

RECEIVED

EDWARD B. KRINSKY, ARBITRATOR

DEC 07 1987

In the Matter of Arbitration Between

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

LABOR ASSOCIATION OF WISCONSIN, INC./
PLYMOUTH POLICE DEPARTMENT EMPLOYEES
LOCAL 215

Case 29
No. 38313
MIA-1204
Decision No. 24607-A

and

CITY OF PLYMOUTH (POLICE DEPARTMENT)

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, by
Mr. James R. Macy, for the City.
Mr. Thomas A. Bauer, Labor Consultant, Labor
Association of Wisconsin, Inc., for the
Association.

On July 9, 1987, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator in the above-captioned case pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act. A hearing was held at Plymouth, Wisconsin, on September 7, 1987. A transcript of the proceedings was made. Both parties had the opportunity to present evidence, testimony and arguments. The record was completed with the exchange by the arbitrator of the parties' post-hearing briefs on November 19, 1987.

The parties' final offers are identical with respect to three items. Each offer incorporates all tentative agreements, provides for a two-year Agreement from January 1, 1987 through December 31, 1988 and provides for a 3% wage increase effective January 1, 1987 and an additional 3% increase effective January 1, 1988. The Association's final offer contains a fourth item, shown below. The City's final offer is silent with respect to this item.

ASSOCIATION'S FINAL OFFER

. . .

3. Article IX - HOLIDAYS. (Effective January 1, 1988)

Add the following new sections to this article:

9.03 - Holiday pay shall be computed at eight (8) hours pay at the employee's regular rate of pay.

9.04 - If an employee is required to work on a holiday, the employee shall receive, in addition to his holiday pay described in Section 9.03, the following compensation:

- a. Eight (8) hours pay at the employee's regular rate of pay.
- b. Four (4) hours compensatory time off to be taken at a time mutually agreed to between the Chief of Police and the employee.

Such compensatory time earned, as described in this section, shall be used during the year that it is earned, with the exception of those holidays which occur in December of each year, which shall be carried over into the succeeding year up to a maximum of sixty (60) days to allow the employee to schedule such time off. No reasonable request for such time off shall be denied.

The parties disagree about what units of government should be used as comparable units of government in this matter. The Association has chosen to use all cities of more than 2,500 population in Sheboygan County, in which Plymouth is located, and in all of the contiguous counties, as well as the Counties themselves. Thus, it proposes to use the following Counties: Sheboygan, Fond du Lac, Washington, Manitowoc, Ozaukee and Calumet. It proposes to use the following Cities: Sheboygan, Fond du Lac, Manitowoc, Port Washington, Sheboygan Falls, New Holstein, Kiel, Chilton and Brillion. The City has proposed to use cities of similar size to Plymouth. It has chosen: Chilton, Kewaskum, Kiel, Kohler, Mayville, New Holstein and Sheboygan Falls.

The arbitrator believes that the most appropriate comparables for a police department in a small city are other police departments in small cities with reasonable geographic proximity. Four such cities are on both parties' lists of comparables: Chilton (3,133); Kiel (3,136), New Holstein (3,415) and Sheboygan Falls (5,898). Plymouth has a population of 6,410. In addition, the arbitrator feels that it is appropriate to include, from the Association's list, similar sized cities in the contiguous counties: Port Washington (8,634) and Brillion (2,977). From the City's list the arbitrator would include Mayville (4,394). Mayville is not in a contiguous county, but it is not any further distant

from Plymouth than some of the other comparables. This group of small cities ranges in population from approximately 3,000 to 8,600. There are no other cities with slightly higher populations (the next closest is Manitowoc with 32,000). The arbitrator would also include Kewaskum (2,325) and Kohler (1,722) from the City's list even though they are quite small, since they are small cities within the contiguous counties.

The arbitrator is required by statute to consider the factors enumerated there in making his decision. There is no issue or dispute presented with respect to the following factors: (a) lawful authority of the municipal employer; (b) stipulations of the parties; that part of (c) which deals with the financial ability of the unit of government to meet the costs of any proposed settlement; that part of (e) comparisons with employees in private employment; (g) changes in circumstances during the pendency of the arbitration; and (h) such other factors normally or traditionally taken into consideration. The other factors are considered in turn, below.

Part of factor (c) which must be weighed by the arbitrator is "the interests and welfare of the public." The Association's proposal has a cost effect, although a very slight one. Since its holiday pay proposal is to be effective in 1988, there is no cost for 1987. The 1988 cost is slightly over \$2,000, representing the extra cost for nine employees to work on an average of five holidays apiece during the year.

The cost to the City will not necessarily be in cash. Rather, it may be primarily in the value of compensatory time, or lost working time. The City objects to the Association proposal, in part, because officers already have more compensatory time than they can use, and the accumulation of compensatory time interferes with the department's ability to schedule. There is particularly a scheduling problem if officers do not continue to be willing to switch shifts as necessary to accommodate the use of compensatory time by other officers. There is a monetary cost, also, the City argues, to the extent that the City deems it necessary to hire part-time officers, or bring in full-time officers for additional shifts at overtime rates. The Association contends that to date the City has made very little use of extra manning and has not called in officers at overtime rates, and there is no reason to anticipate that the Association's proposal, if implemented, would cause the problems that the City is concerned about.

The arbitrator has considered the parties' arguments. He is not persuaded by the evidence and testimony concerning current practices that the public would be adversely affected

by the Association's proposal. It is his opinion that neither final offer is preferred over the other when the interests and welfare of the public are considered.

