

IN THE MATTER OF ARBITRATION)

INTEREST ARBITRATION)

between)

City of Edgerton (Police)
Department))

-and-)

Teamsters Local No. 579)

WERC Case No. 2)
No. 46400)
MIA-1641)
Decision No. 27179-A)

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

August 12, 1992)

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APPEARANCES

For City of Edgerton Police Department

Jeffrey T. Roethe, Attorney, Edgerton, Wisconsin
Richard A. Schultz, Administrator
Keith Burdick, Chief of Police

For Teamsters Local No. 579

Marianee Goldstein Robbins, Attorney, Milwaukee, Wisconsin
Brendan F. Kaiser, Secretary-Treasurer
Jim Bosben, Part-Time Patrolman
Blaine Larson, Steward

JURISDICTION OF ARBITRATOR

Representatives from the City of Edgerton Police Department ("City") and from Teamsters Local No. 579 ("Union") exchanged proposals to initiate negotiations for a successor collective bargaining agreement for the years 1992 through 1994, covering non-supervisory law enforcement personnel of the City. The Parties met on several occasions in an unsuccessful attempt to negotiate a successor agreement. Through negotiations and mediation, the Parties were able to resolve all outstanding issues with the exception of two.

Unable to reach a voluntary settlement, the Union, on October 16, 1991, 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 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 1992-1994; that an informal investigation was conducted on December 4, 1991,

by David Shaw, a member of the Commission's staff; and that said Investigator having advised the Commission on February 24, 1992, that the Parties were at impasse on the existing issues as outlined in their final offers transmitted along with said Advice and that said Investigator had closed the investigation on that basis.

The Parties have not established mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining, and further, that the Parties have not mutually agreed that the arbitration should not be limited to the last and final offers of each of the Parties.

The Commission having on February 28, 1992, issued an Order that compulsory final offer arbitration be initiated for the purpose of issuing a final and binding award to resolve an impasse arising in collective bargaining between the Parties on matters affecting wages, hours and conditions of employment of non-supervisory law enforcement personnel in the employ of the City; and on the same date the Commission having furnished the Parties a panel of arbitrators from which they could select a sole Arbitrator to issue a final and binding award in the matter; and the Parties advised the Commission that they had chosen Richard John Miller, Maple Grove, Minnesota, as the sole impartial Arbitrator.

A hearing in the matter convened on June 5, 1992, at 9:30 a.m. at the Edgerton City Hall, Edgerton, Wisconsin. The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions. Post hearing briefs were filed by the Parties and received by the Arbitrator on June 29, 1992. The Parties were given the opportunity to file a reply brief. On July 6, 1992, the Arbitrator received notice from both Parties that reply briefs were not necessary and the record was therefore closed on that date.

POSITIONS OF THE PARTIES

There exists two disputed issues between the Parties. The first issue is that of shift schedule (hours worked per day), in relationship to the appropriate wage increase for all law enforcement personnel other than part-time Patrolman. The City's proposal is one of status quo and not changing the eight hour per day shift schedule contract language agreed upon between the Parties over many years of collective bargaining. The City's proposal relates to wage increase only and is a 4% wage increase effective January 1st of each year of the three-year contract, i.e. 4% wage increase on January 1, 1992, 4% wage increase on January 1, 1993, and 4% wage increase on January 1, 1994.

The Union, on the other hand, proposes to change the existing contract language by extending the end of each shift by one-half hour from eight hours to eight and one-half hours, thereby increasing police coverage for the City and increasing the annual hours worked and, consequently, the annual salary of law enforcement personnel. As a quid pro quo for the proposed shift schedule change, the Union proposes a wage freeze for 1992. The Union, like the City, both propose a 4% increase effective January 1, 1993 and a 4% increase effective January 1, 1994.

The second issue deals with the appropriate wage increase for part-time Patrolman. The current part-time Patrolman earns \$9.00 per hour. The Union proposes that the part-time Patrolman should receive the same wage as Patrolman (Start-3 year rate) of \$12.54 per hour effective January 1, 1992, \$13.04 per hour effective January 1, 1993, and \$13.56 per hour effective January 1, 1994, excluding any longevity payments. The City's wage proposal for part-time Patrolman is as follows:

	<u>1/1/92</u>	<u>1/1/93</u>	<u>1/1/94</u>
Starting	8.33	8.66	9.01
1 to 3 Years Service	9.52	9.90	10.30
Over 3 Years Service	10.69	11.12	11.56

Under the City's proposal, the part-time Patrolman would receive \$10.69 per hour.

