STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION

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

ONEIDA COUNTY (SHERIFF'S DEPARTMENT)

ARBITRATOR'S DECISION AND AWARD

Case 85
No. 46494 MIA-1649
Decision No. 27160-B

Milo G. Flaten, Arbitrator

SCOPE AND BACKGROUND

This arbitration arises from an Order of the Wisconsin Employment Relations Commission dated April 6, 1992, wherein compulsory final-offer arbitration was initiated for the purpose of issuing a final and binding award to resolve an impasse arising in collective bargaining between the Wisconsin Professional Police Association - Law Enforcement Employee Relations Division (hereafter "the Union") and Oneida County (Sheriff's Department) (hereafter "the Employer") pertaining to the wages, hours, and conditions of employment of non-supervisory law enforcement personnel of the Oneida County Sheriff's Department. Previously, the Wisconsin Employment Relations Commission had furnished the parties with a panel of arbitrators from whom they selected Anthony V. Sinicropi. Later, the aforementioned Sinicropi was rejected by the parties who sent to the Commission for another panel of arbitrators from whom Milo G. Flaten of Madison, Wisconsin, was selected to hear the case.

The arbitrator's authority to hear the matter and issue a final and binding order comes from Sec. 111.70 of the Wisconsin Statutes, known as the Municipal Employment Relations Act as it pertains to collective bargaining units composed of law enforcement personnel and fire fighters.

Under Wisconsin law, the arbitrator must select one or the other final offer of the parties and compromises or split decisions are prohibited.

After phoning and corresponding concerning a date, the parties notified the arbitrator they had selected July 16, 1992 for a hearing.

The hearing was conducted at Rhinelander, Wisconsin, and was completed in one day. At the hearing 66 exhibits were introduced into the record, plus the past and current Collective Bargaining Agreement between the parties (hereafter "the Contract") through the testimony of two witnesses.

Appearing for the Union was Richard T. Little of Wauwatosa, Wisconsin, Bargaining Consultant, and for the Employer, Attorney Lawrence R. Heath, Corporation Counsel.

THE FACTS

The Employer is a municipal corporation located in the northeastern part of the State of Wisconsin. Its county seat is Rhinelander, Wisconsin, and it has a population of nearly 32,000 people.

The Employer's Sheriff's Department operates under the supervision of an elected County Sheriff and an appointed Chief Deputy. All others are in the bargaining unit which consists of 35 full-time positions and three part-time positions. There are five detective sergeants, five sergeants, 12 patrolmen, three clerk matrons, five jailers, four dispatchers,

and one combined jailer/dispatcher in the bargaining unit. The part-time positions include three cook/clerk/matrons.

The Employer and the Union met twice for the purpose of negotiating the 1992 Contract. After an impasse was reached by the parties, they notified the Wisconsin Employment Relations Commission who sent an investigator on January 15, 1992. The investigator verified and advised the WERC that the parties were at impasse and requested them to send final offers to be used by an outside arbitrator in reaching his binding decision.

Wage adjustments in the other Employer bargaining units, i.e., the Courthouse Employees, the Highway Department, and the Nurses Bargaining Unit, have been already been agreed on through previous voluntary settlements. While the latter bargaining units work a standard shift between 8:00 a.m. and 4:30 p.m., five days per week, Monday through Friday, the employees in the case at hand work on a three-shift rotation 24 hours per days, seven days per week.

FINAL OFFERS

The final offer of the Union requests 2% across-the-board wage increases on January 1, 1992, on July 1, 1992, and on August 1, 1992. With regard to holidays, the Union requests that the language of the most recent Contract which expired December 31, 1991, remain in force until the expiration of the proposed Contract, or through December 31, 1992.

The final offer of the Employer proposes a 3% wage increase effective January 1, 1992, and a 2.5% wage increase effective July 1, 1992, across the board. With regard to holidays, the Employer proposes that each employee be allowed 10 floating holidays per

calendar year to be scheduled with the consent of the Sheriff (or designate) on or before January 31, 1992. Additionally, the Employer offers a .5% wage increase across the board effective January 1, 1992.

POSITIONS OF THE PARTIES

The Union

The Union takes the position that its final offer must be considered to be more reasonable than the proposed offer by the Employer and therefore, that the arbitrator decide that its offer should be final and binding on the parties in the proposed 1992 Contract.

The Union points out that the existing holiday schedule which the Employer proposes to change has been in effect for 15 or more years. It argues that the impact of the Employer's proposals would reduce holiday benefits to the absolute bottom of the comparables scale. Elementary mathematics, the Union goes on, clearly indicate that the Employer's contentions simply do not hold water. Furthermore, the Union continues, setting aside the Employer's attempt to reduce holiday benefits, shows that the total impact of the Union's final offer (3.5%) is, in fact, lower than that of the Employer (4.7%).

