



DECISION OF THE
ARBITRATOR

IN THE MATTER OF:

Arbitration between the

Wisconsin Professional Police Association (LEER Division),
Wauwatosa, Wisconsin

- and -

County of Sheboygan
Sheboygan, Wisconsin

WERC CASE 306 No. 54787 MIA - 2106

Decision No. 29097-A

REPRESENTATIVES:

For the Police Association: Richard Little, Bargaining
Consultant

For the County: Louella Conway, Personnel Director

DATE OF DECISION:

November 15, 1997

DATE OF HEARING:

August 29, 1997

ARBITRATOR'S AUTHORITY:

By a letter dated June 26, 1997, the Wisconsin Employment Relations Commission (WERC) notified Peter E. Obermeyer, of his appointment as the Arbitrator to hear and decide Case 306 No. 54787 MIA-2106. The parties to the dispute were identified as the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (Association) and the County of Sheboygan (County).

On Friday, August 29, 1997, at 10:00 a.m. a hearing was held at the County's Law Enforcement Center, Room 113 in Sheboygan, Wisconsin. Prior to the beginning of the hearing the representatives notified the Arbitrator that a tentative agreement had been reached by the parties concerning the issue of work week/work shift.¹ That issue is no longer before the Arbitrator. At the hearing both parties were provided the opportunity to present exhibits and testimony which were relevant to the issues in dispute. Following close of the hearing the representatives were given ten (10) calendar days to challenge exhibits which were accepted into the record. The representatives of the Association and the County submitted written briefs which were both postmarked Monday, October 6, 1997.

Based on the record developed at the hearing of August 29, 1997, the Arbitrator was obligated to select one party's final offer regarding the issues at impasse. Wisconsin Statute

¹County Exhibit No. 9 and Association Exhibit No. 9.

establishes the following eight (8) criteria as the basis for selecting the final offer of the Association or the County.

- (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 the 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 price 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 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.

The Decision in this case was reached based on the record of the hearing, the briefs submitted by the parties, and the criteria of Wisconsin Statute.

ISSUE:

Which of the final offers submitted by the Association and the County should be selected by the Arbitrator as final and binding on the parties?

DISCUSSION:

1. Introduction. The County is located on the eastern border of the state, with principal offices in the city of Sheboygan, Wisconsin. It is a municipal corporation organized under the laws of the State of Wisconsin, serving approximately 110,000 citizens. A majority of the County employees are represented by labor unions, certified in eight (8) bargaining units. The Association represents approximately fifty-seven (57) sworn law enforcement employees, who have the power of arrest.

2. Arbitrator's Decision. The Decision in this case is limited by the final-offer total-package provisions of Wisconsin law. This system obligates the Arbitrator to select a single

party's final-offer on the issues in dispute over the other party's final offer. The difficulty of such a choice is obvious.

The Arbitrator's decision on the items in dispute was influenced by certain beliefs in the collective bargaining system, and the impact that compulsory arbitration has on the bargaining process.

First, the terms and conditions of employment, which are established by arbitration, generally do not answer or resolve major disputes or underlying issues which exist between the parties. This is particularly true where the arbitrator is limited to the final offer of the employer or the union.

And second, substantial modification or elimination of an existing term and condition of employment, should usually remain with the parties to negotiate. Where, however, a bargaining system substitutes arbitration for the pressure of a work stoppage, arbitrators are obligated to establish some standards to judge requests to modify an existing contract provision.

In this case the County seeks to modify the current method of compensating for the longevity of employment. The Arbitrator weighed the following considerations in judging the request:

- 1) Is there a demonstrated need for the change?
- 2) Does the offer fairly deal with the demonstrated need?
- 3) Is the impact on the employees affected by the proposed change reasonable?
- 4) Is the proposed change consistent with statutory

standards directing the arbitrator's decision?²

To favorably consider the County's requested change the Arbitrator needs to affirmatively answer each of the above questions.

3. Central issue. The parties have consistent positions regarding the issues of general wage increases and the length of the contract. At the heart of this dispute is the proposed modification of the longevity compensation system. Currently the Labor Agreement provides for five (5) longevity steps, after five (5), ten (10), fifteen (15), twenty (20), and twenty-five (25), years of continuous employment.³ The longevity payment begins at two and one-half (2 1/2) percent of base pay and increases to twelve and one-half (12 1/2) percent of base pay after twenty-five (25) years of continuous service.

It is the position of the County that a modification to the five (5) step percentage driven longevity system is necessary. They suggest that a three (3) step procedure, with flat dollar amounts, is warranted based on external comparables and internal settlements with other County bargaining units. Crucial to the County's offer is a "quid pro quo" which:

- (1) freezes all employees hired before January 1, 1998, to the five (5) step percent system found in the 1995-1996 Labor Agreement; and

²Arbitration Decisions, Malamud, D.C. Everest School District, Decision No. 24678, (1988) and Arbitration Decision, Vernon, Elkhart Lake - Glenbeulah School District, Decision No. 26491 (A), (1990).

³Association Exhibit, Tab No. 1 and County Exhibit No. 2, Labor Agreement, 1995-1996, Article 12.

- (2) adds a forty-two (42) months of service step to the wage schedule and an upward adjustment to the sixty (60) month wage step.

The County contends that the above "quid pro quo" package and the weight of external and internal comparables warrant the modification of the current longevity procedure.

The Association challenges the County's offer to modify the existing longevity system. They contend that the issue of longevity is a bedrock term and condition of employment which must be altered only through bargaining, not by an arbitrator's decision. A contract provision of its duration and integral relationship to wage rates should be reserved only for the parties to determine. In addition the Association suggests that County's proposed change in longevity is faulty because it:

- (1) will create a divisiveness between officers by establishing a "two-tier" longevity system between employees hired before and after January 1, 1998;
- (2) does not meet recognized arbitration standards warranting change to an existing contractual term and condition of employment; and
- (3) lacks an adequate "quid pro quo" to merit change.

