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DEC 05 1990

EDWARD B. KRINSKY, ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of :
WISCONSIN PROFESSIONAL POLICE :
ASSOCIATION, LAW ENFORCEMENT : Case 115
EMPLOYEE RELATIONS DIVISION, : No. 43399 MIA-1494
WAUKESHA COUNTY LOCAL : Decision No. 26513-A

For Final and Binding Arbitration :
Involving Law Enforcement :
Personnel in the Employ of :

WAUKESHA COUNTY :

Appearances:

Michael, Best & Friedrich, Attorneys at Law, by
Mr. Marshall R. Berkoff and Mr. Scott C. Beightol,
for the County
Mr. Richard T. Little, Bargaining Consultant, for the
Association.

On July 24, 1990, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator "to issue a final and binding award in the matter pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act." A hearing was held at Waukesha, Wisconsin, on October 4, 1990. A transcript of the proceeding was made. At the hearing the 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 16, 1990.

The sole issue in dispute is wages, for the 1990-1991 Agreement. The Association's final offer is a 5% across-the-board increase effective 12-23-89 and a 5% across-the-board increase effective 1-5-91. The County's final offer is a 4% across-the-board increase plus new steps for deputies, effective 12-23-89, and a 4% across-the-board increase on all steps, effective 1-5-91.

The statute requires the arbitrator to select one of the final offers in its entirety. In making his decision the arbitrator is required to weigh the factors contained in the statute. There is no dispute presented with respect to several of these factors: (a) lawful authority of the Employer; (b) stipulations of the parties; (c) interests and welfare of the public and financial ability of the Employer to pay; (g) changes during the pendency of the arbitration proceeding. The remaining factors will be discussed below.

The arbitrator is required to consider factor (d), comparisons with other employees performing similar services and with other employees generally, (1) in public employment in comparable communities and (2) in private employment in comparable communities. The parties provided no data with respect to private sector employees and thus the discussion below is confined to public sector employees.

Internal Comparisons

It is appropriate to consider what wage increases have been offered to, and accepted by, other bargaining units of the County. The County presented data about its offer to its non-represented and other unionized employees. It bargains with five other units. It has offered annual increases of 4% each year to the non-represented employees. Three of the other units have reached agreement for 1990 and 1991 and have settled for across-the-board increases of 4% each year.

The largest unit, AFSCME, has not yet settled its Agreement with the County. As of the stipulated date for close of the record in this proceeding (October 4, 1990) those parties were in mediation. There had been a petition for arbitration, but final offers had not yet been certified. The final offers as of that point, submitted by both parties, contained across-the-board wage increases of 4% in each of the two years.

In the remaining bargaining unit, bargaining was still in progress and no final offers had been submitted.

It is the arbitrator's opinion that the internal comparisons clearly favor the County's position. No unit within Waukesha County has settled for across-the-board increases which are greater than the 4% per year which the County has offered, and the County has not offered higher wage increases to any unit.

External Comparisons

In the present dispute both parties agree that it is appropriate to consider comparisons with sheriff's departments in other counties, and they agree on the use of the counties which are contiguous to Waukesha County, excepting Milwaukee County. In addition, the Association urges the arbitrator to consider wages and benefits paid to the six largest (greater than 10,000 population) municipalities within Waukesha County. The County urges the arbitrator not to consider them.

The County presented testimony to the effect that in the past the parties have looked to the contiguous counties outside of Milwaukee County for their comparisons, and have not used

municipalities. The Association disagreed with this assertion in its brief, citing 1985 and 1988 interest arbitration awards involving these parties.

The 1985 and 1988 awards make it clear to the arbitrator that the parties have not mutually agreed upon use of municipalities for comparison purposes in the past, and they have also had some differences over which counties were appropriate for comparison purposes. The latter point is not at issue here, since the parties agree on which counties to use in this proceeding. In the 1985 proceeding, the Association urged arbitrator Mueller to use wage comparisons with four municipalities. In his discussion Mueller made no mention of those comparisons, gave no weight to them and discussed only comparisons with other counties. In the 1988 proceeding, the Association did not urge arbitrator Gundermann to use municipal comparisons, although it is possible that this was because the major issue involved classifications of deputies, which would not be relevant to municipal police departments.

Since the parties here agree on comparisons with other counties, and there is no history of mutual use of municipalities for comparisons, and since the arbitrator views the comparisons with other sheriff's departments as more meaningful and appropriate in this dispute than comparisons with municipal police departments, the arbitrator will concentrate on the contiguous counties for comparisons.

