

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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In the Matter of the Petition of

THE LABOR ASSOCIATION OF
WISCONSIN, INC.

Case 29
No. 46793 MIA-1686
Decision No. 27300

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

CITY OF WEST BEND

APPEARANCES:

On Behalf of the City: Richard C. Yde, City Attorney

On Behalf of the Union: Patrick J. Coraggio, Labor Consultant

I. BACKGROUND

On January 2, 1992, the Union 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 Relations Act, with regard to an impasse existing between the Parties with respect to wages, hours, and conditions of employment of law enforcement personnel for the years 1992 and 1993. An informal investigation was conducted on March 5, 1992, by a member of the Commission's staff, and the Investigator advised the Commission on June 11, 1992, that the Parties were at impasse on the existing issues. Final offers were submitted at that time.

On June 16, 1992, the Commission ordered the Parties to select an arbitrator to resolve their dispute. The undersigned was selected, and on July 1, 1992, his appointment was ordered by the Commission.

Subsequently, a hearing was scheduled and held on November 10, 1992. The Parties filed briefs, and the City filed a reply brief which was transmitted to the Union February 1, 1993.

II. FINAL OFFERS AND ISSUES

There are three issues before the Arbitrator. The major issue is wages. The other two issues are the clothing allowance and the allowance for vision exams.

The Union proposes to increase the wage rate schedule by 4% effective January 5, 1992. For 1993 they propose a split increase of 3% effective January 3 and 2% July 4, 1993. The Union makes no proposal, as does the City, on clothing allowance or vision exams.

The City proposes to increase wage rates by 4% on January 5, 1992, and 4% effective January 3, 1993. Their final offer on the other issues reads as follows:

"Clothing Allowance: Section 10.02, Page 13, Line 5, replace 'to a maximum of \$335' with '1992 to a maximum of \$360, and during calendar year 1993 to a maximum of \$385.'

"Vision Exam: Section 11.06, page 17, Line 16, change 'Fifty Dollars (\$50.00)' to 'Seventy-Five Dollars (\$75.00).'

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Association

The Association analyzes the final offers in the context of the statutory criteria. The Union believes two of those criteria are not particularly relevant. They are the lawful authority of the Employer and the ability to pay. They note that neither of these two issues were raised in negotiations or mediation. Therefore, it is their position that these criteria are not in dispute.

Regarding the tentative agreements and their impact on the final offers, the Association contends that these items must be looked at and given consideration by the Arbitrator. These tentative agreements, in their opinion, have no additional cost to the Employer and reveal the Association's desire to reach an agreement by making numerous concessions. For instance, Article VIII - Overtime, Section 8.01, which was changed to read that overtime would be paid to the nearest quarter hour instead of the current contract language which states the next higher quarter hour. Another concession made by the Association was to allow in Article VIII, Section 8.04, the City to reschedule employees' days off to accommodate attendance at a training program which is at least five consecutive days long (Monday through Friday) without incurring any overtime obligation. The biggest concession related to health insurance where the Association agreed to a preferred provider concept of health insurance with a co-insurance rate of 80%/20% applied to the first \$2,000 per individual of covered charges, either basic or major medical, per calendar year. The co-insurance would create out of pocket payments for the employee of \$200 single and \$400 family. This is in contrast to the previous insurance which was 90%/10% on the first \$2,000. Additionally, individuals will now be subject to a \$200 per admission deductible for each non-preferred provider in-patient hospital admission unless the deductible is waived. Prescription drugs were increased from \$2 for brand names and no deductible for generic drugs, to \$4 per prescription for brand names and \$20 for generic prescription. Still further, another concession in the health insurance area was to make eligible employees and dependents who wish to use in-patient or out-patient treatment of mental and nervous drug abuse and alcoholic disorder benefits contact the Employee Assistance Program before utilizing those services, a condition which did not exist in the prior agreement.

