

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

\_\_\_\_\_\*  
In the Matter of the Petition of \*  
\*  
WISCONSIN PROFESSIONAL POLICE \*  
ASSOCIATION/LAW ENFORCEMENT \*  
EMPLOYEE RELATIONS DIVISION \*  
\*  
For Final and Binding Arbitration \*  
Involving Law Enforcement \*  
Personnel in the Employ of \*  
\*  
CITY OF RHINELANDER \*  
(POLICE DEPARTMENT) \*  
\_\_\_\_\_\*

Case 43  
No. 38212  
MIA - 1192  
Decision No. 24378-A

APPEARANCES:

Philip I. Parkinson, City Attorney, on behalf of the City of Rhinelanders

Richard T. Little, Wisconsin Professional Police Association, Law Enforcement  
Employee Relations Division, on behalf of the Association

INTRODUCTION

On April 22, 1987, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Arbitrator pursuant to Section 111.77 of the Municipal Employment Relations Act (MERA) in the dispute existing between the City of Rhinelanders (hereinafter the "Employer" or "City") and the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (hereinafter the "Union" or "Association"). On June 2, 1987, an arbitration hearing was held between the parties pursuant to statutory requirements and the parties agreed to submit briefs and reply briefs. Briefing was completed on July 2, 1987. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.77 (6), Wis. Stats. (1985).

ISSUES

1. Should the 1987 labor agreement be amended to include the language proposed by the employer relating to Hospital and Surgical Insurance (Section 15.01)?
2. Should the 1987 labor agreement be amended to include the language proposed by the employer relating to Holidays (Article X)?
3. Should the 1987 labor agreement reflect the Rank and Salary Schedule contained in the Final Offer of the Union or in the Final Offer of the Employer?

DISCUSSION

The Final Offer of the City proposes language changes in two parts of the labor agreement plus a wage and salary offer. The Union's Final Offer relates only to salary and wages.

The Wisconsin Municipal Employment Relations Act requires an independent arbitrator to accept one final offer in its entirety and to reject the other. Therefore, it is possible that one Final Offer might contain a defect so substantive that the other must be chosen, even though the rejected offer is more reasonable in the other issues presented for arbitration. In this matter, one side has proposed language revisions in arbitration which were rejected by the other side during negotiations, an objection which is renewed here. These changes must be carefully examined and the final offer selection may rest upon that examination. Before beginning that task, it is appropriate to review the two proposals relating to salary and wages.

## RANK AND SALARY SCHEDULE

### The City's Position

The City has settled with all its other bargaining units for the same salary increase offered this unit. Furthermore, it has offered the detectives in the unit an additional .3% increase for pay lost as a result of the proposed change in Holidays. The wage and salary offer of the City is more reasonable than the Association's, based upon those settlements.

The Employer recognizes that its police are in fact among the lower paid forces in the comparables used by it and in those offered by the Union. Yet, even using those comparables presented by the Association, the City's offer would result in a gain of one rank. The Association's offer would jump it from 12th rank to 9th, an unreasonable increase.

### The Association's Position

The Association would remind the arbitrator that it was not involved in bargaining with the employer's other employee units and cannot be bound by the level of settlements made there. Moreover, no showing has been made here as to the comparability of the other units with this one. No showing has been made of historical wage patterns nor have the duties and qualifications of other city workers been compared to the police.

The Union argues that the only valid wage comparison is with other law enforcement units and here the record shows a steady deterioration in the level of wages paid to its members. Comparing wages paid in the top patrol range, since 1980, when the Rhinelander police were paid \$20.00 per month less than the pay of comparable departments, to 1986, when the base wage was \$110.00 below the average, the Association's members have been badly dealt with. The Union does not ask to be made whole in a single year. It only asks for progress toward equality. Therefore, its request for an increase of approximately 5% is reasonable.

### Discussion

Two salary offers here represent differing approaches. A percentage increase, as offered by the Employer, serves to spread the actual dollar differences between those at the upper end of the salary scale and those at the lower end. A flat dollar increase, as offered by the Association, tends to compress the salary schedule, bringing employees at the lower end of the scale relatively closer to those at the upper end.

Neither approach is unreasonable, and thus either might be chosen, standing alone.

