to Article XXIV, the Union proposes to delete paragraph B from Section 1 and insert it under Section 2. Section 1 states:

"Dismissal: An employee may be discharged for the following offenses without warning or notice:"

Paragraph B under Section 1 states:

"Use of abusive language toward another person while on duty."

Section 2 of Article XXIV states:

"For all other offenses, the progression of disciplinary action will be:

- A) Written reprimand
- B) Suspension not to exceed five (5) working days
- C) Dismissal"

Thus, it is apparent that the Union's proposal is aimed at eliminating the use of abusive language as a basis for immediate discharge and placed in the category of "all other offenses" for which progressive discipline must apply.

The Union also proposes a new clause for Section 2. The proposal states:

"The Employee, in lieu of days off without pay, may use vacation, accumulated overtime or work regular days off without pay to satisfy any discipline required under Section 2. B). An employee, working without pay on a regular day off, will be scheduled to work one day per work cycle."

IV. DISCUSSION

A. Wages

The Employer argues that its wage offer is most reasonable because it is basically the same as the 1983 offers of other bargaining units within the County. Moreover, they believe their offer is in line or superior to wage payments made to sheriff department personnel in comparable counties. They contrast the offer to the Union offer for dispatchers which they conclude is clearly high relative to other 1983 settlements. They contend the Union's final offer for dispatchers equates to a 7.8% increase for the 3-11 shift and an 8.9% increase for the 11-7 shift.

The Union suggests first that the instant case has historically had settlements higher than other county units. This was particularly true for 1982 when the lift was 1% higher than other settlements. The Arbitrator views their argument as implying a similar pattern ought to prevail in 1983. They note, however, that with the two other bargaining units represented by AFSCME, the Employer has agreed to settlements that contained a lift of at least 5% and a cost of at least 4%. In addition, the Employer has only been able to cause one unit, not represented by AFSCME, to agree to an amount similar to the County's offer in the instant case. In fact the Employer agreed to settlements with the two other AFSCME units that are very similar to the Union's position in the instant case. These two settlements are similar in lift and cost. The Union believes that the Employer's offer would erode the relative standing of this unit, both internally and externally.

It is apparent that in determining which wage offer is most reasonable, the Arbitrator will have to consider both internal comparables and external comparables. Both Parties presented comparable hourly wage data for 1982 and 1983 for other counties (external comparables). The Union suggests that certain of those counties are more comparable than others. While this may be true, the Arbitrator is not convinced that these counties are so different that they, as a result, deserve more weight than other counties. The following represents a compilation of the wage data submitted by the Parties. It is noted this was the only data submitted and available to the Arbitrator.

WAGE COMPARISONS

1982 (Top Rate)

<u>COUNTY</u>	<u>SERGEANT</u>	<u>PATROLMAN</u>	<u>DISPATCHERS</u>
Shawno	8.71	7.99	7.43
Door	9.97	8.98	8.84
Forest	X	6.87	X
Oconto	8.49	8.10	7.14
Average	9.05	7.985	7.80
Marinette	9.33	8.88	6.09
difference			
from	+.28	+.89	-1.71
average	+3%	+11.2%	-22%

1983 (Top Rate)

<u>COUNTY</u>	<u>SERGEANT</u>	<u>PATROLMAN</u>	<u>DISPATCHER</u>
Barron	X	8.87	7.79
Calumet	9.68	9.22	8.05
Langlade	8.52	8.21	X
Lincoln	10.95	8.49	7.51
Oneida	8.59	7.80	X
Polk	X	9.62	8.49

Waupaca	9.10	9.01	8.37
Average	9.368	8.74	8.04
EMPLOYER difference	9.61	9.15	6.27
from	+.25	+.41	-1.77
average	+2.7%	+4.6%	-22%
UNION difference	9.85	9.38	6.43
from	+.48	+.64	-1.61
average	+5%	+7.3%	-20%

A review of this data shows that at the sergeant and patrolman (deputy) classifications, Marinette has historically been near the top of this group of comparables and has exceeded the average by a significant margin. In the sergeant classification, the Employer's offer would nearly maintain the historically positive differential enjoyed by the Union. On the other hand, the Union's offer with no apparent justification would increase the positive differential even more. This weighs heavily in favor of the Employer's offer.

At the patrolman (deputy) classification, it is seen in 1982 that the instant bargaining unit by a wide margin exceeded the average. Even under the Employer's offer a healthy, albeit lesser positive differential is maintained. It cannot therefore be said that their offer is unreasonable at this bench mark either. The Union suggests that this historical, positive differential must be maintained. Bargaining units which have historically been wage leaders cannot per se justify increases in excess of the pattern merely because they have exceeded wage levels in the past. To uphold the Union line of reasoning, external wage equity would never occur. Lower paid units would be forever trying to "catch up" to higher paid units which would be trying to stay ahead.

At the dispatcher classification, a significant wage disparity exists which is not adequately addressed in either offer. However, the Union offer addresses it to a more constructive degree, thus, the Union's final offer is preferred at this bench mark.