ANALYSIS OF THE EVIDENCE

The Arbitrator evaluated the final offers of the Parties in light of the statutory criteria set forth in Wis. Stats. 111.77(6):

- A. The lawful authority of the employer.
- B. Stipulations of the parties.
- C. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- D. Comparison of 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. In public employment in comparable communities.
 2. In private employment in comparable communities.
- E. The average consumer prices for goods and services, commonly known as the cost-of-living.
- F. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- H. 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.
- A. The lawful authority of the municipal employer.

This factor is not an issue in the instant proceedings. The lawful authority of the City permits the retention of rights and responsibilities to operate the City so as to carry out the statutory mandate and goals assigned to it consistent with the provisions of the collective bargaining agreement between the Parties.

B. Stipulations of the parties.

Except for the two issues at impasse, the Parties have agreed to all other contract items for inclusion in the successor 1992-94 collective bargaining agreement. Consequently, the Arbitrator shall include the stipulations as part of the final award in this matter.

- C. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

The Union has proposed changing the status quo by proposing a change in the work week from an eight hour day to an eight and one-half hour day. The City has vehemently opposed the change in shift schedule because it would increase the wages substantially, increase the fringe benefits (holiday, vacation, sick leave, pension contribution), may lead to addition overtime, and would result in non-productive hours worked by the Patrolmen.

The Union proposal would, in fact, increase the weekly wage rate by 2 1/2 hours per week, would increase the holiday pay 1/2 hour per holiday times the 12 paid holidays for an additional six hours of holiday pay per year at double time which would result in additional average cost of \$969.33 per year. The Union's proposal would also increase vacation time by 1/2 hour per vacation day up to a maximum of 200 hours for an average annual increase of \$141.33 per Patrolman. Further, the Patrolman on sick leave would also be entitled to claim 8 1/2 paid hours for each sick day. There is no provision in the contract for retroactivity so accrued days would have to be carried forward with an additional benefit, which for a seven-year Patrolman would be 42 additional hours at an average pay of \$13.46 per hour or \$565.32 per Patrolman per year. Additional hours would carry added pension costs, which are currently being paid in full by the City (18.2% of an employee's gross wage).

The Union has proposed a complete wage freeze as an appropriate quid pro quo for its proposed schedule change. This will result in an annual cost saving to the City per Patrolman at a start rate of \$836.78 or, in the case of the Sergeant, \$1,050.84. This substantially offsets the cost of the extended work shift.

The City prepared detailed analysis of the cost associated with the shift schedule change in light of the wage freeze for 1992 and the impact of the part-timer's increase. (City Exhibits A-9 - A-14). In 1991, the base year for calculating costs, the total gross salary of the entire Edgerton Police Department was \$180,798, which includes the part-time salary paid to Jim Bosben. Under the City's proposal of a 4% wage increase for 1992, the total expenditure increases to \$189,515. This compares to the cost of the Union's proposal at \$193,378.

For 1993 and 1994, the Parties are in agreement that the general wage increase for Patrolmen will be 4% for each year. Consequently, the City calculates the total cost of its wage increase at \$196,845, compared to \$201,222 under the Union's proposal. For 1994, the City estimates that the total cost under its wage proposal will be \$204,669, compared to the Union's proposal at \$209,628. The approximate cost difference between the Parties' proposal is \$13,199 for the three-year period.

The City produced evidence that Edgerton has lost many of the industrial jobs in the City over the last ten years. There were 2,750 jobs lost with Dana Corporation releasing 1,700 employees, Dorsey Trailer releasing 450, Nunn Bush Shoe Factory releasing 350 and the LeMans Corporation closing its plant in the summer of 1992, releasing 250 employees. During the decade only approximately 45 jobs were created in the community. (City Exhibits E-1, E-2, F, G and H). As a result, Edgerton is becoming a retirement community with many people living on fixed incomes, which makes it more difficult to raise the tax rates to offset higher labor costs to City employees.

In rebuttal, the Union presented evidence that shows Edgerton has attracted new businesses. Peterson Products has commenced business in Edgerton, along with CPI.

Even though Edgerton has lost several businesses and gained a few back, and is now becoming a retirement community, the City never proved that it had the inability to pay the Union's final position, which is approximately \$13,199 more than the City's proposal over the three-year period. In fact, the City never contended that it is financially unable to meet the Union's proposal. It thus cannot be concluded that Edgerton is experiencing, on the whole, an economic disaster that would preclude the Arbitrator from awarding the Union's proposal.

D. Comparison of 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 in public employment in comparable communities and in private employment in comparable communities.

The effect of the Union's proposal for 1992, even with the wage freeze, is at least a 6.22% pay increase, with additional pay for other benefits bringing the total package increase to 11.25%. This compares to a 4% general wage increase, for a 5.05% total package increase under the City's proposal. For 1993 and 1994 the Parties agreed that the appropriate wage increase should be 4% for each year.

