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WISCONSIN EMPLOYMENT RELATIONS COMMISSION
PERMITS SECTION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

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* In the Matter of the Petition of	*	*
* FOND DU LAC PROFESSIONAL POLICE ASSOCIATION LOCAL 12	*	*
* For Final and Binding Arbitration	*	* Case No. 78
* Involving Law Enforcement Personnel in the Employ of	*	* No. 37859
* CITY OF FUND DU LAC (POLICE DEPARTMENT)	*	* Decision No. 24656-A
	*	* MIA-1154

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APPEARANCES

On Behalf of the City: Bruce K. Patterson, Consultant

On Behalf of the Union: Gorden E. McQuillen, Attorney
Cullen, Weston, Pines and Bach

I. BACKGROUND

On November 24, 1986, the Union 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 Parties with respect to wages, hours and conditions of employment of law enforcement personnel for the calendar year 1987. An informal investigation was conducted on February 3, 1987 by the Chairman of the Commission and he advised the Commission on June 29, 1987 that the Parties were at impasse on the existing issues as outlined in their final offers.

The Parties were directed to select an Arbitrator and the undersigned was so selected. He was appointed July 23, 1987. A hearing was scheduled and heard on September 24, 1987. Post hearing briefs were submitted and exchanged November 9, 1987.

II. ISSUE AND FINAL OFFERS

The only issue which remained unresolved between the Parties was the amount wages should be increased for the year 1987. The City proposes that wages be frozen in 1987. Along

with this they make a commitment that no layoffs will be made. The Union proposes all rates on the salary schedule be increased by 3%.

The Parties did stipulate (resolve) to a number of matters. They include (1) the language governing the format for the Wisconsin Retirement System payments and as such is not a cost item in this negotiation, and (2) revisions to the group health insurance program which ultimately will provide a cost containment program which arguably could result in some stabilization of health insurance rates. In addition, the City and the Association agreed to add a chiropractic coverage with a \$250 per person per year maximum. The Good Attendance Bonus Program increased the earning rate of the credits and also increased the value of each credit.

III. ARGUMENTS OF THE PARTIES

A. The City

1. Interest and Welfare of the Public/Ability to Pay

The City believes that this criteria would best be satisfied if employees in the city work force received a uniform wage and benefit improvement for the period covered by this contract. This argument rests on the fact that the wage freeze that is set forth in the City's final offer is consistent with the negotiated voluntary settlements reached with other certified collective bargaining units having the right to interest arbitration. This represents a total of 218 employees or 82% of the City's unionized work force. In addition, the City Council imposed a freeze on all other nonrepresented positions that are governed solely by the City Council. They also note that going back as far as 1980 there have been consistent increases between all the City's bargaining units and non-represented employees. They contend these figures clearly support the argument that the City has consistently attempted to maintain an internal pattern of equity in its settlement with City employees.

Regarding their ability to pay, they direct attention to the testimony of the City Manager. He notes that based on revenue shortfall they projected a loss or budget gap of \$2.1 million by 1989 along with a 41.07% increase in the tax levy over a three year period. Also noted was the fact the Council, in an attempt to deal with the revenue shortfall, took drastic action illustrated by its phasing out of the vast majority of its public health programs and after significant reductions in other accounts finally decided it could not budget money for wage increases in 1987.

They point to additional data they believe are demonstrative of their limited ability to pay. For instance, while the City ranks fourth in population, it ranks the lowest of

the comparable cities based on per capitalized valuation. Hence, among communities in its geographic region it has the least ability on a per capita basis to raise taxes to support its local government. The City asserts as well that it has a modest ability to generate revenue. The City consistently ranked fifth in its tax effort ratio for all years 1982 through 1986. In salary comparison as shown on City Exhibit 19.1, the City ranked either fifth, fourth or last. Its ranking of last in 1987 would be caused by the award of the City's wage freeze but when viewed in terms of tax effort, the City maintained its ranking of fifth.

2. Comparisons to Other Employees

In this regard, the City believes internal comparisons are more important than comparison to police employees outside the City. In fact, they consider the internal comparisons the most significant factor.

