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IN ARBITRATION BEFORE  
ROBERT J. MUELLER

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In The Matter Of The Interest  
Arbitration Between

TEAMSTERS UNION  
LOCAL 695

and

TOWN OF MADISON  
(POLICE DEPARTMENT)

DECISION & AWARD  
Case 30  
No. 39866  
MIA-1286  
Decision No. 25741-A  
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APPEARANCES:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman,  
S.C., by MR. WILLIAM S. KOWALSKI, for the Union.

Axley Brynelson, Attorneys at Law, by MR. MICHAEL J.  
WESTCOTT, for the Employer.

BACKGROUND

On November 28, 1988 the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator to resolve the impasse between the parties by selecting the total final offer of one or the other parties and issue a final and binding award pursuant to Section 111.77(4)(b) of the Municipal Employment Relations Act. A hearing was held on January 25, 1989 in Madison, Wisconsin. The parties were present and were afforded opportunity to present such documents and testimony as they deemed relevant. Post hearing and reply briefs were filed in the case.

THE FINAL OFFERS

Between the time that each party submitted their final offers, agreement was reached on a number of items contained in their respective final offers. At the start of the hearing in this case the parties amended their respective final offers so as to present the following three issues for resolution in this proceeding. The three issues remaining

consisted of three items contained in the Union's initial final offer and are the following:

1. Amend Section 1 of ARTICLE VIII - HOURS OF EMPLOYMENT<sup>0</sup> AND WAGES to read as follows:

Employees shall report to work fifteen (15) minutes before the time scheduled for the start of their shift, both in the case of a regular and an overtime shift, for the purpose of being briefed by the outgoing shift. When the incoming shift has been properly briefed the outgoing shift may be released from further duty; however, no overtime shall be paid unless said briefing requires more than fifteen (15) minutes. It is understood and agreed that proper and complete briefing is essential. (underlined portion is new language.)

2. Amend the second paragraph of Section 1 of ARTICLE IX - HOLIDAYS to read as follows:

Employees who have any of the above holidays off shall not be required to work on the holiday unless agreed to by the employee or in the event of an emergency. Effective May 30, 1988, employees who work any of the above days shall receive eight (8) hours pay at time and one-half (1 1/2). Such pay shall be in addition to earning the holiday. (underlined portion is new language.)

3. Dental: Employees pay all premium costs; the Town provides group status and provides administrative services. (new provision)

#### DISCUSSION

##### ISSUE #1 - SHIFT CHANGEOVER

The Union confirmed their agreement with the Town that there is a need for officers to report early so as to be briefed by the officer going off duty, and they confirmed their position that they did not request overtime pay for the fifteen minutes that an officer is required to report in early.

They argue the Town's contention that the Union's proposal should not be accepted because it would lead to abuse by officers and result in inadequate briefing, is purely speculative and not supported by any evidence .

The Union also argues that the Town's insistence on requiring each and every officer to report in fifteen minutes before the start of his or her regular shift and

work a full eight hour shift thereafter results in each employee donating fifteen minutes of overtime to the Town each day without being compensated therefore. Such arrangement also conflicts with the 8-hour work day provision of the contract.

The Union argues that its proposal is simply one that seeks fair treatment to the officers in exchange for their donating fifteen minutes of unpaid overtime each scheduled day to the Town.

The Town argued that the contract does not mandate an 8-hour work day as claimed by the Union. The contract simply provides that the Town, "shall endeavor to schedule eight (8) hour shifts..."

They contend there has been no evidence submitted that the past contract provision nor administration thereof has been a problem. The Union has not shown any need to change the status quo with respect to such provision.

The Town further argues that the Union's argument is inconsistent with evidence and testimony which they presented that was intended to show that the amount of crime present in the Town of Madison is greater than in surrounding municipalities. If that be the case, it would follow that a greater amount of briefing time would be required to adequately brief an incoming officer about the greater amount of activity presumably occurring on the prior shift.

The Town contends the fifteen minute briefing period is required so as to insure that the incoming officers will be fully briefed.

Finally, the Town contends the Union supplied no comparability data on this issue. The Town's research revealed that no other municipalities reviewed by them contained any contract language addressing the shift relief issue.

ISSUE NO. 2 - PREMIUM PAY FOR HOLIDAYS WORKED

The Union contends internal comparison to employees in the highway-clerical department favors the union's position. The highway-clerical department agreement provides for a number of holidays wherein the employees receive the holidays off with pay. If an employee is required to work on a holiday, that employee is paid straight time for the work, keeps the holiday pay he received under Section 1 of Article 10 and in addition is given compensatory time off. Such arrangement amounts to double time pay for employees who work a holiday. The Union's proposal is only for time and one-half for holidays worked.

