



BEFORE THE ARBITRATOR

In the Matter of the Petition of

WALWORTH COUNTY DEPUTY SHERIFFS' ASSOCIATION

To Initiate Arbitration Between Said Petitioner and

Case 128 No. 51844 MIA-1929 Decision No. 28328-A

WALWORTH COUNTY (SHERIFF'S DEPARTMENT)

Appearances:

Davis & Kuelthau, S.C., Attorneys at Law, by Roger E. Walsh, appearing on behalf of the Employer.

Gimbel, Reilly, Guerin and Brown, Attorneys at Law, appearing on behalf of the Association.

INTEREST ARBITRATION AWARD

Walworth County Deputy Sheriffs' Association, (herein "Association") having filed a petition to initiate interest arbitration pursuant to Section 111.77(3), Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and Walworth County (Sheriff's Department) (herein "Employer"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated April 3, 1995; and the Undersigned having held a hearing in Elkhorn, Wisconsin, on June 2, 1995; and each party having filed post hearing briefs, the last of which was received August 2, 1995.

ISSUE

The sole issue in this matter is the general wage increase occurring for the calendar year 1995, pursuant to a wage reopener provision of the parties' calendar 1994 and 1995 collective bargaining agreement. The Association proposes a 2.25% across-the-board increase effective January 1, 1995, and 2.0% across-the-board increase effective July 1, 1995. The Employer proposes a 3.5% across-the-board increase effective January 1, 1995.

POSITIONS OF THE PARTIES

The Association argues that Walworth County deputies have

uniquely heavy responsibilities. First, Walworth County is home to Alpine Valley, the site of many rock concert music events, and home to Country Thunder U.S.A., an outdoor country music festival. Both draw large, sometimes unruly crowds. Further, Walworth County is a large resort area. The tourist trade attracts criminals who would prey upon them. It argues that this translates into a need for qualified and well-paid professional law enforcement officers.

The Association argues that its proposed wage increase would only cost the 3.25% during the term of this agreement, less than the cost of the Employer's 3.5% wage increase. It also argues that in every odd year since 1991, the Association has received a split wage increase totaling more than the flat percentage increases for the other units. In every even year, the other bargaining units received a split wage increase totaling more than the Association's flat rate. It is, therefore, the Association's turn for a split-rate increase. In 1994, the Association accepted its smallest wage increase in five years in exchange for a shift change, while other units fared much better.

The Employer argues that it relies heavily comparison to wage rate increases granted other county employees and to wage rate comparisons to similar employees in the counties of Dodge, Jefferson, Kenosha, Ozaukee, Racine, Rock, Washington and Waukesha. There is no apparent dispute as to the appropriate comparable counties, except the Union's assertion that Milwaukee County is comparable. It notes previous arbitrators have found that Walworth was not comparable to Milwaukee. Among the comparable group, Walworth has the second highest wage rate, second only to Racine County which has a much higher crime rate. It next argues that Walworth County's 3.5% proposed wage increase is solidly within the range of wage increases granted in the comparable counties. The Association's proposed wage increase would be the largest total wage rate increase among the settled comparable counties, except Jefferson which clearly granted a "catch-up" increase.

The Employer's final offer is essentially consistent with all of the wage settlements it has in its other bargaining units, while the Association's proposed settlement provides an annual total percentage increase which is more than that received by any other unit. All other units have settled for wage increases of 3.52% across-the-board or less. Further, reviewing the total salary increases for the past six years among the other units, it is clear that the Association has received the second highest total increase over that period. Finally, it argues that its offer is more consistent with the increase of the consumer price index over 1994.

In its reply, the Association argues that while arbitrators have rejected Milwaukee as a comparable for Walworth County, that view is no longer correct because Walworth is now a convention and festival haven like Milwaukee County. It also argues that the Association's offer is comparable to that of comparable

counties when the average wage increase over 1995 is used, rather than year end wage rate. In any event, the Association's offer maintains the relative standing of Walworth County among the comparables. It notes that the Employer's offer ignores the recent internal settlement pattern of granting this unit split wage increases every even year. Finally, it argues that its 3.25% cost increase is more consistent with the consumer price index increase than the Employer's 3.5% wage increase. In any event, it argues that these indexes have little or no meaning in this arbitration because they involve many occupations, while this unit involves professional law enforcement officers who put their lives on the line every day.

In its reply brief, the Employer argues that the Association fails to justify its offer under any of the standards enumerated in Sec. 111.77, Stats. It argues there is no evidence that the special events in Walworth County adversely affect unit employees working conditions. In fact, Employer exhibit 10 suggest otherwise by showing that Walworth County experiences the same or less violent crimes than comparable counties. Similarly, the Association produced no evidence at the hearing to support its implicit argument that the Employer deliberately negotiated split increase in even years with the Association. The Association's argument that its offer costs the Employer only 3.25% is misleading since the Association's offer will cost the Employer 1.05% more in the succeeding year. The Employer also argues that the Association's claim that it is entitled to a larger wage increase in 1995 because it "accepted its smallest wage increase in five years --in exchange for a shift change", is incorrect. It did receive .25% less than other units, but the shift change actually reduced the work week from 39 hours to 38 and gave each deputy an additional 5 days off per year. This is a continuing permanent benefit and, therefore, the Association should not be permitted to "make it up."