They emphasize again that in late 1986 and early 1987, the City has been able to negotiate voluntary settlements which incorporate the wage freeze with bargaining units representing 218 of its 266 unionized employees. Those units range from a small unit of two employees to a large unit of 150 employees. The Police Association, with its membership of 48 employees, is the third largest unit. The City believes that should this unit prevail in this arbitration case, that irreparable harm will be done to the collective bargaining process in the City of Fond du Lac. It believes that an award in the Association's favor would discourage collective bargaining on the part of all units and result in a round of arbitration cases involving the 1988 contract year. They cite at length many arbitration awards which demonstrate arbitrators' preference for internal settlement patterns.

Even when external comparables (they propose a different set than the Union) are reviewed, they note there is a consistent theme whether one is viewing the Police Association or employees in the Department of Public Works or in the Fire Department. The theme is that the City of Fond du Lac has consistently ranked in the fifth, sixth or seventh slot among the comparables. This ranking has resulted from a long history of voluntarily bargaining contracts. Additionally, the impact of the zero wage increase for 1987 is essentially the same on all groups of city employees. Where they had ranked either fifth or sixth among the comparable communities, their rank is diminished to last place due to the wage freeze. The City therefore believes that this factor reinforces the necessity for the Arbitrator to rely on the internal comparable situation and preserve the internal salary relationships.

Last, they argue the internal salary relationship between this unit and the supervisory police Association is significant. It is their opinion the salary relationship of the command people to the rank and file would be substantially

diminished if the Arbitrator were to award for the Union. Supervisory personnel have already had their wages frozen for 1987 and a granting of any increase would diminish the salary differential and hence the incentive for people to become supervisors.

3. Cost of Living

The City believes the appropriate cost of living criteria to be referenced here would be the 1986 data for the United States Urban Wage and Clerical Workers or the Small Metro Area Urban Wage and Clerical Workers. In either case, the City submits their offer more closely approximates the changes in the consumer price index than does the demand of the Union.

B. The Union

1. Interest and Welfare of the Public/Ability to Pay

In the Union's opinion, there can be no doubt that a wage freeze under current economic conditions would have adverse impact on the welfare and well-being of members of this bargaining unit which, in turn, would have the potential for leading to an overall negative impact on the interests and welfare of the general public. Additionally, depriving police officers of a pay increase will cause reduced spending power on the part of the officers. This will clearly impact negatively upon the economic interests and welfare of the City's business community. Because the City operates on tax revenue derived, in part, from that business community, such a taxing policy would likewise be negatively impacted by a wage freeze. Thus, the Union argues the Arbitrator should determine that the interests and welfare of the public would best be served by an award which grants the police officers of the City a 3% wage increase.

With respect to ability to pay, the Union suggests the testimony of the City Manager actually shows the City has the ability to pay. For instance, the City Manager testified that the City could easily bear the cost of the Association's offer through the exercise of its taxing authority. Moreover, because of existing vacancies within the police department, the City is in a position to have funded the requested pay increase out of the unit. Thus, the City testified that one of the reasons that it has not filled those existing vacancies is so that it might better bear the cost of an adverse arbitration award. Last, they note the City testified that there have been a number of cutbacks in City services. The payback on those cutbacks should reflect positively on the City's ability to bear the cost of the Association's offer. In addition, the wage freezes in other City Departments, as testified to by the City Manager and as revealed by the City's exhibits, shows that the City already

should have enjoyed substantial savings over what might otherwise have been expected to be normal increases in the City's operation costs.

2. Comparisons to Other Employees

The Union, unlike the City, believes external comparisons to other cities are of extreme importance. First, they believe their comparable grouping to be more appropriate, although they note the City's proposed set of comparables does not differ markedly from that proposed by the Association. The difference between the two proposed groups of comparables is that the City would include Manitowoc in its list of comparables while excluding West Bend and Beaver Dam as proposed by the Association. They believe their group more accurately reflects the labor market.

The Union believes its wage offer is more appropriate since it would allow it to maintain its historical position with respect to the list of comparable communities. They present data showing that since 1980 wages of Fond du Lac police officers have ranked either seventh, in 1980, or more recently sixth out of 8 on the list of comparable communities. They draw attention to the fact that the City's offer would drop Fond du Lac police officers back to the seventh position on the list of comparables proposed by the Association. Conversely, the Association's offer would maintain its sixth place on the list of comparables proposed by the Association.

