

RECEIVED
NOV 03 1989

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

* * * * *

| | | |
|---|---|----------------------|
| * In the Matter of the Petition of | * | * |
| * WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LEER DIVISION | * | * |
| * For Final and Binding Arbitration | * | Case No. 276 |
| * Involving Law Enforcement Personnel | * | No. 40447 MIA-1320 |
| * in the Employ of | * | Decision No. 25636-A |
| * CITY OF APPLETON | * | * |
| * (POLICE DEPARTMENT) | * | * |

* * * * *

APPEARANCES

On Behalf of the Employer: David Bill, Director of Personnel

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

I. BACKGROUND

On April 13, 1988, 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 non-supervisory law enforcement personnel for the years 1988-89. An investigation was conducted on June 20, 1988, by a member of the Commission's staff; and the Investigator advised the Commission on August 17, 1988 that the Parties were at impasse on the existing issues as outlined in their final offers.

The Parties were furnished a panel of arbitrators by the Commission and ordered to select one to serve. The Parties selected the undersigned and on September 12, 1988 appointed the Arbitrator.

A hearing was scheduled for January 5, 1989. Prior to conducting the arbitration hearing the Parties asked the Arbitrator to act as a mediator to explore the possibility of a voluntary settlement. Eventually those efforts proved futile and an arbitration hearing was conducted. The Parties presented evidence in support of their positions and reserved the right to submit post hearing briefs and reply briefs. The exchange of the briefs was completed on February 16, 1989. The City filed a reply brief which was received March 1, 1989.

II. FINAL OFFERS AND ISSUES

The only issue before the Arbitrator is the amount of the wage increase for 1988 and 1989. The offers are as follows:

| | <u>1988</u> | <u>1989</u> |
|-------|------------------------|------------------------|
| City | 3% 1-1-88 | 3.5% 1-1-89 |
| Union | 2% 1-1-88 2% 7-1-88 | 2% 1-1-89 2% 7-1-89 |

III. ARGUMENTS OF THE PARTIES

A. INTEREST AND WELFARE OF THE PUBLIC

1. The Union

The Union notes that the cost impact of the Union's 2% and 2% split increase is the same as the Employer's 3% proposal. Beyond this the differences in 1989 are slight.

The total cost difference would be a total of \$12,000. Thus, they contend that it is difficult for the City to argue it is not able to meet the Union's offer. In fact, they note the City made no arguments whatsoever to suggest that the City was unable in any way to meet the increased costs presented by the Association's offer. Therefore, they argue that the interests and welfare of the public and the financial ability of the unit of government to meet the costs of the offer do not form any basis for deciding that the City's is superior in any way to the Association's final offer.

2. The City

The City acknowledges that they have not argued that it couldn't meet the cost of the Union's offer. However, they argue that the fact that the City could pay for it certainly does not translate directly into a conclusion that they should.

Regarding the public interest, they note that all bargaining units of the City, except Police and Fire, reached voluntary agreement on two-year contracts at 3% for 1988 and 3 1/2% for 1989. It is their position that it would not be in the public interest to grant the Association, through arbitration, an increase greater than the pattern that has been established with other City bargaining units through voluntary settlements. This would have a negative impact upon the City's credibility with other bargaining units and would likely reduce the potential for reaching voluntary agreements with any of those units in the future. Such a result is not in the public interest.

B. COMPARISONS OF THE WAGES, HOURS AND CONDITIONS OF EMPLOYMENT OF THE EMPLOYEES INVOLVED IN THE ARBITRATION PROCEEDING WITH THE WAGES, HOURS AND CONDITIONS OF EMPLOYMENT OF OTHER EMPLOYEES PERFORMING SIMILAR SERVICES AND WITH OTHER EMPLOYEES GENERALLY.

1. The Union

The Union notes the Parties have agreed upon a group of seven cities for comparability purposes. Based on wages in these cities, the City's proposal would maintain Appleton officers in their fifth place rank, as in their 1987 agreement. In contrast, the Association's proposal, in each of the two years, would move them to fourth place. This advancement is insignificant since, relative to the wage leaders, they are losing ground. For instance, the previous fourth place finisher (Oshkosh), in both 1987 and 1988, will have leaped over Appleton by some \$90. In 1987 the salary differential was \$245 in favor of Oshkosh. The City's 1989 proposal would leave Appleton officers trailing Oshkosh by \$516, in contrast to the Association's proposal, which would leave the Association members still trailing Oshkosh in 1989 but by only \$90.

