

BEFORE THE ARBITRATOR

AUG 10 1987

In the Matter of the Petition of
 WISCONSIN PROFESSIONAL POLICE
 ASSOCIATION/LEER DIVISION
 For Final and Binding Arbitration
 involving Police Personnel
 in the employ of
 CITY OF DELAVAN (POLICE DEPARTMENT)

WISCONSIN EMPLOYMENT
 Case No. 11
 RELATIONS COMMISSION
 No. 37858 MIA-1153
 Decision No. 24470-A
 S. Michelstetter,
 Arbitrator

Appearances:

John Rudd, City Administrator, appearing on behalf of the Employer.

Richard Little, Business Representative, appearing on behalf of the Association.

ARBITRATION AWARD

Wisconsin Professional Police Association/LEER Division, herein referred to as the "Association" having petitioned the Wisconsin Employment Relations Commission to initiate Arbitration, pursuant to Sec. 111.77, Wis. stats., between it and City of Delavan, herein referred to as the Employer, and the Commission having appointed the Undersigned as Arbitrator on May 13, 1987; and the Undersigned having conducted mediation without resolution of the dispute, followed by hearing, all on June 24, 1987, and the parties having each filed post-hearing briefs, the last of which was received July 25, 1987. The standards applied herein are those found in Section 111.77, Wis. Stats.

ISSUES

The following are the issues in dispute with respect to the parties calendar 1987 and 1988 collective bargaining agreement:

1. WAGES: The following were the 1986 wage rates for reserve officers;

Start	7.29
After 1 year	7.41
After 2 years	7.53

The Employer proposes to increase these by 3% for 1987 and 4% for 1988. The Association proposes to increase these to the following rates;

	1987	1988
Start	9.01	9.37
After 1 year	10.04	10.44
After 2 years	11.29	11.74

2. HEALTH INSURANCE

The Association proposes to add the following language to the health insurance provision of the agreement;

"In the event of separation from the department, employees shall not be required to return or refund any portion of the deductible or co-insurance payment made to the employee by the City. Any employee hired after January 2, and therefore not eligible for the January 31st payment under this section shall be reimbursed by the City for any deductible or co-insurance costs. Employees requesting reimbursement must submit documentary evidence of any incurred costs."

The Employer opposes any further change in the health insurance provision.

POSITIONS OF THE PARTIES

The Association takes the position that the interest and welfare of the public includes not only the tangible elements of employment, but the intangible elements of employment, including job satisfaction and morale. It takes the position that the Employer has undermined the morale of the police department by having effectively reassigned three full time police officer as reserve officers. In its view, this reassignment was used as an effort to undermine the Association and discourage collective bargaining. It notes, that in the current negotiations, the Employer never mentioned the possibility of layoff until approximately two weeks after the Association filed for this arbitration. It also notes that the Employer has not shown any economic justification that the layoff and subsequent reassignment of the three full-time officers to reserve (part-time) status.

Alternatively, the Association supports its position on the basis of internal comparability. In this case, it believes that the sole reliable comparison is between the wage rate for full-time police officers and reserve in that, in its view, the two perform the same duties and have the same responsibilities. It explains that historically, the Association has been willing to agree to lower wage rates for reserve officers, because the reserve officers were not the majority of the unit. It denies that there has ever been a strong historical relationship between the size of general increase received by full-time and that received by reserve officers. It denies that the external part-time police comparisons offered by the Employer are comparable and indicates that the Employer has not shown the degree of collective bargaining, department size, population and comparability of duties. The Association has provided comparisons to part-time police officers in other communities and realizes that its offer will put its reserve officers approximately \$.54 per hour above the highest rate of the comparables offered by the Association. However, the Association urges that external comparisons not be given weight herein due the higher degree of responsibility of unit employees and because of the other unique circumstances of this case. It takes the position that the other statutory criteria have little or no weight in this proceeding.

With respect to the health insurance issue, it takes the position that its proposal is necessary to protect full-time officers who were reassigned as part-time in the event they should be recalled to full-time. It alleges that this proposal is designed to deal only with the current reassignment and not otherwise intended to change past practice as to health insurance.

The Employer takes the position that its offer is preferable under the statutory standards. The Employer takes the position that the offer it proposes is an appropriate general increase of the same percentage as full-time officers received for both 1987 and 1988. It notes that the wage increase proposed by the Association for reserve officers is approximately 35% overall. The Employer denies that the Association's attack on its layoff decision is appropriately addressed to interest arbitration. It notes the Association has not challenged the same in any arbitration or administrative proceeding. Even if properly addressed to this proceeding, the Employer argues the record shows that this department was overstaffed by comparison to other departments. Finally as to this issue, it argues that other factors substantially outweigh any impropriety as to layoff.

