

BEFORE THE ARBITRATOR

RECEIVED
JUL 15 1991
WISCONSIN EMPLOYMENT RELATIONS COMMISSION
STATE OF WISCONSIN

In the Matter of the Petition of	:	
CITY OF MEDFORD	:	Case No. 43966 MIA-1
	:	Decision No. 26674-A
	:	
For Final and Binding Arbitration	:	
Involving Law Enforcement Personnel	:	
in the Employ of	:	Stanley H. Michelstetter II
	:	Arbitrator
CITY OF MEDFORD (POLICE DEPARTMENT)	:	
	:	

Appearances:

Dennis A Pederson, Representative, appearing on behalf of the Association.

Ruder, Ware & Michler, S.C., Attorneys at Law, by Jeffrey T. Jones, appearing on behalf of the Employer

ARBITRATION AWARD

City of Medford, herein referred to as the "Employer" having petitioned the Wisconsin Employment Relations Commission to initiate Arbitration, pursuant to Sec. 111.77, Wis. stats., between it and Medford Police Department Association, herein referred to as the "Association", and the Commission having appointed the Undersigned as Arbitrator on December 5, 1990; and the Undersigned having conducted hearing on March 4, 1991, in Medford, Wisconsin, during the course of which the parties consented to mediation, which proved unsuccessful. The parties each submitted post hearing briefs and reply briefs, the last of which was received May 15, 1991.

ISSUES 1/

The parties final offers set forth the issues in dispute for the parties' calendar 1990 and 1991 agreement. I summarize them as follows:

1. WORK SCHEDULE:

current:

"ARTICLE III - HOURS OF WORK

A. The normal scheduled work week shall be prepared by the Chief and posted in advance. The normal scheduled work week shall be so established as to provide for a regular work schedule which will permit the officers to obtain the hours per day necessary to provide for a normal scheduled work day. The normal scheduled work week shall be six (6) days of work on and four (4) days off. The normal scheduled work day shall be nine and one-half (9-1/2)

hours.

. . . "

Employer: revise the last two sentences of paragraph A to read as follows:

The normal scheduled work seek shall be six (6) days of work on and three (3) days off. The normal scheduled work day shall be eight and one-half (8 1/2) hours. (Note: This work schedule shall be implemented upon receipt of the arbitration award).

Association: current contract

<u>2. WAGES:</u>	Employer	Association
1/1/90	11.14/hr.	11.14/hr.
1/1/91	11.64	11.70

3. HEALTH AND DENTAL INSURANCE:

current contribution: 195.00/month (maximum contribution family and single)

Current Article IX provides in relevant part: " The employer may seek quotations from various carriers from time to time."

Employer: 1/1/90	245.00/month	(Emp. contrib.)
1/1/91	275.00	

future years' negotiated increases to be retroactive to date of premium increase.

Article IX: revise above sentence to read: "The Employer may seek quotations from various health and dental insurance carriers from time to time. . . ."

Association: 1/1/90 85%

The Association accepts the Employer's revision of the above-quoted sentence from Article IX.

4. HOLIDAYS:

current agreement:

"ARTICLE V - HOLIDAYS

Each officer shall receive five (5) floating holidays per year after completion of the initial probationary period. Scheduling of the floating holiday shall be by the mutual agreement between the officer and the Chief of Police. Floating holidays may be used only Monday through Friday and may not be attached to vacation time.

Employer:

Effective January 1, 1991, after completion of the initial probationary period, each Officer shall receive the following paid holidays: New Year's Day, Afternoon of Good Friday, Memorial Day, July 4th, Afternoon of Christmas Eve, Christmas Day, Labor Day, Thanksgiving. Holiday shall be computed on the basis of eight and one-half (8 1/2) hours of work at an Officer's regular straight time rate of pay.

Officers may be required to work on holidays. If an Officer is required to work on a holiday, the Officer shall receive the above holiday pay plus the Officer's regular straight time rate of pay for all hours worked."

