

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
AUG 30 1993

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

DOUGLAS COUNTY

Case 190
No. 48445 MIA-1772
Decision No. 27594-A
Milo G. Flaten
Arbitrator

The undersigned was appointed as arbitrator in this matter on April 1, 1993. Prior to his appointment, the Union filed a petition requesting the Wisconsin Employment Relations Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act, Wisconsin Statutes.

An investigation had been conducted on January 18, 1993 by a member of the Commission's staff who advised the Commission on March 12, 1992 that the parties were at impasse and final offers were transmitted.

A hearing was held on June 22, 1993 at Superior, Wisconsin. Prior to the start of the hearing, and with the consent of the parties, an unsuccessful attempt to mediate the dispute took place.

At the hearing, the parties had the opportunity to present evidence, testimony and make arguments. Post-hearing briefs were submitted to the arbitrator for mutual exchange following an agreed-to schedule.

Appearing for the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (hereafter, "the Union") was Richard T. Little of Wauwatosa, Wisconsin and for Douglas County (hereafter, "The Employer") was John Mulder, Personnel Director.

The arbitrator is required by statute to select in its entirety one side's final offer or the other.

The final offer of the Union was as follows:

- A. All terms and conditions of the 1991-1992 Agreement shall be continued for a two (2) year term except as otherwise agreed to between the parties in their written stipulations and except as noted below.
- B. Revise all applicable dates to reflect a duration of two (2) years.
- C. Amend ARTICLE 29 to read as follows:
CALL OUTS: Employees, when called to work on holidays, Sundays or any other unscheduled day, shall be paid *at the rate of one and one-half (1 1/2) times the regular rate of pay* ~~the applicable rate of pay for each day~~ for the work performed, but in no case shall they receive less than four (4) hours' straight time pay. This minimum call-in pay does not apply when ordered in less than two (2) hours prior to an employee's regularly assigned shift. ~~Hours worked in excess of eight hours per day shall be compensated pursuant to Article 27.~~
- D. Revise APPENDIX "A" to reflect the following:
 - Effective 1-1-93 Two percent (2%) across the board.
 - Effective 7-1-93 Two percent (2%) across the board.
 - Effective 1-1-94 Two percent (2%) across the board.
 - Effective 7-1-94 Three percent (3%) across the board.

The final offer of the County is as follows:

- A. All tentative agreement reached to date.
- B. Wages:
 - Effective 1-1-93 Increase wage scale by 3%.
- C. Duration: Change all dates to reflect a one-year agreement for 1993.

POSITIONS OF THE PARTIES

The Union takes the position that its Final Offer is the more reasonable of the two. It also argues that its offer more fully meets the criteria set forth by the Wisconsin Statutes as that which an arbitrator should consider in reaching his decision.

With regard to wages, it argues that its final offer is fully supported by external comparisons. By that the Union means comparison with other Sheriff's Departments in the surrounding territory and by comparison with the City of Superior Police Department. It points out that its final offer falls well within the range of wage increases given to surrounding counties it claims should be used to compare in terms of population, proximity to Douglas County, size of department, crime index offenses, as well as hourly wage rates.

The Union argues further that the wages of the City of Superior Police, especially, should be viewed as a primary source for comparison rather than looking to the wage increases offered to other Douglas County employees.

There is a sound basis for comparing law enforcement personnel with other law enforcement personnel, argues the Union. Not only is the nature of their work different from white and blue collar employees, but the law governing the procedure for establishing their wages, hours and conditions of employment is also markedly different, contends the Union. On a basis of similarity of duties, working together and interchangeability of personnel, there is more reason to compare the Douglas County Sheriff's Department with those of the City of Superior Police than with the county highway or hospital employees argues the Union.

On the other hand, the Employer argues that wage comparisons awarded to other employees of the County, based on percentage increases, should be given the greatest weight. Internal settlement patterns between different units of this County have been widely recognized by arbitrators as valid subjects of similarities, argues the Employer. What wage increases fellow employees received is a good yard stick for the proximate mix that goes into the whole picture, claims the Employer. In fact, the internal pattern shown by other units of this County is more important than any single other criteria. Furthermore, avers the Employer, the County has had a consistent historical settlement pattern with all of its bargaining units going back to 1985.

The Employer next points out that the Union's comparison of wages with those of the City of Superior is not valid. This is because the city does not employ Jailers and Jailers comprise 34% of its bargaining unit, continues the Employer. It's like comparing apples and oranges, argues the Employer, when the jobs in the two departments are so dissimilar.

The Union, however, argues that there has been a steady decline in Douglas County wage levels when viewed against the backdrop of wage levels in the other counties it claims are valid comparables. For instance, contends the Union, in the 3-year period of 1988, 1989 and 1990, Douglas County Sheriff's Deputies ranked in the number one position among the comparables both in 1991 and 1992 it dropped a notch to the number two position, the Union continues, and that steady decline will continue if the Employer's wage offer is used in 1993. The Union then goes on to claim that no justification for the decline has been proven.

The Employer answers by pointing out that the Union's comparisons are made in terms of percentage only. When compared in terms of actual wage rates, the Employer continues, its offer is not unreasonable and it then points out that its wage rates are still considerably above average. More importantly, points out the Employer, its percentage increase offer is consistent with that of other Douglas County bargaining units.

With regard to Employer's contention that the other County bargaining units all accepted the identical percentage increase that is being offered to the Union, the latter declares that is not true. For all but two of the other units accepted contracts with restricted clauses which limit re-opening talks to the subject of wages and nothing else, declares the Union.

