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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of the CRAWFORD COUNTY SHERIFF'S DEPARTMENT, LOCAL 1972,AFSCME. AFofL-CIO For Final and Binding Arbitration Involving Law Enforcement Personnel,In the Employ of CRAWFORD COUNTY(SHERIFF'S DEPARTMENT)	¼	CASE XXXII No. 33106 MIA 902 DECISION NO.21680-A

I APPEARANCES

For Local 1972, AFSCME. AFofL-CIO
Jerry Matousek,President, Local 1972
Lauren Knutson,Vice President
Pat May, Secretary/Treasurer
Jerry Barrette,Stewart
Daniel Pfiefer, District Representative, AFSCME AFofL-CIO

For The Crawford County Sheriff's Department
Robert Zimble,Chairman, Law Enforcement Committee
Donald Johnsrude, Chairman,Personnel Committee
Bernard Gilletzic, Member,Personnel Committee
William C. Fillock, Sheriff, Crawford County
Paul Hagen, Clerk, Crawford County
Dennis M. White,Attorney, Crawford County

II BACKGROUND

On March 27,1984,the Crawford County Sheriff's Department Local 1972,American Federation State County Municipal Employees,American Federation of Labor, Congress Industrial Organizations(Hereinafter called the Union), filed a petition requesting the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration persuant to Sec.111.77(3) of the Municipal Employment Relations Act,for the purpose of resolving an impasse arising in collective bargaining between it and Crawford County(Hereinafter Called the Employer) on matters affecting the Wages,Hours,and Conditions of employment of non-supervisory law emforcement personnel in the employ of said Crawford County. The parties having waived an informal investigation,and the Commission being fully advised in the premises made,filed the Findings of Fact, Conclusions of Law,Certification of Results of Investigation,and Order Requiring Arbitration.

The parties selected Donald G. Chatman as Mediator/Arbitrator on May 22,1984. A mediation meeting was held on June 20,1984 at 10:30 A.M. at the Crawford County Courthouse,Prairie du Chien, Wisconsin,in an attempt to resolve the outstanding issues in dispute. The parties were unable to reach agreement over the outstanding issues,and the Mediator served notice of the prior written stipulation to the parties to resolve the dispute by final and binding Arbitration. The mediation meeting was closed at 10:40 A.M. on June 20,1984 and an arbitration hearing on the issues at impasse was held.

III PROCEDURE

A hearing on the above matter was held on June 20,1984 at 10:45 A.M. at the Crawford County Court House,Prairie du Chien, Wisconsin before the Arbitrator,under rules and procedures of Sec.111.77(4)(b) of the Municipal Employment Relations Act. At this hearing both parties were given full opportunity to present their evidence,testimony and arguments,to summon witnesses and to engage in their examination and cross examination. The hearing was adjourned on June 20,1984 until receipt of final arguments presented in the form of written briefs. The exchange of briefs was completed on July 20, 1984,and the hearing was closed at 5:00 P.M. July 23,1984. Based on the evidence,testimony,arguments and past practices of the parties, and the criteria set forth in Sec.111.77(57) of the Municipal Employment Relations Act,the Mediator/Arbitrator renders the following award.

. FINAL OFFERS AND ISSUES

The Employer's final offer is attached to this award as Appendix A. The Union's final offer is attached to this award as Appendix B. The parties have stipulated that Section 25.07 of the existing agreement(line 4) will be changed from $162.50 to $175.00 in the successor agreement,and the new agreement between the parties shall be in effect for one year beginning January 1,1984 to December 31,1984.