Prior to offering argument on how the external comparables support their offer, the Association first contends its selection of comparable communities is more reasonable than that of the City. The Association, in determining the appropriate comparables, looked at the contiguous communities to the City of West Bend as well as other law enforcement departments in the area; departments which are, to some degree, relevant in size and are in the same geographic proximity and job market. The Association also considered the population of the community, the square miles of the community, and how much interaction took place between the officers in the City of West Bend and the officers in the other departments that were in the general area. The communities they feel most appropriate as comparables are the Washington County Sheriff's Department, City of Mequon Police Department, City of Cedarburg Police Department, City of Port Washington Police Department, and

the villages of Grafton, Germantown, and Hartford police departments. In fact, they note that all these municipalities are included in the City's exhibits as well. Thus, they suggest that the City cannot legitimately dispute their comparables.

What the City does do is go beyond these municipalities and include Ozaukee County, Fond du Lac County, Dodge County, and Sheboygan County. However, these comparisons, the Union submits, are without merit and unreasonable. This is primarily because there is no testimony put into the record by any witness that the City of West Bend police officers interact or have any contact with county law enforcement officers from other jurisdictions on a regular basis. Moreover, the duties of city police and county police are definitely and distinctly different. The duties, obligations, and responsibilities of city law enforcement officers cannot be compared to those of a county.

Based on their choice comparable groups, the Association contends that criteria (D) favors their offer. At the foundation of their argument is the fact that the police officers in the City of West Bend have consistently lost ground on their fellow law enforcement officers in comparable communities since 1987. In 1987 the salary of a patrolman in West Bend was \$8.52 per month less than the average. In 1991 it was \$72.64 per month less. If the Employer's final offer is accepted, the rate will be \$109.15 less than average at the end of 1993. If the Association's offer is accepted it will put the patrolman \$80.19 per month behind the average. This is a slight improvement over the 1992 deficit of \$91.57/month under the offers. Thus, their goal is to stop the downward spiral and to start to catch up. They note, too, that even the Employer exhibits show a downward trend.

The Association also rejects the City's reliance on the internal comparables. There has been no history of an internal pattern. The Employer's own exhibits clearly demonstrate that although the settlements are similar, from 1987 through 1992, there was always a deviation in the internal settlement. It is only in 1992 that all of the unions accepted a 4% wage increase, and thus, the Association submits, the argument of internal patterns is without merit. There are also differences between the units in fringe benefits. For instance, the fire department has holiday pay that is paid out at the end of the year and equals 240 of pay in cash on December 1. The police officers have not been afforded this benefit and instead have 12 holidays which must be taken as off time. The police have no option to cash out the 12 days (96 hours). Fire fighters also have an education allowance which the police officers do not have, which allows fire fighters to collect up to \$500 per year for schooling. Additionally, fire fighters get 8% of their retirement fund paid

to the state in contrast to the Association's 6.7%. There are other examples as well. Accordingly, they maintain that the internal settlement pattern and historical overview provided by the Employer cannot be given much weight by the Arbitrator because creative bargaining has put different benefits into the contracts of the fire fighters, and presumably in all of the other contracts that the City negotiates as well. They cite, among others, Arbitrator Anderson's award in the Village of Fox Point (Decision No. 44912) which, they believe, presented a very similar situation. Adherence to the internal pattern would simply put the West Bend officers too far behind, it is argued.

The Association also rejects the City argument that police officers have benefits or total compensation which exceeds that of other groups. In this regard, the City stressed the health insurance benefit for retirees. However, the Association notes that the benefit is not without cost to the officer--it is deducted from accumulated sick leave--and that it has never been utilized by the unit.

Last, the Association contends it has offered a quid pro quo for its "catch-up" raise. This comes in the form of their rejecting the increases in clothing allowance and vision exams. There is also relief for the Employer due to the fact that they have proposed a split increase. In fact, the Association's final offer, even though it presents an additional 1% lift in the second year of the agreement, presents a less costly package to the Employer during 1992 and 1993.