DISCUSSION

In this proceeding the arbitrator is required to select the final offer of one party or the other, without modification. The determination of which offer is to be selected must be based upon the criteria which are set forth in Sec. 111.77, Wis. Stats. The standards which arbitrators are to use in evaluating final offers as specified in Section 111.70(4)(cm), Wis. Stats., are:

- a. The lawful authority of the municipal 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 the costs of any proposed settlement.

- d. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employes, 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.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. 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 parties, in the public service or in private employment.

These standards are in addition to "other factors" which are ordinarily considered in collective bargaining or interest arbitration. The weight to be given any factor is a matter left to the discretion of the arbitrator.

The main issue in this case is the Association's proposed use of a "split year" increase. The use of increases divided as the Association's offer is in this case, is a common method of providing larger than normal wage rate increases at a lower cost. Ordinarily parties use a single increase once during the contract year. Split increases are commonly only used when an employer has financial difficulty or there is a need for a "catch up" wage increase. This purpose is an "other factor" considered in arbitration. The Association has failed to show that any of those

circumstances are present here and, therefore, has failed to provide an adequate justification for the use of its split year increase.

The Employer has not claimed inability to pay and, in fact, has offered a general increase which exceeds the cost of the Association's offer during the 1995 year.

The Employer correctly did not include Milwaukee County as a comparable. It is neither contiguous, nor of similar size to Walworth County and, therefore, does not have a significant degree of comparability to be used for wage comparison purposes. The wage rate comparisons the Employer offered to 1994 demonstrate that Walworth pays more than every county except Racine and that Racine pays \$2.50 per hour more than any of the other comparable counties. Walworth is \$.27 per hour more than its Rock County. All, but Kenosha County have settled for 1995. All but Jefferson and Dodge settled for 3.5% increases. Jefferson was the lowest paying county in the comparable group by far. The Employer's offer is comparable to that offered in comparable counties and maintains the relative wage standing of the Association among those comparables.

Over the years the Employer and all of its collective bargaining units have settled on roughly similar wage settlements in each unit. Until recently it used win-win negotiation techniques. There have been variations including split year increases in some units and not in others. The Association's proposed use of a split year increase is not inconsistent with that pattern per se. In 1990, all units settled for a 3.5% wage increase, except the nursing home which settled for 3.0%. In 1991, the same pattern emerged with all units except the nursing home and this unit settling at 4.0%. In that year, the Employer granted this unit a 2% increase January 1, 1991, and 3% July 1, 1991. In 1992, the Employer granted every unit a 4.0% wage increase including this unit, but in every other unit made a 10 cent per hour increase effective in September or later of the contract year (about 1%). The nature of that type of increase suggests that it was made to counter-act the adverse effect of regularly using percentage increases on low wage employees. This is not a problem which this unit experiences. In 1993, the Employer granted all bargaining units a 4.0% increase and granted this unit a split increase of 2% and 3.5% mid-year. There was no evidence as to the reason for this increase; however, it exceeded that necessary to rectify any inequity from the previous year. In 1994, every unit except the Human Service professional unit settled for a total increase of 3.5%. In some units the settlement was 3.5% at the beginning of the year and in others the settlement was 3% at the beginning and .5% July 1. Lakeland Hospital settled for 2.5% January 1 and 1.0% July 1. The Human Service unit settled for 3% January 1, but there was a change in the salary schedule which provided for an additional increase. There is no testimony that the Employer and the Association even discussed establishing this

pattern in past years and no other explanation why this pattern was established. There was evidence that in 1994, the Association accepted a .25% lesser wage increase in exchange for a reduction in hours and a health insurance benefit for retirees. The preponderance of the evidence indicates that the above-described pattern resulting in split year increases in even years was the result of individual variation and not the type of established pattern which ought to be given controlling weight in this proceeding. Additionally, none of the other units received increases in 1994, for which "catch up" might be appropriate in this unit in 1995. Finally, the nature of the quid pro quo indicates that it was a continuing benefit and it would, therefore, be inequitable to permit the Association to undo its side of that bargain without giving back the benefit it gained. Finally, the offer made by the Employer

The Employer's offer is consistent with the cost of living which was less than 3% for calendar 1994. The Association's offer exceeds that necessary to maintain the cost of living.

Walworth County is an area which attracts a large number of conventions and music festivals. This may be different than comparable counties, although policing these activities is well within the normal job duties of sheriff deputies state-wide. Other counties have higher serious crime figures than Walworth. There has been a decline in the number of sworn deputies since 1973. Part of the decrease has been a replacement of sworn deputies with civilian personnel in the jail and in the dispatch center. Some of the personnel in this unit have been assigned to the metro drug unit (and, thus, out of the unit). This may have occurred in other counties as well. The detective bureau has been reduced from 12 to 10 people, although the number of deputies has remained the same. The work load per deputy has increased significantly over the years both with respect to the quantity of cases and the severity of the crimes. Association has not established by a preponderance of the evidence that its work load is higher or more complex than comparable counties, or its risk factors are significantly different than that of the comparable counties'. Based upon all of the evidence in this case, I conclude that the final offer of the Employer is preferred.

AWARD

That the final offer of the Employer be included in the parties' 1994-1995 collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 27th day of October, 1995.


Stanley H. Michelstetter II