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IN THE MATTER OF BINDING ARBITRATION

INTEREST WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

between

Wausau Professional Police Association

Case 30 No. 34033

MIA-924

-and-

Decision No. 22289-A

City of Wausau, Wausau, Wisconsin

July 22, 1985

APPEARANCES

On Behalf of Wausau Professional Police Association

James T. Rogers, Attorney, Rogers & Bremer, Merrill, Wisconsin

On Behalf of City of Wausau

Ronald J. Rutlin, Attorney, Mulcahy & Wherry, Wausau, Wisconsin

JURISDICTION OF ARBITRATOR

On September 11, 1984, representatives of the City of Wausau (hereinafter referred to as the "City") and the Wausau Professional Police Association (hereinafter referred to as the "Association") commenced negotiations on a successor contract to replace the agreement which expired on December 31, 1984. Thereafter, the Parties met on two occasions in an unsuccessful attempt to negotiate a successor agreement. On October 26, 1984, the Association filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act, with regard to an impasse existing between the Association and the City with respect to wages, hours and conditions of employment of law enforcement personnel for the years 1985 and 1986; that an informal investigation and mediation session was conducted on December 11, 1984, by Robert M. McCormick, a member of the Commission's staff; and that said Investigator having advised the Commission on January 15, 1985, that the Parties were at impasse on the existing issues as outlined in their final offers transmitted along with said advice and that said Investigator had closed the investigation on that basis.

The Parties have not established mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining, and further, that the Parties have not mutually agreed that the arbitration should not be limited to the last and final offers of each of the Parties.

The Commission having, on January 24, 1985, issued an Order that compulsory final offer arbitration be initiated for the purpose of issuing a final and binding award to resolve an impasse arising in collective bargaining between the Parties on matters affecting wages, hours and conditions of employment of non-supervisory law enforcement personnel in the employ of the City; and on the same date the Commission having furnished the Parties a panel of arbitrators from which they could select a sole arbitrator to issue a final and binding award in the matter; and the Parties advised the Commission that they had chosen Richard John Miller, New Hope, Minnesota as the arbitrator.

A hearing in the matter convened on Wednesday, May 15, 1985, at noon at the City Hall in Wausau, Wisconsin. The Parties were afforded full opportunity to present evidence and argument in support of their respective positions. Following receipt of positions, contentions and evidence, Association Attorney James T. Rogers submitted a letter to the Arbitrator correcting what he believed to be errors in City Exhibit #21. By letter dated June 14, 1985, City Attorney Ronald J. Rutlin submitted a response to Mr. Rogers' letter. The Parties filed post hearing briefs which were

received on June 17, 1985. On July 8, 1985, the arbitrator was notified by letter that the Parties elected to not submit reply briefs, after which the hearing was considered closed.

POSITIONS OF THE PARTIES

The Association's final offer was submitted to the Commission on January 11, 1985, by Association Attorney James Rogers and it states the following:

The Wausau Professional Policemen's Association proposes, in addition to the stipulations entered into between the parties previously, the following amendments to the present agreement between the City of Wausau and the Wausau Professional Policemen's Association, and proposes that the said agreement be effective from January 1, 1985 to December 31, 1985. The changes are as follows:

1. Article 13 - WAGES, Appendix "A" shall be increased as follows:
 - (a) Effective January 1, 1985 - 4% across-the-board
 - (b) Effective July 1, 1985 - based on the January 1, 1985 rates - a 1 1/2% increase across-the-board.
2. Article 30 - DURATION OF AGREEMENT, the agreement shall become effective January 1, 1985 and shall remain in full force and effect up to and including December 31, 1985.

The City's final offer was submitted on January 11, 1985, by City Attorney Ronald J. Rutlin and it states the following:

1. Revise ARTICLE 19 - WORKMEN'S COMPENSATION to read as follows:

"ARTICLE 19 - WORKER'S COMPENSATION

Employees eligible for Worker's Compensation benefits shall be allowed to exercise one of the following options: (1) receive the Worker's Compensation benefit with no deduction from accumulated sick leave; or (2) receive the Worker's Compensation benefit and be paid the difference between the regular pay based upon the normal work week (excluding overtime and premium pay) and the Worker's Compensation benefit with the City charging the employee's sick leave account with the number of hours that equal the cash differential between the Worker's Compensation and the regular pay."

2. Revise ARTICLE 30 - DURATION OF AGREEMENT by changing all dates to reflect a two year contract commencing January 1, 1985 and expiring on December 31, 1986.
3. ARTICLE 30 - DURATION OF AGREEMENT, add the following "reopener" language:

"The Association has the option of submitting proposals to reopen the Contract on the issue of wages (Appendix 'A'), Article 22 - Vacations and one additional Article by submitting such proposals to the City by July 1, 1985. In the event the Association elects to open the Contract the City shall have the option of proposing changes in two (2) Articles of the contract by submitting such proposals to the Association on or before August 1, 1985."