Association: current agreement

POSITIONS OF THE PARTIES

The Employer takes the position that the following factors support its position; 1. the interests and welfare of the public; 2. comparisons to similar employees in similar units in other municipalities and 3. overall compensation already received by employees. With respect to comparisons it notes no comparison pool has been established for the parties. It would urge the use of Colby-Abbotsford, Ladysmith, Minocqua, Neillsville, Park Falls, Phillips, Tomahawk, and Taylor County, because they are in a 55 mile radius and are demographically similar. Taylor County is included because Medford is in Taylor County and Medford officers work closely with Taylor County officers. It denies the Association's use of 4th class cities in Taylor and contiguous counties is appropriate because a fourth class city can be anywhere from 3,000 people to 10,000 people and, therefore, the range of population is both too big and excludes smaller but similarly sized cities. It supplied the population figures for the Association's comparisons and based upon its supplied data it notes that Merrill is literally twice the size of Medford. It notes this results in no cities from Clark county being listed.

The Employer argues that its proposed change in work schedule is justified both because there is a change in circumstances and because the Employer is offering an equivalent quid pro quo. The Employer relies upon the testimony of Chief Kay to the effect that since 3 of the 6 unit employees have reached the three week vacation mark, the Employer has had difficulty in maintaining sufficient non-supervisory manpower to staff regular work shifts. This problem is compounded by the absence of officers from regular duty by virtue of sick leave and attendance at training programs. The Employer has filled in for these unavailable officers by using Chief Kay and the sergeant to perform regular patrol duties more frequently. The Employer argues that its proposal is reasonable to resolve this problem. The switch to the new work schedule with a 8.5 hour day would give the Employer an extra person-shift every 3 days during a 9 day period. This would resolve the Employer's scheduling problem for the next 11

to 12 years (when employees would first reach the 4 week vacation level). It believes the foregoing change is in the public interest because it will better enable the Employer to provide services to the public and will better enable Medford police officers to coordinate with county officers who work the same schedule as proposed by the Employer herein.

The Employer argues that it is offering a fair and adequate quid pro quo for the work week change of 7 additional holidays, a above average health insurance contribution and a above average wage increase. It notes that the number of holidays offered this unit plus the existing 5 personal days exceed the number of holidays enjoyed by the Employer's other units and comparable units in comparable communities. It goes on to note that the wage increase offered herein exceeds that provided other city units and the average percentage wage increase among comparable communities. Similarly, it believes its offer on health insurance exceeds the benefit it has offered the DPW bargaining unit and the nonunion employees.

The Employer, also, argues that its proposed 6-3 work week is heavily supported by the external comparisons. Of its comparisons, only Park Falls has a 6-4 work week; however, even at Park Falls, two cycles of the officers' work schedules are 7-2. Among the comparison similar units, all of them have 8 or 8.5 hour days. The same is true with the comparisons offered by the Association.

The Employer argues that the Association's proposed change in health insurance contribution method is not justified by any change in circumstances. Further, it argues the Association has not offered an adequate quid pro quo for it. It notes that the adoption of the Association's position would unjustifiably significantly alter the bargaining relationship of the parties by changing the past relationship of bargaining increases in health insurance and, therefore, should not be adopted. It argues that the change proposed by the Association would result in significant inconsistency with the DPW unit and non represented unit. It notes that the Employer's offer has corrected the potential for officers to have to pick up insurance increases between the date of change of any insurance premium and the beginning of a new agreement.

Finally, the Employer argues that its entire package offer is more appropriate than the Association's. Its offer is more consistent with the settlement of the DPW and what the Employer did with its non-represented group. Its offer is closer to the average of the comparable units' settlements: indeed, it argues no one has settled for 5% in 1991. Similarly, it argues that on an hourly basis, its proposed wage rate is clearly preferable. Finally, it believes the arbitrators should consider the fact that this unit, unlike any of the existing comparables, is the only group to have an educational incentive and 3 of the 5 officers are currently receiving the maximum benefit.

The Association argues that hours of work is the main issue. It notes that the Employer's offer on holidays is essentially dealing with the impact of its hours proposal rather than being an incentive to accept the Employer's offer:

The Association proposes the use of cities of Ladysmith, Park Falls, Tomahawk, Merrill, Bloomer and Mosinee, as well as Taylor County for comparison purposes, because they are cities of the fourth class with populations of at least 3,000, and are in generally the same area as Medford. It argues that the Employer has included some communities which are much smaller and not close to Medford and some of which are so small that they are not covered by binding arbitration (Colby-Abbotsford, Neillville and Phillips).