The Employer relies heavily on the comparison criterion. It relies on the communities within Walworth County which have reserve police officers to supplement their force. It argues that reserve officers are far better off than their comparable reserve officers in the external comparisons and that the wage increase proposed by the Employer is much closer to that which others have received than that offered by the Association. However, the Employer takes the position that in any set of reasonable comparisons, its offer is clearly closer than the Association's. The Employer objects to the Association's method of costing, because it compares pre-layoff costs to post-layoff costs, thus, masking the true roll forward type cost of the Association's proposal. By this method, the Employer costs the Association's proposal with respect to reserve officers at 35% for 1987. It also relies upon comparison to the increases mutually agreed upon with respect to full-time officers. The parties have agreed to the same rates as proposed by the Employer for the reserve officers as the general increase for the full-time officers. It argues that historically, the parties have generally given reserve officers about the same increase as full-time officers. It also argues that the language for health insurance is the same as agreed to by the public works union. The Employer supplements its position by arguing that each of the remaining statutory factors favors its position.

DISCUSSION

The thrust of the Association's position is to respond to the layoff of three full-time officers and their subsequent reassignment to reserve officers by denying the Employer any economic benefit from differences between the lower wage rate of reserve officers and the higher hourly rate of full-time officers. In the process, the Association's offer substantially

mitigates the economic loss suffered by the laid off employees. But for the layoff argument, all of the other statutory factors favor the Employer's position. Thus, for example, the comparison criterion, both with respect to external comparisons and internal comparisons favors the Employer. In the set of external comparisons offered by the parties, the 1987 wage rates of other part-time police officers is generally closely comparable or less than that offered by the Employer, while the offer of the Association greatly exceeds that of the comparison groups. It is not necessary to delineate the exact comparisons, an example of a closely comparable department demonstrates the situation. Both parties have relied upon Elkhorn. Elkhorn is an adjacent community of approximately the same size and its part-time officers are under collective bargaining agreement. While Elkhorn is comparable, its full-time staff is larger than the Employer's and crime statistics suggest it may not have the level of activity of Delavan. The comparison for 1987 is as follows:

part-time	start	top
Elkhorn	7.19	7.84
Delavan		
Association	9.01	11.29
Employer	7.51	7.76

The Association relies very heavily for comparison on the wage rate paid full-time Delavan officers and there is no dispute that the offer of the Association does raise unit employees to the rate of full-time officers. The offer of the Employer is an offer of the same percentage increase as the parties agreed upon for full-time officers. Since at least 1976, the percentage increase received by reserve officers has tended to parallel that offered by full-time officers, but there have been years when there have been substantial differences in favor of one or the other. The most important fact from the parties' bargaining history is that since 1976, the parties have maintained a differential between the wage rate of full-time and part-time much akin to that maintained in comparable communities and which the Employer herein seeks to maintain. The Association is correct that both full and reserve officers must obey the department's general orders and that the 1979 general job descriptions in general terms require that the two classifications perform the same work. The full-time position requires an associate degree in a police related field while the reserve officer must only meet minimum state requirements. The undisputed evidence in this record is that for as long as anyone can remember, full-time officers have generally had a higher degree of responsibility often working more independently and in more complex situations. The parties have continuously historically recognized this by maintaining a pay differential between the two positions similar to that proposed by the Employer. The Association has offered some evidence that on some occasions the former full-time officers in the position of reserve officer have been called upon to act as shift commander, a function which reserve officers are not generally supposed to perform. The preponderance of the evidence suggests that the Employer has relied upon or more than passively accepted the advantage of having the more qualified

former full-time officers in part-time positions. The evidence is insufficient to conclude that reserve officers, in general, are now generally required to carry the full level of responsibility of full-time officers. On the basis of the evidence in this case, there simply is no justification for raising the wage rate of all reserve officers.

One of the factors to be considered by arbitrators is, in relevant part: "Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wage, hours and conditions of employment through voluntary collective bargaining" Collective bargaining is often used in the public and private sector as a means of making proposals to insure the maintenance of an appropriate collective bargaining relationship. Proposals are also made for the purpose of correcting the effects with respect to wages, hours and working conditions, of inappropriate actions by the other party.

There is evidence that the layoff and recall which occurred in this case had a legitimate economic motivation. The Employer has, in fact, reduced the level of services provided in that it has eliminated three full time positions and has not replaced them, even with reserve officer hours. In fact, the Employer has used reserve officers substantially fewer shifts in 1987 (after the layoff) than it did in 1986 (before the layoff). There is evidence that the department could be considered overstaffed. However, it is unclear whether prior to the decision to adjust the department's budget that the Employer had actually had discussion to that effect. While there is no evidence of threats of any kind, there is evidence in the timing of the Employer's action which would support an inference of retaliatory motivation, but not necessarily compel that inference. Given this context, the proposal of the Association, which is directed at the wage rates of reserve officers, is far too overbroad to deal with the strongest inference available in this record.

In this case the wage rate issue totally outweighs the health insurance issue and, therefore, the latter is not discussed. On the basis of the foregoing, the final offer of the Employer is supported by the vast weight of the evidence under the statutory criteria. Therefore, the final offer of the Employer is adopted

AWARD

That the final offer of the Employer be incorporated into the parties' collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 8th day of August, 1987.


Stanley H. Michelstetter II,
Arbitrator