The Union contends the Town's argument that the internal double time provision for the highway-clerical department employees is not meaningful as a comparison to police officers because highway-clerical department employees work holidays only in emergencies is without merit. It is rare that highway-clerical department employees in fact receive overtime pay for working on a holiday because they rarely are required to do so. The Union argues that such fact is not relevant for purposes of comparison because when they do in fact work they are paid at double time. Such employees enjoy time off on the celebrated holidays whereas police officers are required to work holidays on a regular basis, and are not able to enjoy time off on the holidays so as to be able to celebrate them the same as the highway-clerical employees. In addition the Town expects them to work at only straight time pay.

With respect to internal comparisons, the Union contends the highway-clerical department employees and the police officers have both settled on the same 3% wage increase for each of the two years of the agreement. The highway-clerical department employees, however, received in addition to such wage increase, an increase of \$10.00 in their longevity pay, from \$15.00 to \$25.00 annually. The Town has made no

comparable offer to police officers.

With respect to external comparables, the Union argues that the City of Fitchburg is the most comparable because of its close proximity, similar total populations, and similar propulation characteristics. In addition, the City of Fitchburg has been used most often by both the Town and Union as a comparable one to the other. Fitchburg pays its police officers time and one-half when they work holidays. The Union further argues that while the Town has presented comparison data from various other communities in the area they have presented no evidence that the parties have utilized such other municipalities as comparatives in the past. In addition, the Union argued that the Town of Madison is not comparable to the various other communities in the area because the Town of Madison police officers handle an unusually high number of calls in comparison to such other municipalities because of the high crime rate. Additionally, evidence presented by the Union revealed that the Town of Madison police officers perform a more complete range of police work than do officers in surrounding communities. The Town of Madison police officers work under more difficult and trying conditions than do officers in surrounding communities. Despite such facts, approximately half of the communities referred to by the Town as comparables do provide premium pay of time and one-half for officers working on holidays.

The Town pointed out that presently officers receive a day off with pay (the same as other Town employees) and additionally are paid straight time pay for hours worked on a holiday. The evidence was that the minimum staffing was six officers per holiday (two officers per shift for each of the three shifts). The Town contends the cost of such benefit would be approximately \$2,484.00 additional for each year of the two year contract. The additional cost of the longevity for the highway-clerical employees was

approximately \$720.00 per year. Additionally, the Town contends the police officers received a benefit in the prior contract of an eight year wage step that the highway-clerical employees did not receive.

The Town argues that the reason the highway-clerical employees receive holiday premium pay for work on holidays is because they are not scheduled to work such days. It therefore serves as compensation to such employees for coming to work on what otherwise would be their scheduled day off.

The Town contends that contrary to the Union's contention, the external comparables do not favor the Union's proposal. The Union has selected only those comparables that favor its position. Contrary to the Union's contention that the parties have not made comparisons to municipalities other than Fitchburg, the truth of the matter is that in a prior arbitration, the comparables listed by the Employer were utilized by the arbitrator. Those comparables consist of Monona, Fitchburg, Oregon, McFarland, Dodgeville, Sun Prairie, Middleton, Stoughton, Verona, Mt. Horeb and Waunakee.

The Town argues that the City of Fitchburg should not be entitled to special weight as a comparable as urged by the Union because it is much less comparable to the Town on the basis of assessed value and population than are a number of other municipalities.

The Town also argues that the number of calls and the crime rate have little, if any, bearing on the comparability issue. In the first place, the Union has not submitted any evidence to support its claim that the Town of Madison police officers perform a more complete range of police work than do officers in surrounding municipalities.

The Town presented into evidence what was marked Employer Exhibit #1 which contains comparability data. Such exhibit was for the calendar year 1988 and was corrected as to Sun Prairie. Said Exhibit is as follows:

OVERALL COMPARABLES

<u>Municipality</u>	<u>Population</u>	<u>Assessed Value</u>	<u>Dental Plan</u>	<u>Holidays</u>
Dodgeville	3,458	100,071,630	Yes	Straight Time
Fitchburg	14,000	389,884,930	No	Premium Pay
McFarland	4,607	128,000,000	No	Premium Pay
Middleton	13,284	424,821,922	Yes	Straight Time
Monona	8,700	308,229,880	No	Premium Pay
Mount Horeb	4,000	96,000,000	Yes	Premium Pay
Oregon	4,403	84,922,790	No	Premium Pay
Stoughton	8,684	169,000,000	Yes	Straight Time
Sun Prairie	14,300	323,232,880	Yes	P.L. Straight Time
Verona	4,220	135,179,420	Yes	Straight Time
Wausaukee	5,228	129,000,000	No	Straight Time
			<u>6 of 11</u> Provide Dental Plan	<u>1/2 of 11</u> Provide Premium Holiday Pay
Town of Madison	6,500	167,832,320	No	Straight Time

ISSUE NO. 3 - DENTAL INSURANCE

The Union argued that its' proposal is the most reasonable. It does not seek to have the Town pay any of the premiums. It proposes only that the Town deduct the premium amounts from the employees who participate in the plan and remit such premium amounts to the carrier. Such proposal would provide a valuable service and benefit to the employees and would result in no added expense to the Town.