They also examine average salaries of top patrolman noting the Association's offer would demonstrate a slight improvement in its historical ranking in dollars below the average of the dollars paid to top patrol officers in the wage comparison grouping. On the other hand, the City's offer would drop the top patrol officer's salary to more than \$1,000.00 below the average of the comparability group, or nearly three times its current ranking and nearly double the dollar difference which existed in 1980, the point at which Fond du lac officers ranked the lowest on the group of comparables proposed by the Association. Also, in terms of the dollar amount and percentage amount received by employees in the comparables, the Union submits it would rank fifth and the City's offer last.

3. Cost of Living

The Association prefers to use the Consumer Price Indexes which were released most recently with respect to the hearing date. They suggest that if one examines the small metro area CPI one can see that in the first seven months of 1987 there was a 4% or greater increase in the indices. Thus, were the Arbitrator to award the City's wage offer of 0%, it would have the effect of thrusting the police officers even further backward in economic terms. Even if the Arbitrator were to adopt the Association's proposal of a 3% wage increase, police officers would lose ground with respect to the CPI. This is true

to an even greater degree when looking at the national CPI. For instance the United States CPI, on August 21, 1987, had risen 3.9% whereas in January it had increased only .7%. Notwithstanding the difference in the monthly CPI's, even a .7% national increase would disadvantage the police officers if the City's offer of 0% was accepted by the Arbitrator. Thus, they argue that there is no compelling reason why the City's police officers must be unwilling participants in an economic cutback which does not seem to be reflective of national trends.

4. Overall Compensation

The Association also compares the patrolman wages in Fond du Lac to other cities on total compensation basis. They calculate a total compensation hourly rate by adding retirement benefits, clothing allowance, longevity and shift differential and dividing it by the annual hours adjusted for vacation, holiday and personal time off. Based on these calculations they conclude while the overall compensation rate of either offer would leave Fond du Lac police officers in the same relative position with respect to the remaining communities in the comparable group, the Association's offer with respect to patrolmen, who constitute the bulk of the membership of the bargaining unit, would leave those patrolmen almost exactly at the average for patrolmen in the comparable grouping. Conversely, the City's offer for patrolmen would leave those patrolmen dramatically below the average for patrolmen among the comparable groups and would compensate investigators only slightly above the average for all of the comparable communities.

5. Other Factors

The Union asked the Arbitrator to consider a number of other factors including (1) the fact both offers will result in a negative fiscal impact on the City. The City's offer will result in a net reduction of 6.5%, whereas the Association's offer would result in a net reduction of 3.9%. (2) The fact that the Association offer would continue the substantial positive differential between city police and county deputy sheriff in Fond du Lac County. (3) The fact the city, the county and school district gave employees at the jointly operated SCCOF center raises between 3 and 5%. (4) That firefighters in the City have been the recent beneficiaries of a recalculation of hours worked pursuant to the Fair Labor Standards Act (FLSA). Although there was no precise testimony as to the actual effect on firefighters' salaries of the FLSA, it was nonetheless clear that the firefighters would receive a net pay increase for 1987, notwithstanding the nominal wage freeze. (5) The fact no layoffs were proposed in 1987. (6) The fact that the School District of Fond du Lac granted between a 6 and 6-1/2% wage hike to its employees and that the County overall offered between 3% and 4% salary increases to its employees.

IV. OPINION AND DISCUSSION

This case boils down to which of two comparisons deserve the most weight. Both involve comparisons to other groups of public sector employees. The Union stresses the importance of comparisons to other policemen in comparable cities (external comparables). On the other hand, the City stresses the importance of comparisons to its other public sector employees although they provide different services (internal comparables).

Often in arbitration the evidence on internal comparables and external comparables is consistent. In other words, the internal pattern of wage increases often closely, if not identically, approximates the external pattern. However, there are unusual situations when the internal pattern and external pattern conflict and are substantially divergent.

Arbitrators, when confronted with such situations, have taken a fairly uniform approach. It has been stated before:

" . . . where a consistent internal pattern of wage rate increases can be shown in the contract year, this internal pattern should be given controlling weight unless the Union can demonstrate that acceptance of the employer's offer would result in significant disparities in wage rate levels relative to the external comparison. In other words, consistent internal comparisons, even though they involve dissimilar employees, should be adhered to unless the wage rates of the bargaining unit are just too far out of line. There are very strong equity considerations which arise when an internal pattern is established. Instability in bargaining, dissention and morale problems can occur when one group is treated differently than the others."
(Decision No. 24319)

It could be added, within the context of this case, that the strength of the inferences to be drawn from the internal pattern are enhanced when there has been a history of consistent settlements among the internal bargaining units.