The Union also believes it weighs in favor of their offer that the City's offer would, on a percentage basis, be one of the lowest in the comparability group. Based upon the data available for 1988 and 1989, three of the four cities which were higher than Appleton in 1987 would have higher percentage increases in the two-year period of 1988 and 1989 than would the City's employees, even though the City's employees are starting from a lower base salary. The Union

notes that the City calculated its proposal is to be 6.5%. This compares to the 7.5% cost under the Union's offer.

2. The City

The City acknowledges that under their offer Appleton ranks fifth in base pay when compared with the other cities. However, when looking at the rank of other bargaining units among the comparables, this is not unusual for employees of the City of Appleton. In fact, when compared to employees in the comparables, the police actually fare better than other Appleton positions. While the relative rankings are quite similar, the percentage difference between Appleton's pay and that of the first and second ranked cities is much smaller for police than for other positions.

The Employer notes that the Union has attempted to justify its split increase (one which also exceeds the internal pattern) on the basis of catch-up. First of all, the City argues that the evidence shows that the base pay for Appleton Police Officers exceeds the average of that of the comparables. Secondly, they argue that the present rate of pay was arrived at through a series of collective bargaining agreements which were negotiated between the Parties. This is significant in view of how other Arbitrator's have viewed catch-up situations. They cite Arbitrator Nielsen who stated that:

"Inevitably, some group of teachers will be below the average and another above. The parties have negotiated that placement. Unless the disparity is so great as to render salaries uncompetitive, these past salary agreements should not be open to relitigation in the guise of a catch-up."

Regarding the size of the rate increase in other cities, they think it is important to look at 1987, 1988, and 1989 settlements since there are overlapping two-year and three-year agreements involved. When the data is reviewed they suggest that the City's offer is preferable, particularly over the three years.

C. COST OF LIVING

1. The Union

Even the Union's offer would lag behind the CPI. When compared to the CPI at the close of 1987 (4.4%), the Association's offer will result in a net loss against inflation. Projections into 1989 of a CPI of 5-6% will result in even more loss. Even by comparison, the Association's "lift" of 4% in each year would lag behind that CPI projection. The City's offer would trail even more dramatically.

2. The City

The City believes their data on the CPI is more reliable than the Union's. They also think it is important to compare the CPI to the total package increase rather than just the wage package. Benefits are a significant portion of the package and can't be ignored. For instance, the City has agreed to pay the full 25% increase in health insurance. When total costs are taken into consideration they slightly exceed the CPI figures. The Union's proposal goes far beyond those figures, especially when one considers the impact of the split increase upon subsequent years. It is more important in assessing the cost of living to look at other voluntary settlements which are more consistent with the City's offer.

D. THE OVERALL COMPENSATION RECEIVED BY THE EMPLOYEES IN THE BARGAINING UNIT, WHEN COMPARED TO THE COMPARABLE GROUP, ARGUES THAT THE ASSOCIATION'S FINAL OFFER SHOULD BE SELECTED BY THE ARBITRATOR.

1. The Union

The Union submits that the respective data on overall compensation supports the Arbitrator selecting the Association's final offer. For instance, the Appleton vacation days lag below four other departments. In terms of holiday compensation, it is evident that with the lone exception of Menasha, Appleton trails all other departments in the number of holidays that are available to its officers. In terms of longevity, Appleton eliminated longevity in 1976, except for 15 of 65 officers who were "grandfathered". By contrast, five of the comparable jurisdictions continue to pay a longevity component to their officers. Only Menasha and Sheboygan have the same level of longevity compensation as Appleton. It is also their belief that they lag behind in other benefits such as sick leave, shift differentials, uniform allowance and life insurance.