Issues:

A review of the final offers of both parties reveals the remaining outstanding issues at impasse are:

1.Article XIV Workdays & Workweek; Sec.14.02 (an addition) Shift Scheduling
2.Article XVI Sick Leave; Sec. 16.04(an Addition) Abuse of,
3.Article XVII Holidays; Sec. 17.01(an addition) Easter
4.Article XXII Hospital & Medical Insurance; Sec.22.01 (change of) Payment;Sec.22.01(an addition)Funding of, Sec.22.04(an addition) Qualifications for,
5.Appendix A; Wages

1.Article XIV Workdays,Workweek...Overtime

The Employer proposes the addition to the existing agreement in Article XIV Sec.14.02 "The Sheriff may also schedule a shift from midnight to 8:00 A.M.. The Union maintains the Sheriff could currently have 24 hour coverage and this addition is unnecessary.

2.Article XVI Sick Leave

The Employer proposes and addition to Sec.16.04"Abuse of sick leave shall be subject to progressive discipline,and the first incident of abuse of sick leave shall warrant a written warning within the disciplinary policy(i.e.it shall be treated as a second offense)". The Union maintains the provision for handling this issue exists presently in the disciplinary procedure.

3.Article XVII Holiday

The Union proposes and addition to the agreement Sec. 17.01 adding "Easter" to the Holidays specified in the agreement. The Employer maintains that the Compensatory Time under Sec.17.02 adequately covers this need and the addition is unnecessary.

4.Article XXII Hospital & Medical Insurance

A review of the final offers of the parties regarding hospital and medical insurance shows that both the Employer and the Union propose changes in Article XXII of the existing agreement.

The Union proposes,"the Employer shall pay 100% of the premiums for a health insurance plan". The Union further proposes that,the Employer shall have the right to change insurance carriers for the plan,provided coverage is substantially equal or greater than the HMP plan in effect in 1983.

The Employer proposes to add to the existing Sec.22.01(a) an addition.

Existing Sec.22.01(a)

If an acceptable HMP plan becomes available during the term of this Agreement,employees shall have the right to opt into the HMP plan. The Employer shall select the HMP plan for purposes of this option,after consulting with the Union. Before exercising the option,employees must give written notice to the Employer of intent to exercise the option at least 30 days before insurance premiums on the regular major medical plan are due.If an acceptable HMP plan is available,the Employer agrees to pay 80% of the premium for single coverage for employees without dependents,and 80% of the premium for family coverage for employees with dependents. Employees shall pay the remainder of the premium for their classification.

Employer Addition to Sec.22.01(a)

"A partial or fully self funded plan shall be

considered to be an HMP plan,so long as the employees are covered for medical visits,and the premium shall be considered to be the full cost of the premium scheduled prior to the reduction caused by self funding"
(ie. if a premium is scheduled for $184.00 and self funding on a partial basis reduces the premium to $96.00, as in 1984, the employer pays 80% of the $184.00 rate). The Personnel Committee recommends that the self funding feature of the plan be placed in a segregated fund for covering future claims and premiums and for future bargaining purposes.

The Union maintains the Employer should bear the full cost of this proposal.

The Employer further proposes to add to the existing Article XXII an Additional Sec. 22.04 "Employees must work on the average of 85 hours per month(excluding regular employees on leave of absence,illness or workers compensation leave,who will still be covered by health insurance)in order to be eligible to receive health insurance.

5.Appendix A. Wages

The Employer proposes a wage increase of 2% across the board on January 1,1984 for all unit employees,and an additional 3% across the Board on July 1,1984 for all unit employees.

The Union proposes a 3% increase across the board effective July 1,1984.

The Employer and Union stipulate that no other outstanding issues are at impasse,which would prevent resolution of the 1984 agreement between the parties.

V. CONTENTIONS OF THE PARTIES

Hours of Work: Scheduling

The Employer proposes that an additional statement on hours of work is necessary,specifically,"the Sheriff may also schedule a shift from midnight to 8:00 A.M. in place of another shift" The employer contends that such an addition to the agreement would contribute to the overall efficiency of the Sheriff's department,would provide beneficial human resource flexability,and would cause little harm to the employees' current working conditions.

