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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition to Initiate
Arbitration between the

WISCONSIN PROFESSIONAL POLICE ASSOCIATION
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION, Case 57 No.35922
SHAWANO COUNTY LOCAL MIA-1025
And Decision No. 23146-A
SHAWANO COUNTY SHERIFF'S DEPARTMENT

I. APPEARANCES
For Shawano County[Sheriff's Department]
James R. Habeck, Shawano County Corporation Counsel
Walter E. Schardt, Shawano County Sheriff
Elaine Sturgis,Personnel Director
Vernon Aiusievore, Vernon County Personnel Committee
Donald Loeffler, Personnel Committee
John R. McCormick, Personnel Committee
Harry Bauman, Personnel Committee
Earl Holtz,Personnel Committee

For the Shawano County Deputy Sheriff's Association
John Burpo,Business Agent WPPA/LEER
Richard T.Little, WPPA/LEER
Robert Bohlman,President, Shawano, County Deputy Sheriff's Assoc.
Randell R. Hilse, Vice President
Michael H. Erickson, Stewart
Staben W. Cook, Member
David Swanson, Member

II BACKGROUND
On September 10,1985, the Wisconsin Professional Police Association,Law Enforcement Employee Relations Division,Shawano County Local(hereinafter called the Union) filed a petition requesting the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration pursuant to Sec.111.77(3) of the Municipal Employment Relations Act, for the purpose of resolving an impasse arising in collective bargaining between the Union and the Shawano County Sheriff's Department (hereinafter called the Employer) on matters affecting the wages,hours, and conditions of employment of non-supervisory sheriffs'deputies, employed by Shawano County.

An investigation into the matters in dispute was conducted by a member of the Wisconsin Employment Relations Commission's staff on December 4, 1985. The investigator, satisfied that an impasse existed, accepted the parties' final offers, notified the parties and the Commission that the investigation was closed and the parties remained at impasse. Subsequently, the commission rendered a FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION OF RESULTS OF INVESTIGATION, and an ORDER REQUIRING ARBITRATION.

III PROCEDURE
The parties selected Donald G. Chatman as Arbitrator on December 19, 1985. An attempt at mediation was tried by the Arbitrator on March 26, 1986, at the Offfices of Shawano County, Shawano, Wisconsin at 1:30 P.M.. The mediation attempt was unsussessful, and the Arbitrator served notice of the prior written stipulation to resolve the dispute by final and binding arbitration. The mediation meeting was closed on March 26, 1986, at 2:00 P.M..
An arbitration hearing on the above matters was held on March 26, 1986, at 2:10 P.M. in the offices of Shawano, County, Shawano, Wisconsin, before the Arbitrator, under rules and procedures of Sec. 111.77(4)(b) of the Municipal Employment Relations Act. At this hearing all 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 parties

agreed to the submission of final arguments to the Arbitrator in the form of written briefs,with no rebuttal briefs. The hearing was adjourned on March 26, 1986, until the receipt of the written briefs was completed. The exchange of briefs was completed on May 8, 1986, and the hearing was closed at 5:00 P.M. on May 10,1986. Based on the evidence, testimony,arguments,and criteria of Sec. 111.77(4)(b) of the Municipal Employment Relations Act, this Arbitrator renders the following award.

IV FINAL OFFERS AND ISSUES

The Union's final offer is attached as Appendix A.

1. Wages- 4.5% of Top Patrolman
2. W.R.F.-1.0% increase paid by employer.
3. Vacations- 15 yrs. = 4 weeks of Vacation.
   22 yrs. = 5 weeks of Vacation.
4. Sick Leave- = 100 days accumulation
5. Should an Officer receive a promotion to a higher pay classification the officer shall receive the next highest pay scale above his present wage in the job he is being promoted to.

The Employer's Final Offer is attached as Appendix B.

1. Status quo on all language in 1985 contract.
2. Include Appendix Page to 1985 agreement date July 17, 1985 in the 1986 agreement.
3. 4.3% across the board increase in wages for 1986.