With regard to the duration of the proposed contract, the Union claims its proposal is more reasonable. That is because the year in question is over half completed already and acceptance of the Employer's offer would require the parties to go right back into bargaining for a successor agreement upon completion of these proceedings. Furthermore, continues the Union, all of the other counties shown as external comparables have negotiated two-year agreements. Stability in labor relations requires a two-year contract, argues the Union.

To the Union's position on duration, the Employer declares that the duration of the contract would be insignificant were it not for the percentage of wage increase (lift) proposed for the second year, 5%. Such an increase is very significant, points out the Employer, because the other eight bargaining units have not settled for 1994 and the proposal would set a wage pattern higher than both the internal units and the surrounding Sheriff's Departments.

On the unsettled subject of call-out pay, the Union concedes the issue is insignificant due to the infrequency of occurrences. But it argues that its final proposal is the more reasonable because it would finally place its members on equal footing with all other Sheriff's Department

employees in Northwestern Wisconsin. That is, the Union goes on, no other department provides a possibility of an Employee being called in outside of their regularly scheduled hours of work without receiving premium pay of at least time and one-half for it. The Union declares that selection of its proposal would end that inequity.

The Employer agrees that the subject of Call-out pay is insignificant when viewed alongside the others. However, the Employer points out that while it pays call-outs at straight time rather than at an overtime rate, it pays a greater guaranteed minimum, 4 hours, than the list of comparables. Besides, claims the Employer, the Union offers no quid pro quo for this added benefit while proposing increases over and above the internal settlement pattern.

DISCUSSION

The statute requires an arbitrator to select in its entirety, on party's final offer or the other. However, some factors to be used in reaching a decision are not in controversy. These are "(a) lawful authority of the employer; (b) stipulations of the parties; (g) changes during the pendency of the arbitration proceedings; (h) other factors...normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment."

Both sides agree that the percentage increase in wages over the term of the contract is the major issue in this dispute. What is in disagreement is which entity the arbitrator should use in comparing and determining reasonableness. The Employer's comparables are the percentage increases already granted to the other eight Douglas County bargaining units (internal comparison) and the Union's are the Police Department of the City of Superior and the percentage increases granted Sheriff's Department Employees in the surrounding counties (external comparisons).

The Union's comparables, at first blush, seem to be the most appropriate. After all, the surrounding counties have deputies doing the same duties under virtually the same working conditions. In fact, the City of Superior Police Department has employees who probably are neighbors and social acquaintances and work out of the same headquarters city as the Union's. But, this comparability somewhat diminishes under closer scrutiny. The City of Superior has no Jailers and Jailers constitute over a third of Union's employees. With that much of the work force performing disparate duties, the City of Superior clearly becomes a secondary

comparable. Furthermore, while the Employer's percentage offer is less than surrounding comparables, the existing wage rates already are considerably above average to start with, especially the Employer's Jailers. It, therefore, would not be unreasonable to view the larger increases granted the comparable counties as more like an effort to catch up with the pay in the Employer's County. Moreover, an examination of the 5 surrounding counties shows that they have shifted health insurance costs to employees through increased deductibles and co-payment of single coverage premiums. Despite this shifting of costs, the wage rates of Union employees still compare favorably to the wage rates of the external comparables.

Nor can this observer ignore the settlements of all the other working "Internal" comparables. Where there is a pattern of wage increases throughout the entire workforce, that pattern deserves great weight. Municipal Employers understandably strive for consistency and equity in the treatment of employees. Hard feelings are avoided when all County employees are treated alike. Deviations from an established pattern can be disruptive and have a negative impact upon employee morale.

Sometimes there are too few internal settlements to constitute a pattern. Here, however, 8 bargaining units have accepted the Employer's consistent offer. The pattern has been established except for this single bargaining unit. A deviation from the settlement pattern can be destructive to the collective bargaining process.

With regard to the duration of the contract, the internal comparison shows once again that all bargaining units save this one, have settled for single year contracts. While this observer recognizes that multi-year contracts provide stability, single year agreements provide flexibility to deal with changing conditions such as the cost of living.

What is apparent is that the Union's proposal for a 5% lift in the second year would put the Union's wages above all comparison Sheriff's Departments and possibly ahead of the City of Superior Police Department as well.

While this observer feels that the Union's position on granting overtime for call-out pay is reasonable, its importance clearly pales in the face of the other issues when it comes to deciding which final offer is the more reasonable.

The arbitrator is required by statute to choose one offer or the other in its entirety. Based on the above facts and discussion, it is his conclusion that the County's offer is

preferable. He finds the County's offer to be competitive with other Sheriff's Departments, and more reasonable than the Union's offer when the factors of the interests and welfare of the public, and the cost of living are considered. While the arbitrator is sympathetic to the Union's desire to have equality or near-equality with the City of Superior Police, the disparity of duties in the two departments does not make for a valid comparison. Also, the Union's offer for the second year, when combined with the first year offer, would put the bargaining unit above the competition in the other Sheriff's Departments and possibly above the rates paid to the police in the City of Superior. The arbitrator is not persuaded that increases of that magnitude are called for at this time. It is true, as the Union points out, that selection of the Employer's offer results in the Union being the only unit in Northwestern Wisconsin without overtime for work hours over and beyond normal work hours. But there is no way for the arbitrator to address that difference without awarding the Union's offer in its entirety, something which he feels is not justified based on the record before him.

Based on the above facts and discussion, the arbitrator hereby makes the following

AWARD

The County's final offer is selected.

Dated: August 22, 1993



Milo G. Flaten
Arbitrator