The Union contends the Sheriff currently has the ability to schedule 24 hour coverage,that the current agreement already contains three standard shifts,and two optional shifts. The Union contends that the County has not submitted evidence that the current schedule places undue burden on the County,nor evidence of comparability with the schedules of other comparable counties.The Union maintains that the burden of changing the status quo is the Employer's responsibility,and insufficient evidence has been submitted to justify this addition to the Agreement.

Sick Leave

The Employer proposes an addition to Article XVI of the existing Agreement whereby Abuse of Sick Leave would be subject to an expressed form of progressive discipline. The Employer contends that excessive amounts of sick leave are being claimed on Saturdays and Sundays,that the excesses are even greater if the claims for Fridays are included. The Employer introduced as evidence in documentation of such claims(County Exhibits 1-2)exhibits which proport to substantiate the Employer's contention of excessive weekend usage.Further the Employer contends the Union has produced no evidence to refute the claim of excessive usage.

The Union contends,that the Employer presented no evidence or testimony that the current disciplinary policy,which requires an oral warning for the first offense has ever been utilized and found ineffective. The Union argues the Employer's exhibits (County 1-2) are inaccurate in that the figures contain long term

illnesses,with no substantiating evidence or testimony that such sick leave was abusive. Further,the Union argues that there are no internal comparables,(ie, other Crawford County Units) or external comparable bargaining unit agreements precedent for inclusion in this Agreement.

Holiday

The Union proposes an additional holiday,"Easter", be incorporated into the successor Agreement. The Union contends that only those Employees who work on a holiday receive additional compensation of time and onehalf.Employees who do not work do not receive addition compensation for that holiday. The Union contends that its proposal to add Easter is such that those employees who work on that day would receive time and onehalf. It is the Union's contention that comparable bargaining units have an average of 9.3 holidays per year,and this proposal would only raise the number of holidays for this bargaining unit to 9.0 holidays. The Union cites the City of Prairie du Chien as a comparable bargaining unit, where law enforcement officers have 10 holidays and 10 personal days.

The Employer contends that the addition of another holiday to this bargaining unit would increase the number of days beyond comparable units, that holidays do not stand alone as paid time off. It is the Employer's contention that holidays must be considered in concert with the six days of compensatory paid time under Sec.17.02 of the Agreement. The Employer contends further that this issue was recently resolved by an arbitrator's decision,and the number of holidays should remain as in the present Agreement.

Hospital and Medical Insurance

The Union proposes that the Employer pay 100% of the health insurance premiums effective January 1,1984. The Union contends that six of eight comparable bargaining units pay 100% of the single plan, while Crawford County pays 80%. The Union contends the Employer unilaterally changed the Insurance carrier,with no guarantee that premium costs would increase,decrease or remain the same. The Union argues it is an unwilling partner,that if the Employer wishes to take risks in self-insurance plans,then the employees should not be a party to these unilateral actions, or pay 20% of the costs for this risk. The Union further argues that equity does not exist with other bargaining units within Crawford County, in that the Employer is paying 85% of the insurance premiums for another bargaining unit.

The Employer contends the County adopted a partial self-funding insurance plan in 1984,that this is an effort to reduce spiralling premium costs,that the other two bargaining units within the Employer's jurisdiction are participants and are paying a portion of the premium costs. The Employer considers the self-funding plan to be experimental as the results of actual costs are not known at this time. To address part of this problem the Employer proposes to add to the existing Agreement language a definition of the substitution of the Employer's self-funding plan for an HMP plan, with protection clauses and future utilization of anticipated funds. The Employer contends that the employees are protected from any increases in costs of premiums or loss of medical benefits during 1984.

The Employer also proposes a new Sec.22.04 to the existing Agreement. The Employer's contention for this addition clause is that the insurance carrier requires 85 hours per month of employment for coverage qualification.