2. The City

Based on their exhibits the City asserts (A) that Appleton ranked third among the comparables in total compensation in 1987. They would maintain that ranking in 1988 and 1989 under the City's proposal, and would move to second in both years under the Association's proposal, and (B) that Appleton's hourly rate based upon total compensation ranked fourth among the comparables in 1987. The City's offer would maintain that ranking in 1988 and 1989 while the

Association's proposal would move them to third in 1988 and to second in 1989.

E. SUCH OTHER FACTORS, NOT CONFINED TO THE FOREGOING, WHICH ARE NORMALLY OR TRADITIONALLY TAKEN INTO CONSIDERATION IN THE DETERMINATION OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT THROUGH VOLUNTARY COLLECTIVE BARGAINING, MEDIATION, FACT FINDING, ARBITRATION OR OTHERWISE BETWEEN THE PARTIES, IN THE PUBLIC SERVICE OR IN PRIVATE EMPLOYMENT.

1. The Union

In terms of internal comparables, the Union believes it is significant that Arbitrator Mueller broke the so-called internal pattern when he ruled for the Firefighters recently (3.5 and 3.5%). They also find it significant that the department heads in Appleton find themselves consistently at the higher levels in the comparability group. In particular, within the Police Department, the Appleton Police Chief and the Appleton Deputy Police Chief have salaries in excess of all their counterparts in the comparable districts.

Other factors that the Unions asks the Arbitrator to consider include: (1) The fact that 19 sergeant-level positions have been lost to the bargaining unit since 1981 causing the duties of those persons, who are more highly compensated than are patrolmen, to be assumed by patrol officers. The net result of this, of course, has been a savings over the years of approximately \$40,000 per year. (2) The fact that a portion of the Police School Liaison Officer costs have been absorbed by the Appleton Area School District, at a further savings to the City. (3) The fact that Appleton ranked tied for third as being the most efficient overall provider of police services. Only Waukesha

and Janesville ranked higher, whereas all of the comparable communities ranked lower. (4) The fact that the Appleton Police Department has the fewest officers per capita of not only the seven comparable communities, but also of eight additional departments in Wisconsin with size or composition similar to Appleton. (5) The fact that there has been a steady increase in incident calls during recent years, and (6) The robust economic health of the City.

2. The City

The City presents data which demonstrates that two-thirds of the represented employees of the City voluntarily settled for 1988 and 1989 at a level identical to that of the City's final offer in this case. This, they believe, favors the City's offer. They note Arbitrators have given great weight to settlements between an employer and its other bargaining units. Thus, they argue, no justification exists in this case to break from that pattern.

They acknowledge that the Firefighters won an arbitration case at a slightly higher level than this pattern. However, they argue that a review of that decision shows that the cases are not similar. The relative ranking of the Firefighters dropped from fourth to fifth in spite of the award in favor of the Union. Moreover, the level of additional compensation available to Appleton Firefighters for education and longevity is such that it depresses rather than enhances their comparative ranking. In contrast, acceptance of the City's position in this case does not

disturb the relative ranking of the Police. Additionally, they stress the level of additional compensation available to Appleton police officers enhances their comparative ranking and far exceeds that which is available to Appleton Firefighters.

IV. OPINION AND AWARD

In municipalities that have a number of different bargaining units the internal pattern of settlements -- if one exists -- deserves a great deal of attention. This is well established and the reasons have been well expressed by Arbitrators across the state. A pattern of consistent increases agreed to by various bargaining units is a collective consensus of the appropriate influence all the various statutory criteria should have as a whole relative to the particular economic circumstances in any city. It really is a good yard stick for the proximate mix of all the factors as it subsumes all of them. As such, the internal pattern is more important than any single other criteria.

In this case, 13 separate bargaining units (12 represented by the Teamsters and 1 by AFSCME), constituting 250 of the 380 or 65% of the unionized employees in the City, agreed to a 3% and 3.5% increase. Thus, they found this appropriate in view of the cost of living in Appleton, in view of the City's ability to pay, in view of the interest and welfare of the public and in view of what comparable cities have received. The considered judgement of 250 employees who work, and probably live, in Appleton each and

every day as to what is an appropriate wage increase is very instructive to an Arbitrator who isn't as intimately familiar with the real cost of living in Appleton and the real interest of the public and the real economic circumstances in Appleton.