Additionally, the Union argues, a comparison of wages paid to other employees in public employment performing similar services strongly favors the adoption of the Union's offer. That is, municipalities to be compared should be approximately equal in the areas of population, geographic proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel, and wages and fringe benefits paid to such personnel.

While the Employer's external comparables are good as far as they go, the Union goes on, the Employer list is simply too meager from which to draw valid conclusions. Furthermore, argues the Union, the Employer's comparables are proportionately smaller and, in some cases, one-fourth the size.

With regard to a major change from the status quo (holidays), the Union contends, the Employer has the burden of demonstrating not only that a legitimate problem exists which requires contractual attention, but that its proposal is reasonably designed to effectively address that problem. In this case, the Union continues, the Employer fails to establish either that a legitimate problem exists or that its offer would reasonably address the purported problem. In fact, the Union argues further, the only proof in the record regarding holiday benefits showed that there were no complications created for the Department by using the current holiday scheduling procedures. In fact, the Union goes on, the proof indicates to the contrary that the ability to shuffle holiday time off worked to aid rather than hinder the Department's scheduling needs.

Additionally, the Union takes the position that the arbitration process should not be used as a device for pattern setting or for initiating change in basic working conditions absent a showing that conditions in question are unfair or unreasonable or contrary to accepted standards in the industry. Since the Employer has not shown (1) a failure to establish that a legitimate problem exists, (2) failure to establish that the existence of these benefits has hampered the County in carrying out its functions or in any way caused significant harm to the Employer, and (3) failure to provide "persuasive reason" justifying a proposal that is altogether contrary to industry standards, it is more reasonable to leave

the existing Contract language alone and without change.

The Union next contends that a comparison with the Employer's other bargaining units should be given very limited weight. This is because, the Union goes on, not one of the internal comparables have holiday language similar to that proposed by the Employer.

The Employer

The Employer takes the position that the principal issue in these proceedings is its proposal for a change of the holiday benefits. While acknowledging that the existing language in that regard has remained unchanged for a number of years, it feels that an administrative need for revision of the holiday schedule is imperative. For instance, the Employer argues, the 35 full-time employees in the Sheriff's Department would have a total of 315 designated calendar holidays available to them. However, the Employer continues, last year only 17 of the designated calendar holidays were actually used by Union employees on the calendar day itself. In fact, the Employer points out, bargaining unit employees chose to treat the remainder of the available designated calendar holidays as floating holidays which could be used at any time of the year. Furthermore, continues the Employer, bargaining unit employees frequently broke down the holiday benefit into hours of time to be utilized in units of time of only a few hours like a floating benefit. Not only that, the Employer argues, under the existing system, bargaining unit employees frequently schedule, cancel, and then subsequently reschedule their requests for the holiday benefit.

The way bargaining unit employees use the holiday benefit is nothing more than a scheduling nightmare, argues the Employer. Even under ideal circumstances, the task of scheduling operations of a sheriff's department is difficult, contends the Employer. For

instance, the Employer continues, the impact of separate scheduling decisions by the two County Circuit Courts results in the escort of prisoners between the County Jail and the courts, the transport of prisoners between the County Jail and the State prison facilities, and the transport of mental and alcohol patients between the courts and medical facilities where they are being held. The difficulty of efficiently scheduling those operations, the Employer goes on, can only be increased by many times when the employees are able to schedule, cancel, and subsequently reschedule their holiday benefit on short notice or in time increments of as little as a few hours.

The Union argument that its proposal would cost the Employer zero dollars is speculative at best, argues the Employer. Actually, the Employer goes on, the employees would be compensated at the rate of 2½ times straight pay for any holiday they are required to work. For those holidays which they have selected to take off, the Employer goes on, the employees would receive the very real benefit of the time off itself just like any other employee in either internal or external comparables except the City of Rhinelander Police Department. Under its proposal, the Employer points out, residents and tax payers would have a well-defined holiday benefit by which not only the employee, but management of the Department would know by January 31 of each year when the employees would be exercising their holiday benefit.

The external comparables which the Employer requests the arbitrator to use consist of counties immediately surrounding Oneida County. The Employer argues that those counties are more appropriate than those proposed by the Union. This is because they are immediately contiguous and therefore are more likely to draw from the same labor market.

The non-contiguous counties proposed by the Union, the Employer continues, should not be used in this proceeding. For example, the Employer goes on, Marathon County is 50 miles away and Oconto County is 90 miles distant; Shawano County is 80 miles away and Taylor County is about 60 miles distant. Not only that, the Employer continues, no evidence has been brought forth to suggest that the Sheriff's Department has lost employees to anyone else because of low wage comparisons or that it has suffered from a low application rate of prospective employees seeking available vacant positions in the Department.