4. APPENDIX "A", revise to provide as follows:

Effective 1/1/85

POLICE OFFICER*

\$1757

*The Safety Officer shall receive \$25.00/month above a Police Officer's salary. The Juvenile Officer shall receive \$82.00/month above the Police Officer's salary.

Any person beginning employment with the Wausau Police Department shall start at 85% of the job rate in the classification for which he has been hired. Upon the successful completion of six (6) months of service he shall receive 90% of the job rate and upon completion of one (1) year of service he shall receive 95% of the job rate and after two (2) years of service he shall receive full job rate for his classification. Early advancement under the above procedure must receive the prior written approval of the City Personnel and Labor Relations Committee.

ANALYSIS OF THE EVIDENCE

The arbitrator evaluated the final offers of the Parties in light of the criteria set forth in Wis. Stats. 111.70(6) which includes:

- 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 wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employes performing similar services and with other employes 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 employes, 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.

A. The lawful authority of the employer.

This factor is not an issue in the instant proceedings. The lawful authority of the City permits the retention of rights and responsibilities to operate the City so as to carry out the statutory mandate and goals assigned to it consistent with the provisions of the collective bargaining agreement.

B. Stipulations of the parties.

Except for the three issues at impasse, the Parties have agreed to all other contract items for inclusion in the successor contract. The tentative agreements are contained in City Exhibit #4A-D.

C. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

During the course of the arbitration proceeding, the City never alleged that it did not have the economic resources to fund any of the final offers submitted by the Parties.

D. Comparison of wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employes performing similar services and with other employes generally in public employment in comparable communities and in private employment in comparable communities.

Most arbitrators hold that internal settlements in themselves are not an improper basis of comparison and that arbitrators must be concerned that equitable relationships are maintained between all employees and the employer if the parties to the contract had adhered to that practice in the past or if some good reason exists to maintain that relationship.

The unrefuted testimony of Personnel Director Jerry Stone establishes that the City of Wausau and Marathon County have established a policy of consistency with respect to wage increases and fringe benefits among City and County employees. This comparability and the consistency of both wage increases and fringe benefits among the City and County employee bargaining units can be clearly demonstrated.

In the period of time between 1979 and 1982, the City and County attempted to establish a uniform wage pattern with all other employee groups. By 1982, the City and County were able to establish, with limited exception, a 7.0% average "new money" settlement pattern with an 8% salary "lift" over the term of each new agreement. In 1983, each and every collective bargaining unit as well as the non-represented employees received a 5% wage increase. (City Exhibit #11A-B).

In 1984, each bargaining unit with only four minor exceptions received a 5% increase for a total of 71.6% of the employees receiving an identical wage increase. In fact, two of the bargaining units (transit system and health care) received only a 4% increase. The newly organized clerical bargaining units for the City Hall Non-Professionals and the Courthouse Non-Professionals, both received a 5% increase in "new money" which resulted in a 6% "lift" in wages over the term of the contract. Pursuant to the testimony of the City Negotiator, Attorney Dean Dietrich, these additional increases were necessary to bring those rates in line with other City and County clerical rates.

For the 1985 contract year 57% of the City and County employees have received a 4% increase. (City Exhibit #7). Among the City and County bargaining units with unsettled contracts, the certified employer final offer is 4% on wages only. The DPW, Highway and Parks employee unions have certified final offers at 4.4% wages only. No other bargaining unit has a final offer at the level demanded by the Association in this dispute.

The Association called as a witness Daniel Barrington, the AFSCME representative for the Wausau and Marathon County bargaining units, who attempted to establish that the 4% wage pattern has not yet been established. The City had Attorney Dietrich testify in rebuttal. After reviewing the testimony of both individuals, it

appears that variances in excess of 4% were made either for the purpose of making the salary schedule and pay rates more competitive within the Wausau/Marathon County bargaining groups or to correct serious inequities with employees performing similar work in comparable communities. For example, the mechanic and two fire inspectors in the Wausau Fire Department will receive an additional \$25.00 per month on both July 1, 1985 and July 1, 1986. Three captains in the department and nine lieutenants will receive a \$15.00 per month adjustment on July 1, 1985 and July 1, 1986. This was necessitated by the overall deterioration in their rank order over a period of time in comparison to their counterparts in comparable communities. (County Exhibit #27A-B). The fact remains that the majority of the fire fighters and the motor pump operators received a flat 4% increase in 1985 and 1986. However, even including these pay equity adjustments which have been costed at .4% in 1985 and .5% in 1986 along with the 4% across-the-board increase, the Association's final offer is still over one percent above the fire department settlement.