In addition to the collective wisdom that is indicated by a widespread pattern, there are other reasons internal comparables deserve significant weight. Equity and stability concerns are raised by such a pattern. Arbitrator Fleischli expressed it this way in City of Waukesha, (Dec. No. 21299):

"On an issue such as the appropriate across the board wage increase which should be granted, internal comparisons (i.e., increases granted to other represented employees of the municipality) should, in the view of the undersigned, carry great weight, regardless of whether the bargaining unit consists of firefighting or law enforcement personnel (subject to the provision of Section 111.77 of the Wisconsin Statutes) or professional, blue collar, or white collar workers (subject to the provision of Section 111.70(cm)6. Wisconsin Statutes). Municipalities understandably strive for consistency and equity in treatment of employees. Any unexplained or unjustified deviations from an established pattern of settlements with represented groups, whether achieved through negotiations or an arbitration award, can be disruptive in terms of their negative impact upon employee morale and the municipality's collective bargaining relationship and credibility with other labor organizations."

Certainly, internal settlements shouldn't be blindly adhered to. For instance, sometimes there are too few internal settlements to constitute a pattern or the settlements might be with minor groups of employees. In this case, however, the pattern is fairly widespread and was accepted voluntarily by all except the Police and Firefighter unions. As noted in the arguments presented by the Parties, the

Firefighters succeeded in breaking the pattern to the extent of gaining an extra 1/2%. Yet, in this Arbitrator's opinion, the Mueller arbitration isn't significant. The difference there was only 1/2%. The cost difference here is more than 1/2% and the difference in ending rates will be 1-1/2%. Thus, there is no telling what Arbitrator Mueller would have done if the differences in the offers before him were as great as the offers here. In fact, it could be argued that the Mueller award favors the City's final offer to the Police since it is closer to the Firefighter offer.

A significant consideration in Arbitrator Mueller's decision was the fact the City's offer would serve to widen the gap between Appleton and Green Bay, Neenah, Menasha, and Oshkosh. Indeed, Arbitrators in general have held where a Union is seeking more than the internal pattern they must justify it and a most important, if not the most important, consideration is the impact of the offers on external wage relationships. Arbitrator Yaffee stated it this way:

"In such cases it is the undersigned's opinion that an internal employer settlement pattern should be given substantial weight unless the record demonstrates that adherence to such a pattern will result in conditions of employment which are substantially out of line with conditions existing in external comparable employer-employee relationships." (City of Menomonie, Dec. No. 21962, B. Yaffe)

Evidently, Arbitrator Mueller found adherence to the internal pattern would cause substantial disparities in the Firefighters units.

The police unit must carry this same burden. They must establish that adherence to the internal pattern would cause

their position, relative to external comparables, to erode. Moreover, the erosion must be significant and go beyond historical proportions.

Evidently, Arbitrator Mueller also found that certain Fox Valley cities deserved special weight as comparables isolated from Kaukauna, Fond Du Lac, Sheboygan, and Manitowoc.

In this case no one has argued that Green Bay, Neenah, Oshkosh and Menasha as a group should be given preeminent status over other cities among the larger group agreed to be comparable by both Parties. This approach by Arbitrator Mueller was not particularly justified, at least by the record as reflected in his Award. In this Arbitrator's opinion, all the cities in the comparable group must be considered and there is no particular reason to attach any particular significance to any particular city among the comparables. They are the comparable group and there must be a basis to give any individual or subset of cities more weight than the group as a whole. There is none argued or apparent in this record. Therefore, the Union must justify breaking the internal pattern on the basis of their relative position to all of the comparables.

While Appleton ranks 5th of 8 in base pay in 1987, they were still slightly above average in salaries. The average yearly salary was \$25,744 and the base pay in 1987 in Appleton was \$25,980. On a total maximum compensation basis they fared slightly better. The average was \$27,448 and Appleton stood at \$28,107 (rank three).

It is difficult to justify a catch-up argument when a bargaining unit finds itself above average. Although it is recognized that even positive differentials do erode if wage increases don't keep up with the comparables.