The Employer is opposed to the Union's proposal of 100% premium coverage. The employer contends that only one of the eight comparable bargaining units pays 100% of th premium costs,and that unit is a municipal unit,less similar to the County law enforcement organizations.These comparable units do not have "the generous Workers Compensation differential pay provisions" that employees in Crawford County have as part of their Agreement.Finally the Employer contends that the Courthouse unit and the Highway unit agreed to pay 20% of the medical premiums in 1984,while the Highway unit will pay 15% in 1985.Both

these units are under the same partially funded medical insurance plan.

Appendix A Wages

The Employer and the Union have proposed similar final wage offers. The differences arise as to the distribution during the length of the Agreement. The Employer contends its wage offer exceeds the Union proposal with an offer of 2% ATB on January 1,1984,and 3% ATB on July 1, 1984.The Employer argues that the Union's 1983 wage settlement exceeded the C.P.I., and its offer in 1984 is equitable and essentially the same package accepted by the other two County bargaining units. The Employer contends it is the poorest of any of the other comparable County bargaining units, and does not have the resources to become the leader of these comparable bargaining units.
The Employer contends that the Union's proposal is an attempt to position itself for leading comparable units in the future,that there are hidden inherent costs in the Union's proposal which will cause pressure in the other two County bargaining units for the same benefits.

The Union contends there is little difference between the total costs of the packages submitted as final offers. The Union's proposal of 100% payment of medical insurance premiums by the employer as of January 1, 1984,and 3% ATB on July 1,1984 will generate a similar increase in take home pay. The Union maintains it is aware of the relative worth of the increased health care payments by the employer,and has not requested a wage increase effective January 1, 1984.

VI DISCUSSION AND FINDINGS

The positions of the parties in their final offers are complex.The evidence, testimony and arguments often appear to be directed at future positioning as well as to the issues in dispute between them. While previous arbitration decisions have laid a firm and reasonable foundation for comparability with similar bargaining units,many of the issues in dispute in this instance are unique to this particular Agreement. When addressing the question of comparability, labor history indicates that parties may at a point in time or an instance, arrive at a juncture where comparability with other bargaining units is beneficial. However, of equal importance are the terms and conditions which fashioned a particular agreement. In some ways the issues in dispute between the parties are unique, and it is this uniqueness where comparability is not of neccessity the dominant resolving factor.

On the issue of Hours of Work/Scheduling, the Employer's contention that scheduling an additional shift could or would contribute to the overall effectiveness of the Sheriff's department is an effective argument. The Union concedes the possibility presently exists for 24 hour coverage. The Union's argument that the employer did not present sufficient evidence of need or of other bargaining units using this schedule to change the status quo is not compelling enough for determination in the Union's favor. The Arbitrator is of the opinion that the Employer's proposal on the issue of scheduling a midnight shift should prevail. The rationale is that the proposed clause in Article XIV Sec. 14.02 says may rather than shall. The current Article IV of the Agreement would appear to outline the guidelines for implementing this proposal,while the existing Article XIV would protect the employees from excessive work load or short notice implementation. Since the Agreement provides for six months advance notice,the Union's argument of insufficient evidence of comparable schedules,fails because the Union offered no evidence of comparable oversight clauses in comparable bargaining Agreements.

On the issue of Sick Leave language, the Employer's proposal is based on the need for specific langauge and discipline procedure because of alleged excessive use by this bargaining unit. The Employer presented evidence(County 12) and testimony that sick leave usage is excessive on Saturdays and Sundays, and

even more excessive if Fridays are included. While the Union did not refute the Employer's contention, it argued that the exhibits are only a record of usage with no justification for labeling it abusive. The Arbitrator's examination of County Exhibit 1 (1983 sick leave), and County Exhibit 2 (1984 sick leave through May 1984) does not indicate whether sick days were excessive, dependent on the number of personnel scheduled to work on that particular day,since no work schedules were offered in evidence.

The Arbitrator's examination of County Exhibits 1-2, shows the highest incidence of sick leave occurred on Thursdays.