The Association denies that there has been any change in circumstances warranting abandonment of the 6-4 (9.5 hour day) work schedule which the parties have had in effect since 1981. It denies that the Chief's testimony establishes any real definitive problem. It believes the impact of the Employer's proposed schedule on unit employees is simply too great to be adopted. Under the existing schedule, an employee works an average of 219 days per year and has an average of 148 regularly scheduled off days. Under the Employer's proposal, an employee would be required to work an average of 243.6 days per year and would enjoy an average of only 121.4 regularly scheduled days off (24.6 more days per year longer).

It argues that the Employer's schedule is without support among the comparables. Only Taylor County and Minocqua work the Employer's proposed schedule among the comparisons.

The Association supports its position with respect to health insurance by arguing that the main purpose for its proposed change is under the current system employees must carry the increased cost of health insurance from September until the new contract is resolved. Thus, it argues the Employer uses this long period as leverage in negotiations. This is particularly unfair in its view because the insurance increases occur in September, well before the expiration of the collective agreement. It notes that its offer simply recognizes the current level of cost sharing. The parties have, as recently as 1986, had percentage rather than dollar amounts of contribution. It argues all of its comparisons have percentage contributions and it believes that its offer is a reasonable contribution when compared to the others.

It notes that only the wage increase for 1991 is in dispute. It argues that this is merely 6¢ per hour difference, \$625 for the entire unit and, therefore, should be considered a minor issue. Alternatively, it notes that the Association has ranked 4th among the Association's set of comparables in 3 of the last 5 years. The Association's offer would maintain 4th, while the Employer's offer would reduce them one rank. While the Employer maintains its offer is 4%, the Association argues that with the

change in hours caused by its hours proposal, the effect of the Employer's offer is to lower it to 3.5%. Finally, it believes its offer is more consistent with the 6.1% change in cost of living than the Employer's.

It views holidays as a non-issue. This is because the Employer's offer essentially reduces the number of days off for unit employees far more than the number of days offered by the Employer as holidays. Also, the Employer has proposed straight time pay for hours worked on a holiday, even though the DPW unit receives time and one-half for hours worked on a holiday and the Association's external comparisons all receive premium pay.

In reply, the Employer denies that the controlling issue is hours. The Employer believes that health insurance is another substantial issue. The Employer reiterates that it does not agree with the use of Merrill because it is nearly double the size of Medford. It denies that Colby-Abbotsford, Neillsville and Phillips are "too small to be considered" as argued by the Association because the size disparity is not as great as with the City of Merrill and all three have 5 person police forces. It argues that the Colby-Abbotsford Police Commission is an employer subject to Section 111.77 arbitration and that Phillips is non-union. The Employer argues that the proper consideration with respect to the hours issue is the comparison of the number of work hours as opposed to the number of work days as argued by the Association. Under its proposal, officers would work 2,067 hours per year, while under the existing schedule, they work 2,080.5 hours per year. The Employer argues that none of the comparables has a 6-3 work schedule and concedes that only one of the comparables has a 6-4 schedule: most are in between. It reiterates that one has a 9.5 hour day. Thus, the Employer views the hours issue as a choice between officers' personal preferences to have four days off balanced against the public's need to have protection. As to health insurance, the Employer views the adoption of the percentage contribution as potentially a commitment to do the same in future years. It believes that that type of commitment is unwarranted in view of the volatile insurance premium costs. Further, the Employer believes that consistency with other city units on its premiums is more important than comparisons with other cities as argued by the Association. The Employer disagrees with the Association's argument that the 1991 wage difference equals only \$625.50 for the entire unit and, therefore, is minor, because the wage increase is a continuing cost in future years and the total difference is actually \$1,760.40. Similarly, the difference in ranking occurring on the Association's comparisons is merely \$7 and this should not be determinative. More importantly, the Employer argues that legitimate comparisons between comparable departments are best made by comparing the hourly rate. Finally, the Employer disagrees with the Association's arguments on the holiday issue. First, it denies that its holiday proposal is merely adjustment for the new schedule in that employees will work fewer hours under its hours proposal than currently. Next, it notes that when the parties adopted the current 6-4 schedule, the quid pro