The final offer of the City is consistent with the comparison of wages of other employees performing similar services in the public sector. The City concluded bargaining with CWA for all of its municipal employees (16), with a pay increase of 4% each year over a three-year period commencing January 1, 1992. (City Exhibit K). The State of Wisconsin State Employees Union covering 24,000 state employees signed a two-year contract providing for a

1% pay increase effective June 30, 1991, until June 30, 1992, and then a 2.75% pay increase effective June 30, 1992, until June 30, 1993. (City Exhibit B).

Arbitrators have frequently recognized that the most important consideration under this factor is the comparison of employees to those performing similar duties in comparable communities. Monona Grove School District, Dec. 25030 4-A Petri 1989). Here, with only few exceptions, the Parties have agreed on a comparability group. The City, like the Union, used the comparable cities of Elkhorn, Town of Beloit, Milton, Jefferson, Lake Mills, Evansville and Delavan. The Union added Stoughton and Fontana/Lake Geneva. Stoughton is a valid comparable in that Arbitrator Ed Krinsky used this city in his deliberations in the arbitration to resolve the last contract dispute. (Union Exhibit #3, p. 3-4). Fontana/Geneva is also appropriately included as its population of 5,979 is similar to that of Edgerton (4,254), and other comparison communities. In addition, this city is located in the same geographic area.

Of the available settlement data, Milton granted a salary increase to their law enforcement personnel of 4% in 1992. The Town of Beloit reported a settlement of 5% in 1992 and 4% in 1993. Lake Mills and Elkhorn had pay increases of 4.5% in 1992 and a 4.5% in 1993. The only settlement that compares favorably with the City's proposal is that of Milton, with the others being higher settlements. None of the settlements, however, reach the Union's wage increase of at least 6.22%.

It would at this juncture be easy to conclude that the City's position is preferred over that of the City with respect to both internal and external comparisons, except that one important variable has not been considered as it relates to this case.

A review of the work shift schedules found in the comparable cities show that a variety of work schedules are utilized ranging from 6-2/6-3 to 5-2/5-3 schedules. (Union Exhibit #12). However, all of these schedules provide annual average hours which substantially exceed those of Edgerton by, at a minimum, of 61 hours per year. Moreover, with the exception of Edgerton, all those comparable cities which have elected a 5-2/5-3 work schedule have, at a minimum, eight and one-quarter hours per day (Delavan, Milton and Jefferson). The Town of Beloit, which also has a 5-2/5-3 schedule utilizes the 8.5 hour day which the Union proposes in this matter.

The impact of only working 8 hour per day compared to the other cities that work more daily hours on the annual compensation for Edgerton Patrolmen is significant. Under the City's final offer, maintaining the eight hour shift, a top ranking Patrolman in 1994 will receive an annual salary of \$27,458.06. (Union

Exhibit #13). This is less than a top ranking Patrolman will receive in any other of the comparable cities in 1992.

The City's proposal places the Edgerton law enforcement personnel at the very bottom in terms of annual compensation. The Union offer brings Patrolmen closer to the annual salaries of comparable communities, while at the same time, does so in a way that will provide an additional one-half hour per day of productive time to the citizens of Edgerton.

The City currently has only one part-time Patrolman, Jim Bosben, who has worked for the City for a number of years. Mr. Bosben is fully certified and trained in accordance with current state requirements. He is also expected to perform all of the duties normally performed by a full-time Patrolman.

Mr. Bosben is currently being paid \$9.00 per hour. Under the Union's proposal Mr. Bosben would be pay \$12.54 per hour as of January 1, 1992, compared to \$10.69 under the City's proposal.

The City proposes to start a part-time Patrolman at \$8.33 per hour for 1992. This is the lowest starting rate of any of the comparable communities in 1992. Yet, under the Union's proposal of \$12.54 (without longevity), this would be one of the highest among the comparables. Comparability alone on this issue dealing with part-time salary is not conclusive as to sustain either Parties' position under this factor.

E. The average consumer prices for goods and services, commonly known as the cost-of-living.

The most appropriate cost of living figure is the Milwaukee area, which is geographically closer to Edgerton than any other urban based city. The index shows a 2.6% increase in the CPI for 1990 and 1991 for urban wage earners. The final offers of both Parties are greater than the CPI, with the City's final offer being the closest to the rate of inflation.

F. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

This criterion has been thoroughly addressed in previous discussions involving the economic impact on benefits associated

with the Union's work schedule change proposal. Further comment would be redundant.

G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

The most recent salary and total package settlements to date among the comparable cities have been reported and incorporated into the decision of the Arbitrator.