The Union and Employer stipulate that no other outstanding issues are at impasse which would prevent the resolution of the 1986 Agreement between the parties.

ISSUES

The Union contends that proposal #2 of the Employer's final offer is invalid. The Union raised an objection to its inclusion during the Arbitration hearing and argues that the Appendix was made a valid part of the agreement by signature and dating of both responsibile parties. The Appendix would expire on December 31, 1985, if neither wished to comply with the reopener provisions stated therein. The Union further argues the Appendix to the 1985 agreement contained a definitive time frame either party could utilize, should either party desire to alter or amend said Appendix at the end of the contract term. The Union contends that at no time did the Shawano county submit said notification in writing to the Union, that said Appendix did expire on December 31, 1985, and the Employer is now attempting to circumvent the agreed upon terms by the Appendix's inclusion in the Employer's final offer. The Union argues that proposal No.2 should be held invalid as part of the Employer's final offer and thus the entire employer's final offer must be deemed invalid in accordance with Sec. 111.77(4)(b) of the Municipal Employment Relations act.

The contested document is attached as Appendix C.

Article XVIII Normal Schedule of Work-Overtime

A. Schedule: the work schedule for the duration of this agreement shall be a schedule of five (5) days on, then three (3) days off, with a nine (9) hour work day. Shift hours shall be 8:00 A.M. to 5:00 P.M., 4:00 P.M. to 1:00 A.M., and 11:00 P.M. to 8:00 A.M.. The posting for shift preferences will be made September 1st, with preferences to be made by September 15th, with the employees to be notified of their shift by October 1st, to be effective, January 1. Shifts will be awarded based on seniority within classifications,in the following priority: first, Patrolmen; second, Dispatchers; and third, Jailors.

Appendix:
The undersigned parties agree to the following amendment to Article XVIII,Section A, page 16, of the 1985 Labor Agreement. After 8:00 A.M., line 24, include "and 9:00 A.M.-6:00 P.M. and 7:00 P.M.-4:00 A.M."

> This agreement shall be steadfast for the duration of this agreement through December 31, 1985, at which time this Appendix will expire unless either party,persuant to Section B of Article XXXI, has notified the other party in writing that it desires to alter or amend the Appendix at the end of the contract term.
>
> This agreement shall be made valid by signatures of all parties below.
>
> Dated this 17th day of July, 1985, at Shawano, WI.
>
> The appropriate portion of Sec.111.77(4)(b) reads as follows:
> Form 2. The commission shall appoint an investigator to determine the nature of the impasse. The Commission's investigator shall advise the Commission in writing transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator at the time the investigation is closed. Neither party may amend the final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

The Employer argues That "the Appendix language was included in the initial proposal from the County to the union representation in September of 1985, and the Union had full notice including the final offer notice of December 4, 1985 that the County wished to extend the Appendix provision, therefore validating the County issue and offer". The Employer contends that the Union failed to deny its' contention that it wished to continue the Appendix during the arbitration hearing. The Employer argues that it is inherent in the Appendix page that the language must be amended or altered to reflect its status in the 1986 agreement. The Employer contends that the Union presented no testimony that confusion existed about the Appendix during prior negotiations nor in the investigative phase of the negotiations. Finally, the Employer contends that by the inclusion of numerous excerpts from many other Arbitrator's decisions, including this Arbitrator, that where parties have sought to drop contractual clauses unilaterally, and were rebuffed from such action, it was for failure to sustain a sufficient burden of proof that the instigating party was harmed from such contractual clauses.The Employer maintains the Union has not provided sufficient proof of harm from this provision.