SICK LEAVE USEAGE BY DAY OF WEEK

	1983			1984			17 MONTH TOTAL		
DAY	#	%	RANK	#	%	RANK	#	%	RANK
SUNDAY	29	18.35	2	5	7.93	7	34	15.38	2
MONDAY	15	9.49	7	7	11.11	6	22	9.95	7
TUESDAY	22	13.92	3	11	17.46	1-3	33	14.93	3
WEDNESDAY	19	12.02	5-6	11	17.46	1-3	30	13.57	4
THURSDAY	34	21.51	1	11	17.46	1-3	45	20.36	1
FRIDAY	19	12.02	5-6	9	14.28	4-5	28	12.67	6
SATURDAY	20	12.65	4	9	14.28	4-5	29	13.12	5
TOT. OCC.	158	99.96		63	99.98		221	99.98	

If consideration is given to a standard of what may be considered excessive sick leave usage, it would appear reasonable that the usage be above some norm of probability. Over the seventeen months which the exhibits proports to cover the normal probability of sick leave usage occurring on any given day of the week would be 1:7, or on a percentage basis 14.28% of the time. When the exhibits on sick leave are examined by individual years,by 17 month total or by probability,Thursday is still the most significant day of sick leave usage. The Employer's proposal on sick leave language is not acceptable, because the Employer's evidence refutes the Employer's contentions

The Union's proposal for the addition of Easter as a paid holiday appears to be based on the desire to receive additional 1/2 time compensation when working on this holiday and regular compensation when off on this holiday. The Union's contention for this increase is that this additional holiday will still give them less than the average of the comparison bargaining units. The Employer argued that the Union uniquely had fourteen days off with pay presently. The Employer's contention that total paid time off must be considered,rather than just the portion labeled holidays. The Arbitrator is persuaded that the total paid time off should be a prevailing consideration. This Arbitrator would comment as others have on the uniqueness of the parties agreement,and caution that comparability assumes equality between agreements. Thus, the Arbitrator favors keeping the existing language for Article XVII.

With regard to the issue of Hospital and Medical Insurance,both the Employer and the Union propose change in their final offer. The Employer has undertaken a partial self insurance program which is experimental at this time. This self funding undertaking was unilateral by the Employer in an effort to reduce estimated increasing premium costs. The Employer is protecting the employees medical benefits through an equivalency mechanism with direct payment for medical claims if necessary. The Employer contends that the workers will have no loss of medical protection. In connection with this self insurance program the employer desires the bargaining unit membership to continue contributing 20% to the cost of a program in 1984, just as they did in 1983. The Union disagrees. It contends that the Employer selected this self-funding plan alone and should pay 100% of the premium costs alone. The Union argues that because of the uncertainties of self-insurance,with no determination of the disposition of any deficits or surpluses,they are unwitting partners in an experimental program.

Additionally,the Employer while conceding the self-insurance program is experimental,seeks to incorporate this mechanism into the Agreement langauge,including the disposition of segregrated

insurance premiums.

The Arbitrator is of the opinion that the Employer is able to seek the best possible insurance coverage and premium costs that are financially advantageous to the Employer, provided the affected employees' medical benefits are not diminished in protection,or they agree to such diminution prior to implementation.However,if the Employer implements such change unilaterally,then the burden of failure,or the benefits of success are singularly and totally the Employer's responsibility. The Union,if not a part of the decision to take such risks,should not be required to share in any costs or financial benefits of such risks. The arbitrator finds that as long as the Employer utilizes a self-funding health insurance mechanism, the Employer should pay 100% of the premium costs.

The Employers arguments of effect on the other County bargaining units are not compelling,since no evidence or testimony was offered as to the existence of a Master Agreement for County employees.