quo was that the Association gave up the same holidays as proposed here. The Employer is merely returning what was given to get the schedule. It notes that there is no evidence that the parties had premium pay for hours worked on the holidays in the agreement prior to the change of hours and holidays. It denies that any comparison is useful with the DPW, since DPW employees are not normally scheduled to work holidays and, therefore, they must disrupt their plans to work on holidays. That difference justified the half time additional that they would receive for working holidays.

In reply, the Association argued the additional points as follows. On the issue of hours, the Association states that on cross examination, the Chief admitted that officers would still be absent from work for training, sick leave and involvement in the D.A.R.E. program. Therefore, in the Association's view, these matters are not relevant to the hours issue. It denies that the Chief testified that he "routinely" had to fill in for officers absent for vacation, sick leave, training and the D.A.R.E. program and reiterates its view of his testimony that he only occasionally did so. Further, it believes the Chief's testimony is compromised by the fact that only days earlier he had told officers that the proposed schedule would make no difference to him. Further, it believes that there is no evidence that the proposed schedule will in any way improve the protection of the public. As to the issue of insurance, the Association does not believe that the adoption of its percentage basis contribution of insurance will affect the bargaining relationship because the parties are free to negotiate over insurance contribution in successor agreements. It denies that the Employer's proposal adequately covers the issue of insurance increases during the term of the contract and hiatus between contracts in that employees will still have to pay the increase out of their pocket until a successor agreement is negotiated.

DISCUSSION

Under Section 111.77, the Arbitrator is required to evaluate the offers of the parties under the statutory criteria and to adopt, without change, the entire final offer of the party which is most appropriate. The weight to be attached to any one issue and each critereon is left to the arbitrator.

COMPARISONS

The following is a chart of the comparison communities the parties offered and my selection. My selection is made on the basis of the parties mutual agreement and similarity of size in relative proximity to Medford. I have excluded Merrill as much larger and Phillips as smaller. I have used Colby-Abbotsford because it appears to be a single municipal employer and the combined population is equivalent to the other comparisons. I have selected those communities of roughly comparable size in a fifty five mile radius and Taylor County. While there are variations in the economic nature of the communities, the larger group

appears more likely to present a fairer overall image of practices in the region than the limited number of local comparisons.

Comparisons

place	pop.	Er.	Ass'n.	arb.
Taylor County	19,450	x	x	x
Colby-Abbotsford*	2,729	x		yes
Ladysmith	3,833	x	x	x
Minocqua	3,437	x		yes
Neillsville	2,807	x		yes
Park Falls	3,207	x	x	x
Phillips	1,638	x		no
Tomahawk	3,562	x	x	x
Merrill	9,943		x	no
Bloomer	3,508		x	yes
Mosinee	3,735		x	yes
Medford	4,548			

* combined, operating a joint police department

HOURS

The parties adopted the current 6-3 (9.5 hour day) work schedule in 1981, abandoning a former schedule of about 8 hours. The current schedule works 9.5 hours per shift and produces an average of 2,080.5 annual work hours, 219 work shifts per year (146 off days); while the new 6-3 schedule of 8.5 hour days produces 2,067 annual work hours (average 243.6 work shifts per year (121.4 off days)).

The existing plan is unusual, but not unique among the comparison cities, while, contrary to the Association's position, the Employer's plan is much closer to the norm. The following are the comparisons:

	work cycle	hour per day	yearly work hours
Taylor County	(6-3)	8.5	2,065.5
Colby-Abbot.	[4(6-2)](5-3)(6-3)	8.0	2,085.7
Ladysmith	(4-3)	10.0	2,085.7
Minocqua	(6-3)	8.5	2,065.5
Neillsville	(5-3)	8.5	1,939.1
Park Falls	(6-4)(7-2)(7-2)	8.0	2,085.7
Tomahawk	(6-2)	8.5	2,190.00
Bloomer	(2-2)(3-2)(2-3)	12.0	2,190.00
Mosinee	(6-2)(6-2)(7-4)	8.0	2,054.8
average		8.89	2,084.67
Medford Un.	(6-4)	9.5	2,080.5
	(6-3)	8.5	2,065.5