Discussion of the Appendix Issue

The language of the Appendix is clear and rather unequivocal. All either party has to do was to notify the other in writing of its intent to negotiate this issue. The employer in this instance wished to include an amended version of the Appendix in the successor agreement and had only to show that this issue was presented to the union in its initial or some subsequent written proposal. If that were the case the issue of validity and inclusion in the final offer would be moot. However, the Employer does not present such conclusive documentation as evidence in support of the employer's position. Instead, the Employer presents oral statements and allegations that the Union knew of its intent,that the Union did not say it wanted the Appendix removed, or that the Appendix is harmful to the Union. Out of this morass of data some detail is clear. The first written statement that all parties had the opportunity to review was the employer's final offer. In this Arbitrator's opinion, that was the first written

notice and without savaging the Employer extensively it must be made a matter of record that the Employer erred.

The Union's position in this issue is that the inclusion of the Appendix in the Employer's final offer is invalid becaused the employer has not complied with the express terms of the Appendix language. If the Union's position is to prevail there can be only one outcome. The employer's total final offer position is invalid under Sec. 111.77(4)(b)(Form 2) and the Union's final offer must be accepted by default. It must be by default as the only outcome left if Proposal # 2 is invalid. Sec.111.77(4)b states" The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification"(emphasis mine).This creates an impossibility if the Employer's proposal is invalid. Thus, the issue to be decided immediately by this Arbitrator is whether or not the Union was notified in writing by the Employer.

The testimony, documentation and argument of both the Union and Employer sustain the information that the Union knew about the employer's desire for some change in the Appendix language after the final offers were submitted to the Commission's investigator. As of this point the Union had a written copy of the Employer's desires. It is this Arbitrator's opinion that if the Union deemed the final offer to be invalid it should have raised the issue with the Wisconsin Employment Relations Commission as is indicated in Sec.111.77(1), prior to the arbitration hearing. The Employer could have on, the many occasions prior to the arbitration hearing, approached the Union about this issue,but presented no evidence or testimony that the Employer ever tried.

The Arbitrator finds that while there is strong evidence that the Employer was lax in contract administration and obstinate in rectifying the situation, he does not carry the total responsibility.The Arbitrator deems the Union was also less than forthright in communication with the employer, and most importantly with the Commission. Thus,there are no saints in this particular issue since both parties could have done more to communicate in contract clarification. This Arbitrator finds it ill behooves either party to gain an Appendix or lose an Appendix on this technicality. Therefore, the merit of each side's presntation on all the issues of the final offers will determine the 1986 contract agreement outcome. The Union's contention that Employer's final offer proposal No.2 is invalid is denied.

Vacations

The Union is proposing a change in the amount of vacation received at fifteen years of service from three(3) weeks to four(4) weeks, and at twenty-two years of service from four(4) weeks to five(5) weeks. The Union contends its vacation proposal is an adjustment which attempts to make Shawano County deputies comparable with the majority of deputies in comparable counties. The Union states that the County will still be below average over a twenty year span, and the current most senior officer will not realize any additional vacation time for a period of three years.

The Employer argues that vacation benefits for the deputies are comparable to those received by other County employees,and any change would lead to a lack of internal consistency. The employer alleges the economic impact of the cost of the additional vacation time could lead to a reduction in the number of working officers during this increased vacation period.

A review of the figures(Table 1) would seem to clearly indicate that Shawano County is below the median of the arbitrator selected contiguous counties. The Union's request for twenty days after fifteen years of service appears reasonable and could be sustained under most circumstances. However, there appears to be no validity for seeking a change in vacation time at the twenty-two year employment mark. This request is made when the maximum length of service for the Union's most senior employee is or would be 12-13

years at the expiration of the 1986 agreement.Validity of a final offer, while reasonable for some period of time, does not extend infinitely into the future. It is this Arbitrator's opinion that the Union has overreached. Since the vacation clause is tied to an all or nothing at all format, on this issue the position of the Union is not sustained in its final offer request.