All six of the contiguous units have reached settlements for 1990. Three are for increases of 4.0% and three are for 3.5%. This demonstrates clearly, for 1990, that the County's offer of 4.0% is more in line with the comparisons than is the Association's offer of 5.0%. For 1991 only three of the six contiguous counties have reached settlements: Dodge, Racine and Washington. (Jefferson, Walworth and Ozaukee have not.) Each of the 1991 settlements is for 4.0%. This partially complete data supports the County's offer.

The arbitrator is persuaded that the external comparisons with contiguous counties clearly support the County's offer in terms of across-the-board percentage increases.

The Association's exhibits demonstrate that for top deputies, the County will rank third in 1990 among the seven counties, whichever final offer is implemented. For 1991, the County's rank will be second, whichever final offer is implemented.

The Association's exhibits demonstrate that for top investigators and top detectives for 1990, the County will rank fourth among the seven counties, whichever final offer is implemented. For 1991 the County will rank second among the seven counties.

Additional data presented by the Association show that for top deputies the County's ranking was as follows in the years indicated: 1985 (5th); 1986 (5th); 1987 (5th); 1988 (4th). The movement from these rankings to 3rd in 1990 and 2nd in 1991 is evidence that the parties have bargained improvement in their relative position, and there is no need for catch-up pay in relationship to other counties.

Similar data is presented for top investigator and top detective. The County's ranking was as follows in the years indicated: 1985 (5th); 1986 (5th); 1987 (5th); 1988 (4th); 1989 (4th). The movement from these rankings to 4th in 1990 and 2nd in 1991 is evidence that the parties have bargained improvement in their relative position, and there is no need for catch-up pay in relationship to other counties.

These improvements are evident also when dollar comparisons are considered. For top deputies, the County's average monthly wage was below the average paid by the other six counties, ranging from \$50 to \$29 below average from 1985 through 1988. In 1989 the County's pay was \$84 above the average, and in 1990, the figure will be \$207 above average under the Association's final offer or \$233 above average under the County's final offer.

Similar figures are presented for top detectives. From 1985 through 1988 the County's average monthly pay was below the average of the other six counties, ranging from \$87 to \$.29 below average. In 1989 the County's pay was \$58 above average. For 1990 the Association's final offer is \$93 above average, and the County's final offer is \$67 above average.

These data all support the County's wage offer as being more reasonable than the Association's wage offer, since these improvements are accomplished through 4% increases plus new steps, rather than the 5% increases proposed by the Association which are above what has been accepted by comparable employees.

As mentioned above, the Association presents comparisons with the municipalities within the County. An obvious reason for this is that these municipalities pay salaries to their employees which, in many cases, are higher than what the County pays. The Association's data make it clear, however, that this is not a new development. It has been true historically. Had the parties mutually believed that those comparisons were important and that adjustments were needed accordingly, they could have bargained them. The arbitrator does not have a sound basis for now deciding that the higher Association final offer should be implemented in order to change existing relationships between the County and the municipalities.

Neither party presented figures for wages received by non-police personnel in externally comparable units.

It is the arbitrator's opinion that the external comparisons favor the County's final offer.

The arbitrator is required by statute to consider factor (e), changes in the cost of living.

The Association presented federal Consumer Price Index figures for Milwaukee. The figures for the Milwaukee MSA (Metropolitan Statistical Area) include Waukesha County. The figures show that the all-items index for January - June 1989 increased from January - June 1988 by 5.0% for Urban Wage Earners and Clerical Workers, and 5.1% for All Urban Consumers.

The County introduced federal figures showing that for Urban Wage Earners and Clerical Workers, the index for the first half of 1990 rose 2.6% above the index for the first half of 1989.

The parties are bargaining calendar 1990 and 1991 wage increases. The most relevant figures for making comparisons with cost-of-living changes are the increases in the index which occurred in calendar 1989, for judging the reasonableness of 1990 wage increases, and the increases in the index which occurred in calendar 1990 for judging the reasonableness of 1991 wage increases. These figures would appear to support the Association's offer more than the County's offer for the 1990 wage increase. The 1990 index figures are not available for the full year. The first half figures for Milwaukee support the County's position.

These have been comparisons between the Consumer Price Index and the proposed wage increases. If the size of the increase of the total package is considered, both final offers are significantly greater than the increases in the index figures.

Exhibits presented by the County show that when benefit costs are included, its final offer represents a cost increase of 7.79% in 1990 and 6.92% in 1991. The County calculates the cost increase of the Association's final package as 7.99% for 1990 and 7.85% for 1991.