	ann. days off	ann. days on
Taylor County	243.3	121.7
Colby-Abbots.	260.7	104.3
Ladysmith	208.6	156.4
Minocqua	243.3	121.7
Neillsville	228.1	136.90
Park Falls	260.7	104.3
Tomahawk	273.75	91.25
Bloomer	182.5	182.5
Mosinee	256.9	108.1
av.	239.76	125.24
Medford Un.(6-4)	219.0	146.00
Er.(6-3)	243.3	121.7

In my view a party seeking to change an existing provision must show, in the absence of the offer of an equivalent or greater buy out, that the circumstances relating to that provision have changed, that there now is a need to make a change and that its proposal is reasonably suited to making the needed change. The Employer argues that it has offered a wage increase of .5% greater than it would have, the increased holidays and a higher than normal insurance contribution. Based upon my experience however, I do not believe that an experienced negotiator would, on this record, view the Employer's offer as equal or greater value than the hours benefit enjoyed by police officers now.

Chief Katz testified as to the reason the Employer seeks this change. As of this year, several circumstances have come together to require a reallocation of patrol officers' time. 3 of the 6 police officers employed by the Employer now receive 3 weeks rather than 2 weeks vacation. Additionally, police officers are teaching in the schools as part of the D.A.R.E. program and must schedule accordingly. Similarly, the Employer has experienced problems scheduling police officers to handle drug investigations. Under the current schedule the Employer has three officers for 3 (9.5 hour) work shifts. If an officer is off for vacation, sick leave or training, the Employer has had the Chief or Sergeant doing routine patrol and police work. Under this system, the Chief has been required to fill in on regular patrol about 6 to 7 times per month. He testified that the Employer seeks the new schedule because on the new schedule the department would ordinarily have 3 people for 6 of the 9 days and 4 people for 3 of the days (8.5 hour shifts). The Chief candidly admitted that he believes, but cannot be sure, that this would substantially relieve this problem by allowing him to schedule as much as possible when there are four people scheduled. Training poses a particular problem because the Employer obtains training through other providers. The Employer may be able to choose programs occurring on the days when 4 people are available. Union representatives testified that at a recent negotiation session Chief Katz stated that the proposed work schedule "wasn't as workable as he thought." I don't find any significant

inconsistency in his testimony and am fully satisfied that he testified truthfully and to the best of his knowledge. I am further satisfied that that circumstances have changed in that the Employer now needs a fourth person available as much as possible.

The Employer has demonstrated that its proposal is necessary and, on an experimental basis, reasonable to make the needed change. Unit employees undeniably have a very legitimate interest in having their off time scheduled in a way which is most useful to them, that is having as many off days as possible. However, the main purpose of having the department is to provide the best protection possible for the public with the limited means of the department. By reallocating patrol officers' shifts, the Employer will be simply better able keep patrol officers on patrol while some are absent for the above reasons. Based upon the Chief's testimony the alternative for the Employer is to use as much or more of the Chief and Sergeant's time doing routine patrol (including writing parking tickets) rather than administering the department, spending an inordinate amount of money on overtime or hiring an additional part-time or full-time person. These expenditures are likely to be significant when compared to the total payroll of the department. Accordingly, some change is warranted to attempt to avoid that expense. The Chief has candidly admitted that while he believes the change will give the Employer significant relief, he is unsure as to whether this will be sufficient. Further, the Association has expressed concerns that the Employer's proposed system may be excessive. By adopting the Employer's proposal herein, I do not rule out the potential for some "fine tuning" changes in future agreements. Accordingly, the Employer's offer is preferred on this issue.