Sick Leave

The Union seeks a change in the sick leave policy to change sick leave accumulation from a maximum of 90 days to a maximum of 100 days accumulation. The Union contends the overall compensation presently received by employees in the bargaining unit, including vacation and sick leave accumulation, is substandard when compared to the counties it deems comparable. The Union states that its final offer proposal on sick leave accumulation will result in greater compatibility with comparable units. Its annual costs are minimal and cannot be utilized by any employee with less than twenty years of uninterrupted service. The Employer argues to maintain the status quo. The Employer contends that a change in sick leave policy would lead to inconsistency with other internal bargaining units,when it is now consistent and equal to those governmental units considered comparable by the Employer.

A review of the communities the Arbitrator deems comparable (Table 1)shows that Shawano County is currently at the median for both annual days granted and total accumulation of sick days. If one examines the reported data,eliminating the infinite accumulation possibilities of Portage County,and including the low number of possible accumulation days in Menominee County, the data show Shawano to be below average in sick day accumulation. Further, to reach the maximum level of accumulation requires seven and one half years of non-useage. The Employer raised the issue of internal consistency with other units as a rationale for maintaining status quo. However, the Employer presented no evidence to demonstrate that the units were similar in work efforts,exposure to infection,extraordinary working conditions or other means to postulate that the units ought to be the same. The increase in sick leave accumulation could be considered as a savings to the Employer,rather than a cost, if viewed as an annuity. Under the circumstances that the Union's argument is slightly stronger than the Employer's, and the fact that the benefit of sick leave accumulation increases would be immediately available to the employees, the Union's position is favored on this issue.

CONTIGUOUS COUNTIES AND POLITICAL-SUBDIVISIONS USED AS COMPARABLES TO SHAWANO COUNTY

Table 1

County/Town	Population 85.Est.	Emp.Grp. No.	Vacation 15 yr.	Vacation 22 yr.	Sick Leave Annual	Sick Leave Accum.
LANGLADE	20,317	-----	18	24	12	90
MARATHON	111,943	-----	24	30	12	126
MENOMINEE	3,846	-----	20	20	12	45
OCONTO	30,292	-----	20	30	12	80
OUTGAMIE	134,099	-----	24	30	12	120
PORTAGE	61,405	-----	20	25	12	*
SHAWANO	36,784	-----	15	20	12	90
WAUPACA	44,743	-----	20	20	12	120

* = Infinite days

Promotion

The Union is seeking additional language spelling out promotion. The Union desires to add to Wage Schedule A the following language:

"Should an officer receive a promotion to a higher pay classification the officer shall receive the next highest pay scale above his present wage in the job he is being promoted to".

The present Agreement language reads:
Should an officer receive a promotion to a higher pay classification, the officer shall receive no loss of pay.

The Union contends that it deems the employer has interpreted this clause to mean a member of the department could be promoted from one classification to another classification that could result in the promoted person receiving a rate of pay less than the rate of pay for the listed classification. The Union maintains that this language change is only an attempt to clarify a procedure, should a promotion arise.

The Employer is opposed to this language change. The Employer argues that such change in language would effectively change a contract provision voluntarily agreed to in the 1985 agreement, and both parties were voluntary signers of the language change. Further, the Union has not provided any proof that the change is necessary, nor shouldered the responsibility and burden of proof that the current language is onerous or injurious to the Union. The Employer argues that for the the above reasons the status quo on this language should remain.

The Union in this instance has not shown any injury from the clause, and no specific data or example as to how the clause is or was to be intepreted. The Arbitrator's examination of the affected clauses leads to the opinion that in this instance of disagreement Article XV Seniority would become the controlling factor.

Article XV Seniority

A. Definition: The seniority of a permanent employee who has satisfactorily completed probation shall accure from the last date of employment...

It is this Arbitrator's opinion the length of employment with the County in this representative unit is the determining factor, since seniority is acquired through length of employment rather than job classification. Thus, an employee employed under this bargaining unit for one year has one year of service regardless of job classification. From this perspective the employer's position of maintaining the status quo is preferable.