The Parties also made reference to internal settlements for 1982 and 1983. They are as follows:

Marinette County Wage Settlements

1982

Highway Department Union Local 300 IUOE	8%
Marinette County Hospital Employees, Local 1752, AFSCME	40¢/hour (8% on average rate)
Marinette County Courthouse Employees, Local 1752A, AFSCME	7%
Marinette County Sheriff's Department Employees, Local 1752B, AFSCME	1/1/82 - 5% 7/1/82 - 4%

1983

Highway Department Union Local 300 IUOE	3%
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Marinette County Hospital
Employees, Local 1752, AFSCME

1/1/83 - 3%
7/1/83 - 12¢/hr. (2%)

Marinette County Courthouse
Employees, Local 1752A, AFSCME

1/1/83 - 3%
7/1/83 - 10¢/hr. (1.5%)
10/1/83 - 6¢/hr. (9%)

Marinette County Sheriff's
Department Employees, Local 1752B

Employer Offer	- 3% across the board
Union Offer	- 1/1/83 - 3% across the board
	7/1/83 - 2.5% across the board

The Employer's offer is consistent only with the highway department unit. The Union proposal is only slightly higher in terms of cost impact and lift than the settlements in the other two units. This tends, when viewed from only this perspective, to favor the Union offer.

When the final offers on wages are viewed from a combination of the external and internal comparable factors, it is the conclusion of the Arbitrator that the Employer's offer is favored. From purely an internal comparable perspective, the Union's offer was preferred. However, in this case this should be given less weight than normal. Internal settlements deserve most weight when a consistent pattern is established. Arbitrators often give significant weight to internal patterns because not to would result in disparity of treatment. In this case there, in at least the last two years, has not been any pattern. The Arbitrator can only conclude from this that the respective Parties have believed and concluded at the bargaining table that the respective units had, relative to each other, differences that dictated that they be dealt with based on their individual facts and circumstances. In this respect, external comparables are viewed as more significant. The only evidence submitted by the Parties leads the Arbitrator to conclude that the wage levels that result under the Employer increase proposal are more reasonable.

B. Shift Differential

The Union's proposal on shift differential is most reasonable. This conclusion is reached for several reasons. First, the Employer offers no argument on this point and second, there isn't anything unreasonable about it on its face. In fact it is entirely consistent with the shift differential paid other sheriff's department employees. Thus, on this point the Union's offer is most reasonable.

C. Article XXIV

Even though the Employer offered no argument on this point, the Arbitrator finds, for obvious reasons, the Union's proposal for the new language unacceptable. If an employee could utilize vacation or accumulated overtime to satisfy discipline under Section 2B, any potential corrective impact of the Employer's disciplinary effort would be seriously undermined. Discipline could be limited to nothing more than a day off with pay taken at a time determined by the Employer. This intrusion into and limitation on a right traditionally reserved to management is unjustified in this record. Employers have had, for good reason, the right, and in the view of some, the duty to engage in disciplinary efforts designed to correct the inappropriate conduct of employees. The Union's proposal would effectively negate the impact of the Employer's disciplinary efforts. Further, we believe this result to be a serious flaw in the Union's case.

With respect to the Union's proposal to move (B) of Section 1 to Section 2, this is less bothersome; however, there is no compelling justification put forth by the Union to do so. The Union's basic point is that language that, to some could be characterized as abusive, is sometimes necessary in the performance of their duties.

The Arbitrator notes the term "abusive language" is subject to varying interpretations. However, he would not go so far as to say truly abusive language is "necessary."

The Arbitrator does, on the other hand, recognize that in certain situations, in the heat of battle (so to speak), an officer might in response to abusive behavior or language on the part of a suspect, unintentionally utilize abusive language. Thus, the Arbitrator agrees in part with the principal of the Union argument that in situations some abusive language is more appropriately subject to progressive or corrective discipline than discharge. However, while this is true, it is not reason enough to make the use of abusive language subject only to progressive discipline. There are occasions then the use of abusive language might be a basis for discharge depending on the facts and circumstances. Moreover, we note that Article XXIV says only that use of abusive language may be a basis for discharge and that "just cause" is required for any discipline. Therefore, the opportunity under the present language for the Union to argue extenuating circumstances in such cases is still available.

D. Summary and Consideration of the Offers as a Whole

After examining the individual issues, it was determined that while the Union offer on shift differential is most reasonable, the Employer offer on wages was slightly more reasonable. The wage issue must be given more weight than the shift differential issue. When the marginal preference for the Employer's wage offer is considered in conjunction with the strong negative implications of the Union's proposal on discipline, the Arbitrator must reject the Union's offer.

V. AWARD

The 1983 Collective Bargaining Agreement between the Marinette County Sheriff's Department Employees Union Local 1752B and Marinette County shall include the final offer of Marinette County and the stipulations of agreement as submitted to the Wisconsin Employment Relations Commission.

Dated this 25th day of September, 1984, at Eau Claire, Wisconsin.



Gil Vernon, Mediator/Arbitrator