H. 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.

This factor is one of the important considerations in this matter as it relates to the bargaining history of the Parties.

The Union's proposal represents a substantial change in the status quo by attempting to change the work week for a Patrolman from an eight hour day to an eight and one-half day. The Union bargained for approximately eight years to receive a reduction in work schedule from a 6-2/6-3 to 5-2/5-3 schedule. This bargaining goal was finally achieved effective January 1, 1986. This work schedule change shortened the work week and hours worked by a Patrolman which, as a result, also reduced their gross pay from the old 6-2/6-3 schedule.

During the last round of negotiations, the City agreed to the Union's present proposal for an eight and one-half hour work schedule. A tentative agreement was reached on October 31, 1988. (Union Exhibit #4). On that basis, Arbitrator Krinsky found that on the issue of shift schedule the Union's offer was more preferable on the basis of the Parties' bargaining history. (Union Exhibit #3, p. 18). However, Arbitrator Krinsky rendered a decision in favor of the City based upon the remaining issues at impasse.

The fact that the Parties reached a tentative agreement extending the work day to eight and one-half hours in the last round of negotiations is sufficient evidence that the Union's offer is fair and reasonable. It is fair and reasonable in that it provides additional service to the citizens of the City. The extension at the end of the shift by one-half hour will provide an

additional opportunity for officers going off duty to complete reports at the end of the shift without depriving the City of law enforcement coverage. It will provide greater protection to the citizens of the City and their children on school areas, while allowing the officers the time needed to receive the necessary information on the next shift.

Past bargaining history is also an important consideration as it relates to pay for the part-time Patrolman. It is uncontested that during the course of bargaining for the current contract the Union proposed that part-time officers would receive the same hourly wage rate as full-time officers. By proposal dated August 27, 1991, the City agreed to the Union's position. (Union Exhibit #5, p. 3). Nonetheless, at a subsequent bargaining session on October 10, 1991, the City withdrew from the tentative agreement and proposed a rate ranging from \$8.33 to \$10.69 per hour for part-time employees. The City's proposed change was due to the City Council's rejection of the tentative agreement reached by the Parties. The existence of this tentative agreement is the best indication that the proposal was within the Parties' expectations under a voluntary settlement and, therefore, the Union's proposal is favored by the Arbitrator. The Union's proposal better recognizes the experience and commitment of the current part-time officer. It would, indeed, be unfortunate if that officer was lost by the City due to an inadequate wage rate, especially when there are only six other full-time officers in the Department, excluding the Chief of Police.

In summary, the evidence has proved that the public interest and welfare would be better served by extending the work day by one-half hour to eight and one-half hours per day. This change is not novel as the City proposed extension of the work day at the end of the shift during the last round of contract negotiations. The City's argument during those negotiations is persuasive evidence alone that the extension in daily hours will work to the benefit of the public. In fact, by extending the hours, the public is receiving a benefit of having the Patrolman on duty for a longer period of time rather than granting the employees a substantially higher general wage increase for eight hours of work to make up the disparity in annual that exists between Edgerton Patrolmen and those law enforcement officers in comparable cities, especially in a 5-2, 5-3 work schedule.

The increase police coverage provided by the extension of the daily shift hours is not the only benefit to the public. The low annual salaries of Edgerton Patrolmen have caused, in part, six excellent officers to leave the City's employ over the last few years. In addition, the low annual salary has caused Patrolmen to work part-time in other communities in order to maintain their standard of living. This essentially undermines the very essence of the 5-2/5-3 schedule which was to provide adequate respite to

the Patrolmen from patrol duties to better serve Edgerton citizens.

The evidence has shown that the City has the financial ability to fund the Union's proposal, in spite of a number of plant closings within the Edgerton area in the past several years. It appears that Edgerton is slowly gaining back new jobs in the area.

The Union has provided an appropriate quid pro quo for its proposed schedule change. It has also proven the need for the change and the need to increase the part-time Patrolman salary.

The cost of living is not a substantial fact in this matter, as both Parties proposed wage increases which are substantially above the cost of living.

Taken together, the Union's proposal for extending the shift schedule by one-half hour to eight and one-half hours per day in lieu of a general wage increase for 1992, as well as its proposal for the wage rate of the part-time Patrolman, is found by the Arbitrator to be more reasonable than the City's proposals.

AWARD

Based upon the statutory criteria in Wis. Stats. 111.77(6), the evidence and arguments presented in this proceeding, and for the reasons discussed above, the Arbitrator selects the final offer of the Union and directs that it, along with any and all stipulations entered into by the Parties, shall be incorporated into the 1992-94 collective bargaining agreement.


Richard John Miller

Dated August 12, 1992, at Maple Grove, Minnesota.