The Town contended the Union ignored the matter of comparison to other municipalities because such comparison did not favor the Union's proposal. The City of Fitchburg,

which was advocated as the most comparable by the Union does not provide dental insurance in any form. Additionally, only about 40% of the comparables do provide for dental plans.

The Union has not established any compelling reason to change the status quo with respect to dental coverage.

#### FINDINGS AND CONCLUSIONS

The matter of assessing appropriate relative weight to comparables is a complex and somewhat subjective process. Various characteristics have been identified and applied by practitioners and arbitrators to the process of determining appropriate degrees of comparability of one municipality, school district, county or other taxing district to another. It also appears that each case contains elements or characteristics unique only to itself.

I find that of all the listed comparables in this case, all are relevant. The degree of relevancy, however, varies. It seems to me that the most relevant characteristics for comparative purposes in this case is proximity. That factor is most important because employees and taxpayers in those municipalities compete in the same labor market and shop in the same bread basket area. They are all influenced by their contiguous location to the City of Madison. I would place the municipalities of Fitchburg, McFarland, Middleton and Monona in such group. The factor of assessed value or size is not as meaningful. Size only tells one that a larger community has a larger tax base and more residents. Being larger, however, means it also has more people and where averages apply, they normally would have more and bigger problems. A more meaningful statistic in such area is one that shows the comparative tax burden on a taxpayer for law enforcement purposes in one community, be it larger or smaller, to the burden in the community involved in the case at hand. Such comparative analysis,



however is influenced by the amount of law enforcement activity in one community as compared to another, the amount of priority a community places upon law enforcement as compared to other services, etc.

In this case the assessed value data is the only data supplied and a relative burden per taxpayer cannot be determined. I cannot therefore attribute any great value on such data for purposes of determining comparability.

Returning to the same labor market area and bread basket area, I would find the communities of Sun Prairie, Waunakee, Oregon and Verona to be the next most relevant grouping. Such group would be followed by Stoughton and Mt. Horeb with Dodgeville being the least relevant.

The degree of relevance of one group over the other is not great. All of the listed comparables are influenced by the same proximity to the large City of Madison. Some are simply influenced somewhat more than others. I would find the differences in this case to be negligible and as such not measurable to the extent that any separate grouping might lead to final conclusions different than were one to consider data from all listed comparables as a whole.

I find it necessary in this case to consider the issues of Holiday premium pay and dental together. Reference to the data contained in Employer's exhibit #1 hereinabove set forth reveals that 6 of the 11 comparables provide premium pay for work on holidays. Six of 11 also provide dental insurance. It is not shown by the record evidence whether the six that provide dental insurance coverage do so by contributing part or all of the premium. The record evidence only shows which ones have plans provided in their contracts and which ones do not.

The data shows that only one of the comparables provides neither a dental plan nor premium pay for work on holidays, to wit: Waunakee.

For 1988 two provide both benefits to employees, to wit: Sun Prairie and Mt. Horeb. The evidence shows that Dodgeville joins in 1989 and provides both benefits.

All others provide one or the other benefit, but not both.

It is clear from the above data that The Town's final offer is supported only by comparison to Waunakee. The Union's offer is supported by two of the comparables for 1988 and three for 1989 as to providing for both benefits. I find that of the four communities hereinabove referred to as the most comparable group, 3 of the 4 provide premium pay for holidays worked. Such benefit is of much greater value to the employees than is the dental proposal. The dental proposal at most, carries a minimal administrative cost. The holiday issue is therefore the dominant issue in this case as neither the shift reporting issue nor the dental plan issue carry any significant economic impact.

The shift reporting issue, while not supportable by any similar provision at comparable communities, nevertheless, does not constitute an unreasonable request. Such proposal is based upon a reasonable proposition that there may be times when the briefing of incoming officers would not consume a full fifteen minutes and in such cases it simply is non-productive and otherwise unnecessary for an outgoing officer to stay over when adequate briefing has been completed. The Town's objection to including such proposal in the contract is the allegation that officers will take advantage of such provision to where inadequate briefing will occur. I find such argument without merit because it assumes the negative rather than the positive. One is to be considered innocent until proven guilty. Employees should be considered to be diligent and conscientious in the performance of their job until they prove otherwise. I find the Union's proposal on such issue to be preferred as the more reasonable.

Finally, the Union made the argument and presented statistics concerning the greater amount of crime that officers in the Town of Madison have to deal with in comparison to others. Union Exhibits #10 and 11 contained a listing of offenses per 100,000 population for 1987 and 1986. Said data was shown for 9 of the 11 communities with which comparison has been made. Such exhibit revealed that total index offenses exceeded the City of Madison and Monona by almost 2 to 1. It exceeded the other communities by from 3 or 4 to 1. In my judgment such statistics further support the conclusion that the Union' offer is most supported by the statutory factors and is therefore the one to be awarded in this case.

It therefore follows from the above facts and discussion thereon that the undersigned issues the following decision and

AWARD

The final offer of the Union is selected to be incorporated into the collective bargaining agreement of the parties for 1988 and 1989.

Dated April 24, 1989.

  
Robert J. Mueller