The Association, therefore, concludes that its offer is more acceptable and should be adopted by the Arbitrator.

In addition, the parties are in modest disagreement over the amount of uniform allowance that should be provided by the County

over the two (2) year contract period. Although important, the uniform allowance issue does not have the substance or emotion that is involved in the longevity issue.

EVALUATION OF STATUTORY CRITERIA:

1. The lawful authority of the employer. The County may legally implement either final offer.

2. Stipulations of the parties. The stipulations reached by the parties in the course of their bargaining does not favor the selection of either party's final offer.

3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs. The interest and welfare of the public is met by the County's ability to attract and retain capable, dedicated, and motivated law enforcement personnel.

This goal is jeopardized, the Association argues, by establishing a "two-tier" longevity system. Such a system would have a devastating effect on the morale of law enforcement personnel. The pre and post January 1, 1998, hiring date, would split the department until turnover eliminated those eligible for the current longevity procedure. The County contends that its longevity offer reflects the conditions of the law enforcement labor market and the County's longevity system for other employees. Their final offer, the County suggests, is at a level with external and internal comparables which will allow the County to attract and retain competent law enforcement personnel.

The County has the financial ability to implement either final offer.

In considering this criteria, the Arbitrator concludes that a modification to the current longevity system may have some impact on employee morale. Accordingly, this affect on morale may influence the "interests" and "welfare" of the public. The Arbitrator notes, however, that many contractual conditions differ between employees, many based on an employee's date of employment. Consider that wage rates, length of vacation, and insurance benefits provide differing terms and conditions for bargaining unit members. All in all, this criteria slightly favors the final offer of the Association.

4. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of other employees performing similar services and with other employees generally:

A. In public employment in comparable communities.

B. In private employment in comparable communities.

A. Longevity. Comparables become the turning point in this case. In seeking to change the existing longevity system the County must demonstrate three conditions.

First, that the current method of compensating for the length of service is inconsistent with other external comparables⁴ and internal comparables. Exhibits in the record demonstrate that the

⁴The parties have agreed to a surrounding nine (9) county comparability group.

County's longevity system exceeds all external comparisons.⁵ The current five (5) step (5, 10, 15, 20, and 25 year increases) percent based (2.5, 5.0, 7.5, 10.0 and 12.5) longevity procedure generates an annual total dollar payment which exceeds any other external comparable. The five (5) step percentage driven system is inconsistent with the dollar per month or cents per hour payments generally found among other comparable counties.

Internally, other County employees have modified their longevity plan from the five (5) step percent longevity system. This has been established with five (5) other bargaining units.⁶ The two (2) units which retained the current system accepted a small general wage increase.⁷

Second, the proposed change must be competitive with external comparables. The County's final offer compares favorably with the nine (9) county group of comparables. Currently some comparables have no longevity plan and four (4) have formal systems which provide \$20.00 to \$33.75 per month at the top longevity step.⁸ This is persuasive. The County is offering a longevity plan which is competitive with external comparisons.

And third, does the proposed change result in a general fairness to current employees? By "freezing" employees hired

⁵See County Exhibit Nos. 21 and 24 and Association Exhibit No. 36.

⁶See County Exhibit No. 19.

⁷See County Exhibit Nos. 60 and 61.

⁸See County Exhibit No. 24 and Association No. 36.

before January 1, 1998, the County shelters employees who entered employment under the conditions of the current longevity procedure. New employees need to be specifically aware of the existence of a distinctly different longevity system. A system which is financially less attractive than employees hired prior to January 1, 1998, but comparable with surrounding counties and most other County employees. In addition, the proposed new forty-two (42) month step salary rate and the upwardly adjusted sixty (60) month rate provides a reasonable "quid pro quo" to current and future law enforcement personnel.⁹

The Arbitrator concludes that the County's final offer given the nature of the issue, external and internal comparables, and improvements to the existing wage rate structure of Article 10 of the Labor Agreement, meets the three (3) standards cited above.

B. Uniform Allowance. The most forceful evidence to judge the respective final offers is the nine (9) county comparables. Either offer is justifiable given the comparables, which range from \$325.00 to \$440.00 annually.¹⁰

5. The average consumer prices for goods and services, commonly known as the cost of living. Both offers of a three (3) percent general wage increase for 1997 and 1998, reflect a common recognition of the general cost of living for the area.

⁹Association Exhibit Nos. 29 and 30.

¹⁰Association Exhibit No. 45 and County Exhibit No. 26.

6. 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. The County offer improves the relative wage rate status of presently employed law enforcement personnel.

7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings. No changes were placed into the record concerning this factor.

8. 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. The consideration of internal comparables has previously been discussed in factor number four (4) above.

In evaluating the statutory factors and the considerations necessary to modify an existing term and condition of employment, the Arbitrator finds that the County has met it's burden.¹¹ They achieved this task by demonstrating a need for the change, offering a reasonable longevity alternative for current and future staff,

¹¹See page 5.

present employees are not affected by the modification, and the proposed change is not in conflict with Wisconsin law. Accordingly, the County's final offer is selected given the criteria applicable to this case.

ARBITRATOR'S DECISION:

Based on the hearing record, the written briefs of the parties, and the standards of Wisconsin Statute 111.77, (6), a-h, the Arbitrator selects the County's final offer. It is by this Decision awarded without modification.

Dated this 15th day of November, 1997



Peter E. Obermeyer, Arbitrator