B. The Employer

The City first argues that there has been a settlement pattern established for all City bargaining units. All the other units had voluntary settlements for 1992-93 which provided for the same health insurance changes as in the stipulations between the Union and the City and wage increases of 4% for 1992 and 4% for 1993. Because the City's offer conforms to that pattern, it is more reasonable. First, the other units will not feel that they have been treated fairly; they will feel that they are entitled to some "catch-up" because the Union got more than they did. The City concedes that if the pattern of settlements with the other units provided an increase which was less than the increase in the cost of living or if the pattern caused the Union to be out of line with its comparables or if the pattern was out of line with settlements in comparable communities, there might be a reason for varying from that pattern. However, they maintain no such reason exists. Further in this regard, the City argues that

each of the fringe benefits provided by the City is at least as good as, and most are better than, those provided by Washington County. Moreover, the City's offer exceeds the cost of living, which they submit is an independent reason in support of their offer.

In terms of comparisons to other communities, the City believes its list of comparable communities is more appropriate. They reject the Union's comparables because the only justification given by the Union for selecting the comparables they did was that they interact with those departments. The fact is, however, is that the officers of the West Bend Police Department interact at least as much with the communities to the north and west proposed as comparables by the City as they do with communities to the south. Thus, the City submits its list is more balanced in terms of geography, size of community, number of officers, and number of bargaining unit members. In addition to the Union's group the City proposes the Arbitrator consider Beaver Dam, Dodge County, City of Fond du Lac, Fond du Lac County, Ozaukee County, City of Sheboygan, and Sheboygan County. In contrast, the Union believes that the only comparable communities are south of the City.

The City, when looking at its comparables, believes this criteria support their offer. They argue that just as the City is located between the Milwaukee metropolitan area and the outlying communities geographically, so historically have wages in the City been between those in the Milwaukee suburbs and those farther from Milwaukee. More importantly, the rank of West Bend has remained constant. The same five communities which paid their police officers higher wages than the City of West Bend in 1992 were also paying their police officers more in 1987. Moreover, the City's police officers have not only maintained their relative position compared to the comparable communities but have improved it since 1987. The City also contends it is significant (1) that the wage settlements among the comparable communities for 1993 are generally about 4% and (2) that the City officers have a top base annual wage rate which is \$1,191 more per year than the average.

Among the external comparables, the City believes the most comparable department is the Washington County Sheriff's Department. It is similar in size, is located in West Bend, and requires residency in Washington County (which requirement is more restrictive than the West Bend residency). The Union's offer is less reasonable, the City submits, because it would increase the advantage of West Bend over Washington County. In fact, Washington County has been trying to catch up to the City. Not only are officers in West Bend

paid more, but each of the fringe benefits provided by the City is at least as good as, and most are better than, those provided by Washington County.

Last, in terms of comparables, the City argues that its fringe benefits are superior to those in comparable communities. The benefits provided by the City for health insurance, retirement, life insurance, holidays, sick leave accrual, and retiree health insurance are as good as, or better than, those provided by any of the comparable communities. Additionally, the longevity pay provided by the City is more than most of the comparables and more than all of the Union's comparables. In longevity pay alone, the City is more than \$35 per month ahead of the average of the Union's list of comparables, and the value of the City's retiree health benefit by itself is enough to put the City over the average of the Union's comparables. When all the fringes are added, their value puts the City at or near the top of whichever list of comparables is chosen.

IV. OPINION AND DISCUSSION

This case proves at least one thing. If an arbitrator is in this business long enough, he will see just about everything. The unusual aspect of this case is that economic value of the City's final offer to the employees is greater than the Union's offer. The Union's offer costs approximately \$2,700 less than the Employer's offer during the term of the contract because (1) it does not provide for an increase in the clothing allowance and vision examination allowance and (2) it limits the impact of its 5% rate increase by splitting its effective dates.

In view of this oddity, it is obvious that the issue isn't the dollars or the cost of the offers. Instead, this issue is the structure of the offers and in what form the money is given to the officers. The Employer gives the money in the form of wages and fringes. The Union asks for it strictly in the form of an increase of the wage rate.