With regard to the incorporation of the self funding mechanism into the Agreement,the arbitrator has difficulty accepting this clause in total.While inclusion of parts of this language would provide clarity of employee medical benefits,it also incorporates the unwilling participation of the bargaining unit in funding this program.Finally, the Employer's proposal to add a new Section(22.04) to Article XXII,which would specify the minimum hours work per month for employee qualification for medical coverage is also not recommended. The Employer argues that this provision is a requirement of the carrier for coverage.The arbitrator deems the inclusion of Sec.22.04 in the Agreement unacceptable for the following reasons:

1. It introduces a non-legal outside agency into the Terms and Conditions of Employment between Employer and Union,and

2. It sets differences within the bargaining unit on Terms and Conditions and Benefits for employees with a commonality of interest.

In addition,it is general knowledge,that insurance carriers can insure anyone at a cost. Thus,this proposal would appear to be a financial benefit for the purchaser,with no accrued benefits for others in the Agreement.

Wages

The Employer's offer on wages of 2%(ATB) on January 1,1984,and 3% (ATB) on July 1,1984 exceeds the Union's final offer on wages alone of 3%(ATB) on July 1,1984.It is the Arbitrator's opinion that the Union's offer is lower to acquire 100% medical insurance premium payments by the Employer. The Employer's argument that the Union's offer contains hidden costs has some validity. The lower final wage offer of the Union will alter comparability with other bargaining units, and there is a probability that a catch-up attempt will occur. However, the Union's final wage offer is, by testimony, a clear substitution of medical premium payments by the Employer for a direct wage increase. The Union's final brief conceded minimum diminution of take home pay from their lower final offer. The Arbitrator is of the opinion that the Union's final offer on wages represents a buyout of their share of medical premium payments for as long as the Employer is a self insurer of the medical insurance program. Ultimately, in total dollars, there is no significant difference in the costs of either of the final offers in 1984.

DISCUSSION OF FINAL OFFERS AS A WHOLE

The parties at impasse on the aforementioned issues have chosen compulsory final offer arbitration under Sec.111.77(4)(b) as the means of resolving their dispute. In making that selection,the Arbitrator is compelled to select the final offer of one of the parties and issue an award incorporating that final offer into the successor Agreement without modification,regardless of the merit or lack of,on specific issues in dispute. In this instance,the selection of either parties final offer will incorporate into the Agreement issues

which the Arbitrator deems lack merit.

On the issues as a whole, the wage offers and appendages of both parties are similar in total costs,and are not disparate enough to tip the award in either direction. The Union's proposal on the Addition of Easter, in view of the present amount of paid time off was not a compelling argument. Nor was the Employer's proposal on sick leave abuse language, in view of the Employer's evidence.

Conversely, the Arbitrator deemed the Employer's proposal on the Shift addition to be reasonable,in view of the lead time and employee oversight in implementing such schedule. Similarly, the Union's proposal that the Employer pay 100% of the health insurance premiums is reasonable in view of the Employers' unilateral implementation of a self insurance program with attendant uncertainties. The Employer's proposals on definition of, and qualification for health coverage appear to be bound inextricably to the issue of health insurance payment. In reviewing all the issues presented by the parties, the Arbitrator is of the opinion that all do not carry equal weight.

The primary issue is the payment of health insurance premiums and the attendent issues connected with such payments. Looking at comparative bargaining units provides no insight for this issue in that the amount paid by the employer or employee does not speak to the new variable of self-funding in medical insurance. While the Arbitrator is of the opinion that the Employer has the right/obligation to seek the best possible means of utilizing the funds placed in their public corporate charge,the Employees of that organization are not under an obligation to assist or share in that quest. Under these circumstances and reservations the Arbitrator finds the Union's final offer preferable.

VII AWARD

The 1984 Collective Bargaining Agreement between the Crawford County Sheriff's Department Employee Local 1972, AFSCME, AFofL-CIO and Crawford County(Sheriff's Department) shall include the final offer of the Crawford County Sheriff's Department Local 1972,and the stipulations listed under PART IV of this Award and incorporated as part of this Award.

Dated this 23rd day of August 1984, At Menomonie, Wisconsin

Donald G. Chatman

Donald G. Chatman,
Mediator/Arbitrator