Factor (d) requires the arbitrator to consider comparisons of wages, hours and conditions of employment with those of employees performing similar services in public employment in comparable communities. The issue in this case involves the amount of compensation given to employees who work on a holiday. In Plymouth, as well as in other police departments, it is the case that normally there are police services provided on holidays. Those whose regular schedules call upon them to work on that day must work, even though there is a holiday. This is distinct from many other county, municipal and school employees who are normally scheduled off on holidays and who work on holidays only during emergencies.

The following chart shows how police are paid for working on holidays in comparable units.

<u>City</u>	Compensation for Employee Required to Work on a Holiday: <u>Holiday Pay Plus</u> _____
Brillion	straight time
Chilton	1 1/2 x _____ to be taken as pay or comp time
Kewaskum	straight time
Kiel	1 1/2 x
Kohler	1 1/2 x
Mayville	1 1/2 x _____ to be taken as pay or comp time
New Holstein	1 1/2 x _____ to be taken as pay or comp time
Port Washington	straight time
Sheboygan Falls	straight time

This data shows that of the nine comparable cities, five pay their police at time and a half in addition to holiday pay, and four pay their police at straight time in addition

to holiday pay. While the bare majority support the Association's offer in this regard, there is no clear mandate for time and a half payment.

In such a situation it is the arbitrator's view that a change in benefits should be bargained rather than imposed by the arbitrator. This is not a situation in which the arbitrator feels compelled to remedy clearly inferior conditions of employment. Moreover, only three of the nine comparables allow the use of compensatory time in lieu of pay. The Association's offer thus does not have clear support in the comparables for its method of compensation.

While the issue in this case involves the compensation of police officers who work on holidays, the City argues that attention should be paid also to the number of holidays granted. The arbitrator agrees, insofar as the number of holidays potentially affects the cost of the proposal and also provides a measure of whether the officers of this unit are at a disadvantage with regard to the way they are treated for holiday purposes. There is holiday data with respect to seven of the nine comparables. Ten paid holidays are provided by six cities: Chilton, Kewaskum, Kohler, Mayville, New Holstein and Sheboygan Falls. Plymouth provides eleven paid holidays, as does Kiel. Thus, the bargaining unit is not at a disadvantage with respect to the number of paid holidays it receives.

Based on the analysis of external comparables, it is the arbitrator's opinion that the City's final offer is the preferable one.

Factor (d) also directs the arbitrator to give weight to comparisons of wages, hours and conditions of employment with those of employees generally in public employment in comparable communities. The only such comparisons presented by the parties are those for other units within the City of Plymouth.

The City's non-represented employees received approximately a 2.25% wage increase in 1987 and the increase for 1988 has not yet been determined. The unionized Street and Sanitation unit received increases of 3% in each of the two years with no additional economic benefits. Thus from the standpoint of wage treatment the police unit is not being treated less favorably than the other units.

Both the Streets unit and the Plymouth Utilities unit have eleven paid holidays. They receive straight time holiday pay, but when they work on the holidays they receive double time in addition. Thus, they receive more holiday pay

than police when the holiday is worked. However, police routinely work holidays as part of their rotating schedules whereas these units only work on holidays in emergencies. Data in evidence show that in 1986 a total of \$1,330.20 was paid for extra holiday pay in the Streets unit, and the total for 1987 as of the date of the arbitration hearing was \$36.52.

It appears to be the case, therefore, that the internal comparability favors the City's total economic offer, but favors the Association's offer insofar as pay received for working on a holiday is concerned.

It is the arbitrator's opinion, however, that in comparing holiday pay provisions, the more meaningful comparisons are with units which have similar work schedules. Thus, external comparisons with police departments working similar schedules are entitled to more weight than internal comparisons with non-police employees when considering holiday pay provisions.

Factor (e) which must be considered is the "cost of living." The annual increase from December 1985 to December 1986, the year prior to the effective date of the contract in dispute, was 1.1% or 0.7% depending on whether the index used is "All Urban Consumers" or "Urban Wage Earners and Clerical Workers." The average monthly increase in 1987 compared with 1986 was under 2.0%. Both final offers are in excess of the cost-of-living increase, since both final offers contain annual increases of 3%. Since the City's offer is less in total than is the Association's, and since both are in excess of the increase in cost of living, the City's offer is closer to the cost-of-living increase and is thus preferred when this factor is weighed.

Factor (f) which must be weighed is the overall compensation presently received by the employees. The City produced data for the police units that it selected as comparables, showing payments for health insurance, life insurance, vacations, retirement and sick leave. These data indicate that the police unit in Plymouth is not particularly either advantaged or disadvantaged in comparison with these other units. Using this statutory factor, neither final offer is preferred over the other.

Conclusion

The statute requires the arbitrator to select one final offer in its entirety. Having analyzed the parties' final offers in light of the statutory factors, the arbitrator has a slight preference for the City's offer when measured

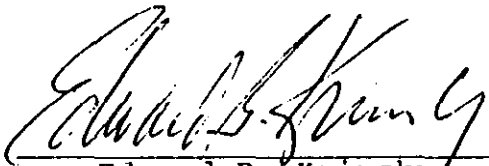
against the external comparables, the cost of living, and the economic offer to other employees of the City. The Association has not shown that its holiday provisions are really at a disadvantage in relation to the external comparisons, and it has not provided justification for a greater economic increase than given to other employees of the City.

Based upon the foregoing facts and discussion the arbitrator makes the following

AWARD

The City's final offer is selected.

Dated at Madison, Wisconsin, this 3rd day of December, 1987.



Edward B. Krinsky
Arbitrator