The Union argues that this is necessary in order to catch up to the external comparables. The City argues for adherence to the internal pattern of a pair of 4% increases. This is not an uncommon dilemma. There is also a well-established method to reconcile these approaches. To summarize the precedent, where there is a well-established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable wage level relationships between the unit at bar and its external comparables. The reasons for this are

well known and relate primarily to the negative affect that breaking the pattern could have on the stability of bargaining and overall employee morale. A large equity factor exists when all but one group has accepted a uniform settlement. It would not be fair to grant a larger increase to a lone group unless truly justified. What constitutes an unacceptable disparity relative to the externals depends on the facts and circumstances of each case.

In this case, whether there is an unacceptable disparity cannot be determined without first determining which other communities are comparable for purposes of Criteria (D). After weighing the arguments of the Parties, the Arbitrator is persuaded that the Union's group of comparables is simply too selective to be valid. Its primary problem is that it relies too heavily on what the Arbitrator will refer to as the suburban Milwaukee collar communities. In this case, these communities are Germantown, Mequon, Cedarburg, and Grafton. These communities are, or surround, recognized Milwaukee suburbs. As such, they compete in a labor market different from West Bend. Equally important is that employees in communities under the strong influence of Milwaukee face a significantly higher cost of living, as evidenced in this record by higher housing costs. For instance, the median home cost in Washington County, in which West Bend is located, in 1990 was \$83,900 compared to \$144,700 in Mequon, \$100,400 in Cedarburg, \$96,700 in Germantown, and \$89,100 in Grafton. As such, it is no surprise that these communities have significantly higher wage levels than West Bend.

This is not to say that West Bend doesn't feel the influence to some degree of the urban sprawl of Milwaukee. It is to say, however, that it does not feel the influence of Milwaukee's cost of living and its labor market to the same degree, and thus, it is unreasonable to compare West Bend only to a group of comparables so heavily influenced by Milwaukee collar communities.

The Arbitrator would feel the same way if the City tried to compare West Bend only to communities more remote relative to Milwaukee. These communities, such as Fond du Lac and Sheboygan, are largely outside the sphere of Milwaukee's influence, where as West Bend is not. In this respect, West Bend is neither fish nor fowl. It hasn't completely escaped the Milwaukee influence, but yet it isn't completely dominated by it as many of the Union comparables.

For this reason the City's comparables present a better balance as to the true character of West Bend. In particular, the Washington County Sheriff's Department, the Village of Hartford, and Port Washington are probably the

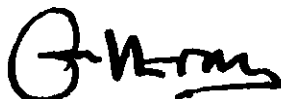
most instructive. It should also be noted that the Arbitrator doesn't necessarily believe the City's comparables to be the best or the ideal group. It is sufficient to say that it is much more appropriate than the Union's group.

When the wage levels in the Employer's comparables are examined relative to West Bend's wage level, it cannot be said that there is any wage disparity, let alone a disparity significant enough to compel altering the internal pattern. West Bend is roughly in the middle of the pack in terms of salary levels just as it is in terms of several important demographics which establish comparability.¹ In fact, in terms of housing costs, population, and bargaining unit size, West Bend pretty much reflects the average of the City's comparable group. The 1992 top pay rate for an officer in West Bend will be approximately \$1,100 more per year than the average, and just as important, it will be that much more than Washington County. This strongly suggests, along with the fact West Bend does have some favorable benefits advantages over many comparables including the Milwaukee collar communities, that adherence to the internal pattern would not result in an unacceptable wage relationship relative to the comparables.

In summary, the Employer's offer is more reasonable because it results in greater economic benefit during the term of the contract to the employees, it is consistent with the internal pattern, and does not result in external wage level disparities. The Arbitrator was not persuaded that the Union's comparable group was entirely valid, that the police made any health insurance concessions not made by others, or that the lower cost of their package was enough to ignore the internal pattern.

AWARD

The final offer of the Employer is selected.



Gil Vernon, Arbitrator

Dated this 7 day of March 1993.

¹The interaction of West Bend with other departments should not be over relied upon as a factor in determining comparables.