In the arbitrator's opinion, since the County's total package cost figures are lower than the Association's, but are still in excess of the change in cost of living, the cost-of-living factor favors the County's position more than the Association's.

Factor (f) relates to the total compensation paid to these employees. The data presented do not persuade the arbitrator that these employees are relatively disadvantaged when contrasted with the comparison employees. There is no compelling argument offered to give them greater total compensation in order to catch up to the competition. The arbitrator has found the County's

wage offer to be preferable to the Association's, for reasons already stated above. There is no reason to change that analysis in the arbitrator's consideration of total compensation.

Factor (h) relates to other factors which are normally taken into account in arbitration. At the heart of the Association's argument is its assertion that the County's offer is not fair and equitable because it treats two groups of employees differently. Deputies receive new steps in their progression schedule, and thus a larger wage increase, while detectives and inspectors do not. The latter group comprises about twenty percent of the bargaining unit, and the Association does not see any reason to treat this sizable group less favorably than the others in the bargaining unit. Moreover, the Association argues, the relative position among both groups of employees will improve among the comparables under its final offer to almost the same degree as under the County's final offer, but without the necessity of inequitably changing the step arrangements.

The County justifies its adjustment of steps for deputies and patrolmen through the unrebutted testimony of Labor Relations Manager Richter that during the past five years eleven deputies have left the department to work for neighboring law enforcement agencies in order to earn better wages. The Association challenges that argument, citing in its brief arguments made by the County in the 1985 arbitration before Arbitrator Mueller:

. . . the County argued that its offer nearly equalled or surpassed the wages offered in contiguous counties for deputy sheriff IIs, and further indicated that between the period of 1980 to 1985, the County had approximately 26 openings in the department and had over 1,000 applicants for such openings. Such facts establishing without question the value and desirability of jobs in the department and the level of pay that is associated with such jobs. Both County and Association exhibits confirm that Top Deputy wages in comparison to other departments have made wage improvements in the years following that award. It would seem that the County has had a change of heart based upon the opinion of eleven potentially discontented employees.

Neither party presented data showing recent numbers of vacancies, applicants or turnover statistics. The arbitrator does not know whether conditions have changed since the 1980-1985 period referenced above, and he is not making any judgments about the arguments of the Association relative to that period. The fact remains that no persuasive argument has been made by the Association to counter the County's assertion that eleven deputies have left the department for wage-related reasons to seek employment in other departments. This loss of eleven

deputies would seem to the arbitrator to be sufficient justification for the County to want to do more for the deputy classifications in which this problem has been experienced, and not as much for the detective and investigator positions in which the problem has not been experienced.

The Association's argument would have greater merit, in the arbitrator's opinion, if the detectives and investigators were being exploited, or treated badly, in order to provide the added funds for the deputies. There is no evidence that such is the case here. The 4% across-the-board wage increase being offered to the detectives and inspectors is right in line with the percentage increases being paid to employees in comparable bargaining units both within and outside of the County.

The Association argues also that equity adjustments should occur as the result of bargaining, not arbitration. While the Association acknowledges that the County has made equity adjustments in addition to across-the-board increases for certain sub-groups of employees in other bargaining units in prior years, the Association emphasizes that these equity adjustments have been the result of voluntarily negotiated agreements. The arbitrator agrees, generally speaking, that wage adjustments should be made through voluntary bargaining rather than arbitration, if possible. However, the arbitrator does not view the inclusion in one party's final offer of wage increases which affect different groups of employees differently as particularly unusual, and especially where there is an explanation given for it which appears to have merit.

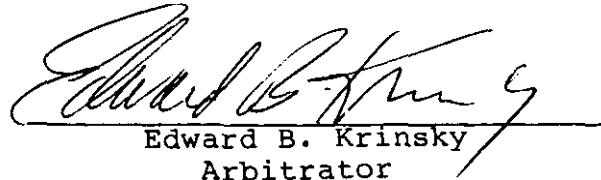
The parties have not bargained language in the past in which they have agreed that deputies, detectives and investigators will be treated identically. The arbitrator does not see the necessity of treating them equally now, particularly where no one is being treated unfairly. The arbitrator does not view the County's offer as inherently unfair or worthy of rejection because some employees get larger increases than others.

As mentioned above, the arbitrator is required by statute to select one final offer in its entirety. Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD

The County's final offer is selected.

Dated at Madison, Wisconsin, this 5th day of December, 1990.


Edward B. Krinsky
Arbitrator