The Association has costed the two offers in its exhibits. The difference shown there is just under \$6,000 on a total salary and wages budget of more than \$450,000. The Total cost increase would be 3.26% were the City's offer accepted, or 4.63% for the Union's offer. Based upon the relative closeness of the offers, either offer might be found reasonable.

Based upon the Consumer Price Index, either offer is reasonable, with the Employer's offer closer to current experience and the Association's offer closer to published projections.

The increase offered by the Policemen would be the highest among the City's comparable group and third highest if the Association's comparable group is used, using the Top Deputies and Top Patrol rank for comparison. Leaving out the settlement in Ashland because of the special nature of those negotiations, the Employer's offer would be next to lowest using its comparables and third from lowest using the Union's.

The average increase in the same salary rank would be \$67.00 per month, using the City's comparables, an average increase in excess of that offered by the City here. It is above average only if Ashland is included in the comparables.

Comparables are used in these proceedings for two reasons. The first is to determine whether salaries are properly fixed. The second is to determine whether an increase is reasonable. In this matter, the monthly increase requested by the Association is in excess of the lowest settlement by \$31.00. The City's offer is \$23.00 below the Union's and \$16.00 below the next highest dollar increase, using the City's comparable list. Based upon this, the City's offer might be found more reasonable.

However, the Association's offer would increase the ranking of the Rhinelander police while the City's offer would roughly maintain its comparable ranking. Based upon this, the Association's final offer might be found to be more reasonable.

## CONTRACT LANGUAGE

Arbitrator Byron Yaffee's decision in School District of La Crosse has become the standard for review of proposed contract language changes. This standard reflects the long-established reluctance of arbitrators to alter contract language in arbitration.

In this case, the City of Rhinelander as proposing party has a burden to demonstrate; first, that a legitimate problem exists that requires contractual attention and; second, that its proposal is reasonably designed to effectively address that problem. This analysis will now be applied to the two language changes proposed by the Employer.

## HEALTH INSURANCE

The City has proposed language which would limit the scope of its health insurance fund to payments of claims for health and dental insurance only, unless the Finance Committee of the City Council and the Employee Health Insurance Committee agree on language which would alter that purpose.

The latest audit management letter received by the City is submitted in support of this language and the plan administrator has suggested draft language designed to establish a formal trust agreement which would preserve the tax-exempt status of the insurance fund.

The Employer has identified a legitimate problem by raising the tax-exempt status issue. However, it has not demonstrated that an alteration in the language here would effectively address the issue. It has even executed a labor agreement for 1987 with one of its bargaining units which does not contain the language proposed here. From the exhibits and testimony, it appears clear that both parties are equally interested in preserving the tax-exempt status of the insurance fund. It also appears clear that an avenue already exists by which that goal could be achieved. That is the Employee Health Insurance Committee. Until it can be demonstrated that the fund is truly in danger and all other avenues of solution have been closed, this issue is not one to be altered in the arbitration process.

## HOLIDAYS

Holiday issues have often been the subject of hard bargaining in labor negotiations. Arbitrators have been extremely wary of imposing changes in Holidays because of this. Therefore, the burden placed upon the purposer of changes is even more strict than it might be in other areas of contract language.

The City wishes to alter the Holiday provisions as they apply to a single group of employees, the Detectives. Because of the reduced winter population of Rhinelander, it believes the scheduled services of the Detectives is redundant and unnecessary during the three winter holidays. It presented expert testimony in support of this position and cited an example of a Detective on vacation who worked his scheduled holiday as an example of the way in which the present schedule is subject to abuse.

The City presented no other evidence in support of its position. No showing was made of the number of calls requiring a Detective's assistance during these holidays, other holidays, or the regular work week. At the hearing statements were made that Detectives working these days used their free time to catch up on office work, when not on call. No claim was made that Detectives were idle or negligent or abusive of their time when on Holiday work.

Based upon the state of this record, it cannot be said that a legitimate problem exists that requires contractual attention. The proposed language fails.

## DECISION

Based upon the foregoing discussion, the final offer of the Rhinelander Professional Police Association shall be incorporated in the 1987 labor agreement, together with any stipulations that may have been agreed to between the parties.

Dated this 17<sup>th</sup> day of August, 1987, at Madison, Wisconsin.

  
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ROBERT L. REYNOLDS, JR., Arbitrator