The relationship between the Wausau police and fire fighters as to levels of salary increase shows that the two protective service units have received identical wage increases since 1979. (City Exhibit #11A). City Exhibits #9 and 10 shows the close historical wage relationship that has been established among the protective employees of the City and Marathon with respect to police officers, fire fighters and deputy sheriffs. If the Association's offer is awarded, the police officer would receive a pay increase twenty-five dollars a month higher by July 1 and thirty-three dollars per month overall than the comparably situated fire fighter for 1985. The City's salary offer for 1985 is identical to that received by the majority of fire fighters.

The County and the deputies are in arbitration over pay rates for 1985. It must be emphasized that the Association's offer requires a wage rate higher than the deputy rate under either proposal. This would reverse the pattern established in 1980 between the deputy and the police officer's maximum salary. (County Exhibits #9-10). Clearly, the Association's final offer would have a detrimental effect on that close historical relationship.

The City has demonstrated that a common pattern of settlement and of monthly wage rate ratios has been established and maintained among the protective service employees of the City and Marathon County over a long period of time. The City has also proved that the vast majority of the other bargaining units have in recent years maintained a relatively close percentage increase to that received by Association members. Therefore, the wage offer of the City in regards to internal comparisons is more equitable than the increase proposed by the Association.

Section 111.77(6)(d) of the Wisconsin Statutes requires that the arbitrator compare the Parties' final offers to the wages and fringe benefits of employees in comparable communities. The City contends that the most comparable pool consists of communities in the central Wisconsin River Valley labor market which includes Antigo, Rhinelander, Merrill, Marshfield, Stevens Point and Wisconsin Rapids. The Association, on the other hand, proposes that Marathon County, Marshfield, Portage County, Rothschild, Schofield, Stevens Point, Weston, Wisconsin Rapids and Wood County are the best comparables.

The use of Marathon County, Marshfield, Portage County, Stevens Point, Wisconsin Rapids and Wood County as comparables is supported by Arbitrator Gordon M. Haferbecker's decision in the most recent arbitration decision between the Parties (Case XII, No. 2006, MIA-205, Decision No. 14255-A, 1976). In that proceeding the City argued that these were the proper comparables and Arbitrator Haferbecker accepted that argument. The arbitrator in this case, like the other arbitrator, finds that these comparables are reasonable in light of the "common industries in the area and

considerable contact among the citizenry, the governing bodies, and the union."

In addition to those comparables, the Association added the cities of Rothchild, Schofield and Weston. The City omits from its list of comparables Portage and Wood Counties and adds the cities of Antigo, Merrill and Rhinelander.

Even though the three cities chosen by City are larger than the three additional cities proposed by the Association (except Weston), they are all considerably smaller than Wausau. These three cities chosen by the Association, however, are all within 3.5 miles of Wausau. Whereas, the City's three choices are all farther than 20 miles from Wausau. For this case, the arbitrator finds that the three additional cities proposed by the Association are most comparable based upon social, demographic and economic constraints. As such, the Association's list of comparables is preferable to that proposed by the City.

Of the settled comparables for 1985, Wausau would rank eighth of nine under either the City or Association's final offer. (Association Exhibit #5). If the arbitrator uses the final offers from the only other unsettled comparable, Marathon County, it would rank eighth out of ten in wages even if the Association's offer is accepted. If the City's offer is accepted, Wausau would drop one more ranking.

The arbitrator calculates that the increase in the average patrolman rate among the settled comparables using the highest paid rate is approximately 4.69%. (Association Exhibit #5). The increase under the City offer at the maximum would be approximately 4.06% while the Association's offer utilizing the highest rate would require an increase of 5.54%. Clearly, the City's offer is closer to the average increase granted to comparable police officers in the comparability group used by the Association and accepted by the arbitrator.

As recited previously, the City granted variances in excess of 4% either for the purpose of making the salary schedule and pay rates more competitive within the Wausau/Marathon County bargaining groups or to correct serious inequities with employees performing similar work in comparable communities. No convincing rationale has been produced by the Association which would substantiate making the salary schedule and pay rates more competitive within the other bargaining units in the City or Marathon County. Further, the Union has not met its burden of convincing the arbitrator that its salary offer must be granted to correct serious inequities with police officers in the comparable communities, particularly in view of the average increase cited above for comparable patrol officers in surrounding communities.

Both the internal and external comparisons have shown that not only for the 1985 contract year but also on a historical basis that the City's salary offer is the most reasonable.