One of the other reasons the internal pattern is particularly important in this case is the fact that a wage freeze is involved. This is not a situation where the internal pattern is 3% and the external pattern a little bit higher. Where the other bargaining units comprising over 80% of the Unionized employees accept a wage freeze in the face of pleas of financial difficulty on the Employer's part, the Arbitrator has to pay even more careful attention to the internal pattern than usual. In short, the case to break the internal pattern would have to be even stronger and more compelling than normal.

However, if it is established that acceptance of the internal pattern would cause wholly unreasonable and

unacceptable wage relationships for the Fond du Lac police relative to police in comparable cities, the internal pattern, as important as it is, would have to give way.

In making such determinations, the impact of the internal pattern on mere external rank is relatively unimportant. What is more important is the impact on the actual wage levels (rates) themselves. It must be asked whether imposition of the internal pattern would cause so much erosion that the employees would be too far behind in terms of wages and overall compensation.

Accepting for the sake of argument that the Association's comparables are most appropriate, the wage and total compensation relationships between Fond du Lac and the comparable average in 1987 for patrolmen are as follows:

	<u>Annual Wages</u> <u>(Difference)</u>	<u>Hourly Total Compensation</u> <u>(Difference)</u>
Average	\$25,621	\$17.14
City Offer	24,603/(\$1018/-3.97%)	16.68/(-.46/-2.68%)
Union Offer	25,341/(-280/-1.09%)	17.16/(+.02/.1%)

In evaluating this data it is the Arbitrator's conclusion that the impact of the Employer's wage freeze would not, given all the facts and circumstances of this case, cause an unacceptable degree of disparity. On the wage rates alone the Employer offer would only cause the patrolman's relative wage to be behind less than 4%. This really isn't a significant difference against the average. Moreover, it is mitigated by the fact that while the employees have had to live with a below average wage rate they have in the past enjoyed a slightly above average total compensation. For instance, under the Employer offer, the impact of their offer only puts the employees 2.68% behind the average on a total compensation basis. Other mitigation comes in view of the fact the City police officers will still continue to out-earn their counterparts in Fond du Lac County by a long shot and still out pace on a total compensation basis two other comparable cities.

It must also be noted that under the Union offer some catch-up, albeit modest, (1/2%), would occur. This doesn't seem to be the appropriate year for catch-up and the fact the Union seeks catch-up weighs against their offer. There isn't apparently any recognition on their part as to the financial realities faced by the City.

The Arbitrator doesn't take the impact of a wage freeze lightly. No doubt it involves a sacrifice. However, all the other unionized employees of the city have voluntarily agreed to make the same sacrifice and the facts do not suggest their burden is any less than that which will be shouldered by the

police association under the Employer's offer. There isn't any reason compelling enough in this record to justify any other decision. Not to expect the police to accept the same wage freeze as others would be unreasonable. Fond du Lac has always been a follower in wage rates perhaps only because they are at the average in total compensation.

The Union did appeal to the public welfare, the cost of living and argue the City had the ability to pay for their offer. First, with regard to the cost of living regardless of which index is used the increases aren't dramatic. Insofar as the welfare of the public and the ability to pay considerations, the Arbitrator must accept in the face of the internal settlements and the evidence on the City's financial condition that there are very real problems. The acceptance of a wage freeze by the other two units forms a collective consensus as the financial situation of the City. This conventional wisdom is very objective and convincing evidence of what properly defines the public interest and welfare for the purposes of these final offers. There may not be a strict inability to pay and the budget impact of either offer may be nill, however it is impossible not to conclude that 1987 in the City of Fond du Lac is a time for restraint on the part of all concerned. It is significant as well that this restraint is not falling solely on the backs of the employees. The City has made earnest efforts in other areas too.

AWARD

The final offer of the City is accepted.



Gil Vernon, Arbitrator

Dated this 28th day of December, 1987 at Eau Claire, Wisconsin.