Retirement Fund

The Union proposes that the Employer pick up the additional one (1) percent employee contribution to the Wisconsin Retirement Fund effective at it initiation date of January 1, 1986. The Union asserts that while there is no pattern of settlement in comparable Counties,there is a long standing history of public employers paying the total employee mandated pension contribution in the State of Wisconsin. The Employer proposes to maintain the status quo on this issue and presents no other arguments.

It is clear to the Arbitrator that most, if not all, public agencies have up to this point paid the employees total share of the Wisconsin Retirement Fund. The Employer has offered no argument against this procedure, except that the "Agreement" between the parties spells out a percentage of payment to the fund (either 5.0% or 6.0%). In all other areas of contention between the parties, in instances where the Employer has desired to maintain the status quo, the Employer has argued vehemently that the party seeking a change in an existing relationship has the burden of proof that such change was necessary. In this instance status quo represents a change from the previous relationship between the parties since the amount of payment to the fund is mandated by outside influences. The Employer has not demonstrated a rationale as to why the Employer should not continue to cover the full cost of employee retirement payments. Thus, the maintaince of the status quo and the payment of the one percent employee cost could mean the same thing. Given the Employers' arguments of other issues before this arbitration,I do not attribute much creditability to that argument. For the sake of clarity, the Union's proposal on Retirement is favored in this instance.

Wages
With regard to wages the Union contends it final offer on wages best serves the public interest by elevating the perceived deficient wages and benefits of the deputies into the median range as compared with wages and benefits received by law enforcement officers in surrounding communities. The Union maintains its offer would accomplish three (3) tasks during 1986: 1. Retain qualified deputies currently in county service, 2. provide the monetary ability to attract qualified person for future positions, and, 3. impact the the Employer fiscally to a minimum degree. To sustain its position on wages and, to a lesser degree, the other contested issues the Union provided 34 exhibit documents, consisting of tables charts, consumer price indexes, and selected comparability comparisons, as well as argument in support of this data to be entered as evidence.

The Employer contends its final offer is the more reasonable of the two offers. The Employer concedes that the County is at or near the bottom in maximum pay received by patrol officers, but argues that employees are at the maximum pay rate after one year as opposed to the 3.2 years for its selected comparable group. The Employer maintains its offer will not place the employees further behind. To substantiate its validity the Employer provided thirty (30) tables, charts, and documents on comparability of communities, salaries, Consumer Price Indexes,fiscal status of Farmers, County tax deliquency and some unsubstantiated allegations of severe county fiscal problems,along with argument to support their position. The Employer is not making an ability to pay case.

After a review of all the data presented, the results can best be summed up by an examination of Employer exhibits 7 and 8. These exhibits show the total dollar difference between the two parties to be approximately $ 4,600 for the year. The major portion of this difference between the Employer and Union ($3,720) is the cost of the one percent retirement payment. This indicates that the dollar difference between Employer and Union for wages and other fringe benefits, less the retirement addition, is less than $900.00 for the year. The Arbitrator could compare these sixty-four documents extensively and arrive at an exceedingly minute conclusion as to which final offer appears better. However, a better example of of the difference between the parties is that it won't pay for a full day's operation of the Sheriff's department normal operations. In this instance, either offer on wages would be acceptable.

Discussion of Final Offers as a Whole
In the examination of the final offers there are some instances which sharply attract the Arbitrator's attention. First,there are instances in the Union's final offer which might be deemed overreaching. There is obviously some validity to the Union's argument on increasing vacation and sick leave accumulations for old and valued employees. Seeking to incorporate these within an agreement nine years before the first current employee would qualify, particularly in a series of one year agreements, may be deemed overreaching. This Arbitrator believes that while the validity of some final offer proposals are strong enough to carry along others of less meritorious content into an agreement, there is a limit as to how much baggage they can haul. The Employer's argument that the other unions which bargain with the employer have or do not have some benefit,fails creditability if there is no master contract,or some specific evidence that the unions have more in common than the same employer. A particular Union is not bargaining for all the workers of the Employer unless there is a master agreement.