Because the Sheriff's Department must be opened and manned every day, there exists no logic for the designation of specific calendar holidays in the Contract. For this reason, the Employer goes on, its proposal for 10 floating holidays is more reasonable because it reflects the actual practice in the Sheriff's Department.

With regard to external wage comparables, the Employer contends, the overall compensation it pays, including vacation, holidays, excused time, insurance and pensions, medical and hospitalization benefits, as well as direct wage compensation, makes Oneida County the highest paid of all the comparables. This is especially true when one takes into consideration not only the top Deputy and Patrolman's wages, but also the education plan benefit, the longevity plan benefit, and the shift differential benefit.

DISCUSSION

After all the trappings are removed, it's clear that both sides consider the issue of holiday benefits to be the most important one of the two under consideration. For example, the Employer states at the conclusion of its brief that "the principal issue before

the arbitrator is that of the County's proposal for change of the holiday benefit." The Union also conceded as much at the hearing.

True, both sides dutifully reviewed the statutory criteria which Sec. 111.77(6) Wis. Stats. directs the arbitrator to give weight to in his deliberations. Inasmuch as those statutory factors constitute a "compulsory checklist," parties to a public sector labor dispute dare not omit tying the local facts and situation to them or at least providing an explanation of why one or more of those criteria are not applicable to the situation at hand.[1]

Since the listed statutory factors are not intrinsically weighted, they cannot of themselves provide an arbitrator with an answer. It is the arbitrator who must make the decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although all "applicable" factors must be considered. This observer has studied and reviewed all of the statutory criteria listed in Sec. 111.77(6) which has been cited by both sides, as well.

One of the more infrequent considerations used by arbitrators in interest arbitration is the past practices of the parties. In fact, a disagreement over one interpretation of that Contract provision resulted in a grievance arbitration adverse to the Employer's position. The Union, of course, cites that arbitration award as authority for its case in this dispute. In this case, the Holidays Benefits found in Article X have been in effect for over 15 years.

The Employer points out that the unit employees employ the designated calendar

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[1] These standards were originally set forth in the Michigan Police and Firemen's Arbitration Act. Their constitutionality was upheld in Detroit v. Police Officers Assn., 105 LRRM 3092, 3095 (1980).

holidays as floating holidays. At first blush, it would appear that such practice by the employees was an abuse of the holiday benefit resulting in a scheduling nightmare for the Department. However, proof in the record provided by the Captain of Detectives showed that no complications were created for the Department as a result of current holiday scheduling procedures. In fact, that Captain of Detectives stated the ability to shuffle holiday time off worked to aid rather than hinder the Department's scheduling needs.

The Employer has provided in its Final Offer, a .5% wage increase as a compensatory change for altering the holiday benefit. Moreover, the record is clear that the Employer's total holiday benefit would be one which would exceed or meet all of the external comparable counties which are immediately contiguous.

One exception to those cited external comparables, however, was the City of Rhinelander police, which is a very important comparable when one considers that bargaining unit officers in the two departments are working almost side by side on a daily basis and often live in the same community. Employees from the bargaining group are sure to compare their lot with that of other employees doing similar if not identical work in the area.

Most compelling to this observer, however, is the commonly accepted principal that when a party requests a change, "give-back," or adjustment in the status quo, the burden of proof which that party must use to rationalize the change in contractual language should be based on (1) whether a legitimate problem exists which requires contractual attention; and (2) whether the proposal under the consideration is reasonably designed to effectively address that problem. In the instant case, the more effective proof to this observer was

provided by the Union whose Captain of Detectives stated that there were no complications created because of the current holiday scheduling procedures. In fact, the flexibility to shuffle holiday time off worked to assist rather than hinder the Department's scheduling needs.

Since the Employer did not establish that an actual problem existed or that the existing holiday schedule has hampered the Employer in carrying out its functions, and because the benefit has been in force in excess of 15 years, and because the parties agree the holiday schedule is the crucial issue, it is clear the Union's final offer is more sound than that of the Employer.

DECISION

Because the parties to the dispute consider the principal issue before the arbitrator to be that of the County's proposal for a change in the holiday benefit, and since the Union's position in that regard is more reasonable, and upon consideration of all of the factors listed in Sec. 111.77(6), Wis. Stats., it is the considered decision of the arbitrator that the Union's final offer in this dispute is the more reasonable.

AWARD

That the Final Offer of the Oneida County Deputy Sheriff's Association be incorporated into the Collective Bargaining Agreement effective January 1, 1992 through December 31, 1992.

DATED: October 23, 1992.

Milo G. Flaten, Arbitrator