What was the average wage increase in the comparables? The wage levels changed on average in 1988 by 3.41%. The Union proposes to change their wage rates by 4% while limiting the cost to 3% in 1988. Yet, the impact of a four percent increase is felt the next year when the 1-1-89 increase is applied to rates that are 4% higher than they were the year before. The average wage increase in 1989 in the comparables was 3.38% and for the two years was 6.76%. This is 1/4% above the City's offer and 1 1/4% below the rate change under the Union's offer and approximately 1/2% below the short term cost of the Union package.

This seems to favor the City, but deeper digging is necessary to see what happens to the overall wage level relationship. In other words, (1) would the police officers in Appleton be any worse off, relatively speaking, in 1988 and 1989 than they were in 1987, and (2) if they are, is the change in their relative position significant enough to justify breaking the internal pattern. A mere difference isn't sufficient in looking at this question. Overall compensation becomes relevant as well.

As noted, in 1987 Appleton was above average +238 or .9% above the average. There would indeed be some erosion in this slight positive differential if the City's offer was accepted. Appleton's base compensation would be only +31 or

.1% above the average in 1988 and +185 or .6% above the average in 1989. In contrast, there would be advancement under the Union's offer. They would be above the average +302 or 1.1% in 1988 and +611 or 2.2% above the average in 1989.

A similar erosion would occur even if there was some reason to look at only the wage leaders. Green Bay is not settled for 1989, so looking at Neenah, Menasha and Oshkosh, (not just Oshkosh as the Union focused on), if the City's offer were accepted it would allow the officers to slip from -1.2% (\$325) behind the average of these 3 cities in 1988 and to -1.8% (\$522) behind in 1989. This means they would slip another \$197 or .6% behind the wage leaders under the City offer. At the end of 1989, the officers, under their offer, would be behind -.3% (\$112).

The next relevant consideration is whether this erosion is significant enough to justify upsetting the internal pattern. It is the judgement of the Arbitrator that it is not. First of all, it must be recognized that the fact that Appleton was 1.2% behind the leaders is a product of years of voluntary collective bargaining. This is in addition to the fact a 1.2% differential isn't all that dramatic and isn't aggravated by fringe benefits levels that are less than average. In fact, the fringe benefit package in Appleton is quite competitive. While they don't enjoy longevity they do have a liberal educational benefit which exceeds all other comparables except Fond Du Lac and exceeds several others even when added to the longevity benefit in these other cities.

A .6% or \$197 increase in Appleton's negative position relative to the wage leaders at the end of 1989 isn't significant enough. Nor is an overall negative differential of less than 2% to the wage leaders enough to justify the instability it would create, especially considering that when compared to all the comparables Appleton is still above average. Fair and consistent treatment of all the various Unions in the City would be difficult if the internal pattern could be broken every time a Union's external relationships shifted over a mere .6% of its historical level. There are always bound to be short-run minor shifts from year to year in these relationships due to an infinite variety of circumstances. For instance, Oshkosh had a 3.8% increase in 1989 because of the elimination of longevity and educational benefits. This suggests that this higher than normal increase was a one-time occurrence and its' effect would tend to be minimized over time.

The bottom line in this case is that the differentials involved in this case for this time period aren't significant enough when weighed against the negative impact on the stability of bargaining and over all fairness and consistency. To award for the Police would do even more damage in this regard than the Firemen case since there was only a 1/2% difference there.

The Arbitrator acknowledges the Union's arguments on efficiency, increased calls, citizen officer ratios. However, it is difficult to say that other employees in the City perform in such a way which is not superior in many respects to other

employees in comparable cities. It is also difficult to say that these factors weren't also given consideration when the Parties voluntarily agreed to wage levels which were historically behind the wage leaders.

All things considered, the internal pattern is a strong indicator as to the appropriate increase in Appleton for municipal employees in light of all the statutory criteria. The erosion in the external relationships under the City's offer are not compelling enough to justify breaking the pattern.

AWARD

The final offer of the City is accepted.



Gil Vernon, Arbitrator

Dated this 20th day of April, 1989 at Eau Claire, Wisconsin.