On the issue of promotion, the existing agreement speaks for itself. It would appear that the seniority clause is the governing article. If the parties have a disagreement over this issue or a promotion, the parties have an appropriate grievance procedure for

the resolution of the problem.

On the issue of wages, the final offers of either party is within the means of the Employer to pay and represent no extraordinary gain or loss to the Union. The actual dollar difference between the two final offers is not enough to tilt this Arbitrator's decision in either direction.

Because the Union raised an argument on the validity of the Employer's final offer, the Appendix page of 1985 remains an unresolved issue. In the Arbitrator's opinion, because this arbitration was conducted under the rules and procedures of Sec.111.77(4)(b), "The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification", the Appendix page of the 1985 agreement is part of the successor agreement regardless of which final offer is accepted. If the Employer's final offer is selected, it will be included because it is part of the Employer's final offer request. If the Union's final offer is selected the Appendix will be part of the successor agreement because it is part of the existing agreement and the Union did not request its removal in their final offer.

The issue for deciding which final offer is selected thus revolves around the Union's one percent retirement pick-up request, and whether or not the Union over reached. On this issue the Employer argues for status quo,without fully developing what is intended in this case. The Arbitrator speculates that the Employer does not intend to be accommodating but has no way, after the close of the hearing, of knowing. Thus, the position of the Union is perferable because of clarity. With the acceptance of the Union's position on retirement the Union's final offer is selected with marked reluctance because of potential overreaching.

Award
The 1986 agreement between the Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, Shawano County Local and the Shawano County(Sheriff's Department) shall contain the final offer of the Union in its entirety along with previously agreed to stipulations of the parties..

Dated this 30th day of June 1986 at Menomonie, Wisconsin.

Donald G. Chatman
Arbitrator

Donald G. Chatman

EMPLOYERS EXHIBIT 1

Final Offer -

#1/ Wages - 4.5% of Top Patrolman.

#2/ WRF - 1.0% increase paid by Employer

#3/ Vacation - 15 yr. - 4 weeks
22 yr. - 5 weeks

#4/ Sick Leave - 100 Days accumulation.

#5/ Should an officer receive a promotion to a higher pay classification, the officer shall receive the next highest pay scale above his present wage in the job he is being promoted to.

12-4-85
James Klus LEER
Jim Mode
Robert Dohlman

EMPLOYERS EXHIBIT

SHAWANO COUNTY'S FINAL OFFER

1. Status Quo on all language 1985 contract.

2. Include Appendix Page to the 1985 Agreement date July 17, 1985 in the 1986 Contract.

3. 4.3% across the board increase in wages for 1986.

John R McCormick 12-4-85
Shawano County Personnel Com

Appendix A

APPENDIX PAGE TO THE WORKING AGREEMENT
BETWEEN THE
SHAWANO COUNTY BOARD OF SUPERVISORS
AND THE
LAW ENFORCEMENT EMPLOYEES RELATIONS DIVISION
OF THE
WISCONSIN PROFESSIONAL POLICE ASSOCIATION

(SHAWANO COUNTY DEPUTY SHERIFF'S ASSOCIATION LOCAL)

1985

The undersigned parties agree to the following amendment to Article XVIII, Section A, page 16 of the 1985 labor agreement:

After...8:00 A.M., line 24, include "and 9 A.M. - 6 P.M. and 7 P.M. - 4 A.M."

This agreement shall be steadfast for the duration of this agreement through December 31, 1985, at which time this Appendix will expire unless either party, pursuant to Section B of Article XXXI, has notified the other party in writing that it desires to alter or amend the Appendix at the end of the contract term.

This agreement shall be made valid by signature of all the parties below.

Dated this 17th day of July, 1985, at Shawano, WI.

FOR THE COUNTY:

Harry Baumann
County Board Chairman

[signature]
County Coordinator

James R. Habeck
County Attorney

FOR THE ASSOCIATION:

Robert C. Coltman
President

David R. Swanson
Secretary

[signature]
LEER Representative