HOLIDAYS

The Employer has proposed to restore the seven holidays traded by the Association in 1981 as part of the package for the current 6-3 schedule. It is unclear whether or not the Employer then paid a premium above straight time for holidays worked during the agreement prior to that time. The following is a comparison to comparable communities:

Pay when worked	pay (holiday pay, plus..)	no. of days
Taylor County	double time	10
Colby-Abbotsford*	1 day pay or 1 day compensatory time	9
Ladysmith	time and one half	10
Minocqua	one-half time and 1 day off	9
Neillsville	one-half time and 1 day off	8.5
Park Falls	double time	9.5
Tomahawk	1 day pay (plus 1 day compensatory time)	10
Bloomer	double time	9
Mosinee	time and one-half	12
average		9.67
Medford (Er.)	straight time	12
(Ass'n.)	not appl.	5

1
 Additionally, the Employer currently pays DPW and non unit employees time and one-half in addition to the holiday pay. These employees are, of course, not regularly scheduled to work on these days and, therefore, if they work on those days, it is on a call-in basis. The DPW unit has 8.5 scheduled holidays and works 2080 hours per year. Under the current system, police officers work 2,080.5 hours and under the Employer's system they work 2,067 (13.5 hours less).

The plan proposed by the Employer is offered as part of its quid pro quo for its proposed schedule. The Association correctly argues that the plan has shortcomings in the pay for holidays worked, but I am satisfied that when taken as a whole the greater number of holidays outweighs the pay shortcoming. Accordingly, the plan offered by the Employer is, on the whole, appropriate as holiday plan.

WAGES

The following is a comparison of the wage rate in Medford with the comparison police departments both on a hourly basis and a salary basis:

	1989 wage rates(maximum)	
	hourly	annual
Taylor County	10.62	22,256.04
Colby-Abbotsford	9.46	19,680.60 <u>1/</u>
Ladysmith	10.70	22,085.40
Minocqua	9.82	20,425.60
Neillsville	9.72	19,970.00 <u>2/</u>
Park Falls	10.70	22,264.56
Tomahawk	11.10	24,288.00
Bloomer	9.69	21,221.10
Mosinee	12.46	25,916.80
average	10.47	22,012.01
Medford*	10.71(3)	22,330.32 (4)

*The collective bargaining agreement specifies wages in hourly terms. The Employer calculates pay based upon that rate times the number of regular hours. Under the current schedule it uses 2085 hours as the work year. Under the Employer's schedule the work year is 2067. The Employer states, however, that it will continue to base pay on 2085 hours.

1/ ignores \$5 per month per year of service longevity

2/ based upon average of 1990 wage rates for full time officers (there was no increase from 1989 to 1990).

Medford police are paid comparably.

The following is a comparison to wage increases granted in the comparable communities for 1990 and 1991:

percentage wage increases in comparable units		
	1990	1991
Taylor County	4.0%	4.0%
Colby-Abbotsford	2.0	1/1/91 2.0 7/1/91 2.0
Ladysmith	4.0	not settled
Minocqua	4.6	4.4
Neillsville	0.0	1/1/91 \$400 per officer 7/1/91 \$400 per officer
Park Falls	4.0	4.0
Tomahawk	3.5	1/1/91 3.0 7/1/91 3.5
Bloomer	4.0	not settled
Mosinee	5.0	4.00
Medford Er.	4.0	4.5%
Ass'n.	4.0	5.0%

And the following is a comparison with internal settlements.

internal settlements		
	1990	1991
DPW	2.5%	4.0%
non represented	4.0%	4.0%
electric utility	2.0%	2.0% **

** It appears that the electric utility is a separate municipal employer under MERA.

Based upon all of the above, the Employer's offer as to wages is clearly supported.

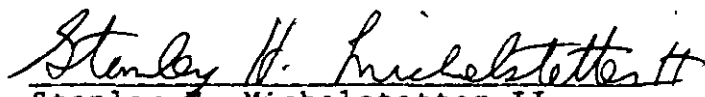
CONCLUSION

Based upon the foregoing, the offer of the Employer has been preferred as to every major issue and, therefore is the more appropriate. Accordingly, the final offer of the Employer is adopted.

AWARD

That the final offer of the Employer be, and the same hereby is, adopted.

Dated at Milwaukee, Wisconsin, this 12th day of July, 1991.


Stanley H. Michelstetter II,
Arbitrator