In addition to the salary issue, the arbitrator must address the change sought by the City with respect to Worker's Compensation, which seeks to limit benefits to the amount of Worker's Compensation paid or deduct any difference between the Worker's Compensation benefit and the employee's regular salary from the employee's sick leave account. Police officers under the City's offer who are injured would only be able to maintain their income if they had accumulated enough sick leave to make up the difference and if whatever sick leave they had accumulated outlasted an extended absence from work.

The Association argues that the present language should remain because the City pays such low wages and arguably police officers are exposed to more frequent and more severe perils on the job which increases the chance of needing and receiving Worker's Compensation.

An analysis of the Worker's Compensation provisions in all City and Marathon County collective bargaining agreements and ordinances/resolutions for non-represented employees reveals that 90.9% of these employees are covered by language nearly identical to that proposed by the City. (County Exhibits #7 and 25).

There are some minor variations among these employee units as to the number of options afforded the employee but the employees may either receive Worker's Compensation alone or with no wage supplement and no deduction from accumulated sick leave or may elect to receive the Worker's Compensation payments and receive their full pay. There is a slight variation in the Marathon County Sheriff's Department wherein the first ninety days of disability are excluded from a sick leave deduction. However, thereafter, all payments in excess of the Worker's Compensation are deducted from the employee's sick leave. The only other bargaining unit which has language similar to that which the Union proposes herein to retain are the Wausau Police Supervisors who are not settled yet for 1985.

Identical or substantially similar language that appears in the present contract is present in the collective bargaining agreement for the cities of Rothschild and Weston. (Association Exhibit #12). Most of the other comparables that have a clause referring to Worker's Compensation language have language which is more in-line with the City's offer. (Association Exhibit #12).

The arbitrator recognizes that police officers are exposed to more frequent and more severe perils on the job than most other City and County employees. However, since the majority of City, County and police officers in comparable communities, are covered by similar and voluntarily agreed upon Worker's Compensation agreements like that proposed by the City, the City's offer is reasonable and appropriate.

The City's final offer also contains a provision for a two year agreement with a limited reopener in the second year for wages, vacation and one other issue selected by the Association and two other issues selected by the City. The Association proposes a one year agreement.

Within the City and County bargaining units the Association's offer is the only one year contract under consideration among the eighteen bargaining units. (City Exhibits #7-8). Among these eighteen bargaining units, ten have settled a new two year agreement or both parties have certified final offers which contemplate a two year agreement. Only the Health Care Center has a reopener clause similar to that proposed by the City. All other settlements or certified offers have fixed terms for the full two year period. Clearly, the Association members will not be disadvantaged in comparison to their counterparts.

The City's offer allows a limited number of issues to be dealt with in bargaining for the successor agreement. Given the long term nature of the excellent relationship that exists between the Parties, a two year agreement is reasonable.

E. The average consumer prices for goods and services, commonly known as the cost-of-living.

This factor directs the arbitrator to consider the cost-of-living (CPI). Generally, in evaluating this factor arbitrators compare the wages only increase and/or the total package cost with the inflation rate at the time the contract expires. The 1984 contract expired on December 31, 1984. In December 1984, the rate of inflation at the national level as measured by the CPI for all urban consumers equalled 4%. (City Exhibit #6). The rate of inflation as measured by the CPI for urban wage earners and clerical workers equalled 3.5% in December 1984. (City Exhibit #6). With the City's final offer at 4% and the Association's proposal at approximately 5.5%, either final offer in regards to salary only

will equal or exceed both CPI measures. Both final offers provide the bargaining unit employees with a protective layer against inflation. Both allow employees to recoup any previous losses that they may have suffered due to the inflation rate. However, the difference between the Association's and the City's final offers as to wages only is \$5,550 (Association Exhibit #10). The Association's proposal, considering the impact of the split wage increase, will result in increases that are slightly larger than the City's final offer and also above both measures of the CPI. Consequently, the City's offer is the more reasonable of the two with regard to 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.

City Exhibits #12A-C and 13A-B establish that in most cases internal equity exists among the City and Marathon County employees with respect to fringe benefits. The Association did not offer any substantial proof that the fringe benefits received by its members were substandard to those received by police officers in the comparable communities which would justify awarding the Association's final offer under this statutory factor.

G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

The most recent salary and total package settlements to date, have been reported and incorporated into the decision of the arbitrator.

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.

This factor was not given great weight because such other factors normally or traditionally taken into consideration in the determination of the impasse items were already considered in the previous statutory factors.

AWARD

Based on the above evidence and the entire record, the City's final offer best satisfies the factors required to be considered by the arbitrator under such law. Therefore, any and all stipulations entered into by the Parties and the City's final offer shall be incorporated into the 1985-86 collective bargaining agreement.


Richard John Miller

Dated this 22nd day of July 1985
New Hope, Minnesota