

DEC 30 1998

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration Between

WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION/LAW ENFORCEMENT  
EMPLOYEE RELATIONS DIVISION

and

CITY OF ALGOMA

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Case 33  
No. 55888  
MIA-2155

Decision No. 29399-A

Appearances:

Richard T. Little                      For the Association

John A. Haase, Esq.                      For the City  
Godfrey & Kahn, S.C.

Before:                      Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On July 7, 1998, the Wisconsin Employment Relations Commission, pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between the Wisconsin Professional Police Association/ LEER Division, hereinafter referred to as the Association and the City of Algoma, hereinafter referred to as the City. A hearing was held on September 3, 1998 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs and reply briefs. Those briefs have been received by the arbitrator. The arbitrator has reviewed the testimony, exhibits and briefs filed by the parties in reaching his decision.

## ISSUES

The parties reached agreement on many of the items to be contained in the successor agreement. Those agreements are incorporated into this Award. The following are the outstanding issues.

The Association<sup>1</sup>:

### Wages

3.5% across the Board increase effective 1/01/1998

3.5% across the Board increase effective 1/01/1999

3.5% across the Board increase effective 1/01/2000

The City<sup>2</sup>:

### Wages

3% across the board increase effective 1/01/1998

3% across the board increase effective 1/01/1999

3% across the board increase effective 1/01/2000

## BACKGROUND

The City of Algoma is located in North Eastern Wisconsin. It is in Kewaunee County. It has a population of approximately 3400. The real property value for the City is close to \$100,000,000. The City has two bargaining units. One is comprised of the general city employees and the other contains police officers. It has settled its agreement with the other City employees for the years

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<sup>1</sup> The final offer from the Association included an amendment to Article 3, Section 3.09. The Association has withdrawn that proposal. The current language in that Section shall be incorporated into this Award.

<sup>2</sup> The Employer proposal included an increase in the clothing allowance from \$435 to \$500 per year. The Association indicated that this amount was already part of the tentative agreements. That appears to be the case. The \$500 amount is incorporated into this Award.

in question. They received a 3% increase in each of the three years.

The City at the time of the hearing employed two police officers and one sergeant. It did have four officers, but two recently resigned. It is in the process of hiring two new officers to fill those vacancies.

#### STATUTORY CRITERIA

The parties have not established their own procedure for resolving impasse over the terms for a new collective bargaining agreement. They have agreed to binding arbitration under the Municipal Employment Relations Act. Section 111.77(6) provides that an arbitrator consider the following factors in reaching a decision:

- 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 employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of wages, hours, and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees in the private employment in the same community and in comparable communities.
- g. The average consumer prices of goods and services commonly known as the cost-of-living.
- h. The average 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 of stability of employment, and all other benefits.

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 the parties, in the public service or in private employment.

#### DISCUSSION

Some of the criteria set forth in Section 111.77 the parties specifically agreed were not applicable or were not raised by them. The lawful authority of the Employer, and any changes in circumstance since the arbitration hearing fall within those categories. For that reason, they will not be addressed during this discussion. The remaining factors set forth in Sec. 111.77(6) will be discussed as they apply here.

The question of ability of the employer to pay should briefly be mentioned. There is disagreement between the parties over the costing method used by the Association. It used two employees for costing, starting with the 1997 base year. The City uses four. The City used the caste forward methodology. The figures offered by both parties show that the cost differential between the proposals is very small. It is under .1% of total costs. Given that fact and the fact that the Employer has not raised the issue of ability to pay, it is not necessary to resolve this question. This factor is not germane to this case.

### Stipulations of the Parties

The City has asked the Arbitrator to consider the scope of the tentative agreements under the factor Stipulations of the Parties. It notes that it has increased the clothing allowance to an amount that is more than any other comparable police department. The Association points out that this is the only contractual change from the last agreement. It argues that this factor is irrelevant.

The Arbitrator does note that the clothing allowance increase has some impact on the cost to the City for the new agreement. To that extent, it is marginally relevant. It is not a new benefit, but an increase in an old one. Therefore, the effect of this change is not nearly as great as it would otherwise be. Even with four officers, the cost increase is only \$260 a year. Given that figure, I find that this factor only minimally favors the City.

### Interests and Welfare of the Public

#### Position of the Association

The increase proposed by it is necessary to maintain the morale of the City police force. Police duties are unique and should be compared with other police departments and not other City employees. In this City, crime is higher than it is in other police departments of similar size. Higher wages are needed to compensate for the additional work required of these officers.

The City recently promoted its Sergeant to Lieutenant and gave him an almost \$6,000 increase. These employees are offered a minimal increase. That disparity can impact the morale of the

officers.

#### Position of the City

The Association argues that the wage proposal that it has made is necessary to preserve morale. It has made no factual showing why this is so, other than its mere assertion that it is. It has also failed to show how crime statistics relate to wages. Finally, it has offered statistics that attempt to portray that there are more violent offenses in Algoma, but it has not broken down those statistics to indicate the nature of the violent crimes involved.

#### Analysis

The Association has provided statistics only for 1997. Was that year an aberration or typical? In a small community, one unusual event can skew the figures in any given year. That event may not typify what normally occurs in the locality. The City is correct that the statistics in many categories fall within the norm for a community the size of this one. That fact tends to support the supposition that the figures for violent crimes in the City in 1997 were not indicative of what occurs during a typical year.

I also agree with the City that the evidence does not warrant a finding that adoption of the City offer would seriously impact morale. Certainly, the employees would be happier if they got 3.5% rather than 3%. That is always going to be so. That fact does not mean that morale will be destroyed if the lower increase were granted. I find that there is no evidence that morale will be

seriously impacted no matter which offer is adopted.<sup>3</sup> This factor favors neither party.

Comparison of Wages of other Public Employees

The list of comparables suggested by the parties contains many of the same localities. These include the City of Kewaunee, Oconto, Oconto Falls, Peshtigo, and Sturgeon Bay. The Association proposes the inclusion of Kewaunee County. It argues that there is considerable interaction between the City employees and the County employees. The City opposes the inclusion of Kewaunee County. It also proposes the inclusion of Brillion, Chilton and Seymour. It believes that the population, number of officers and property values for these three communities is comparable to that of the City. The Association opposes the inclusion of those three.

Arbitrators have considered population, geographic proximity, mean income, budget, number of employees and income of City residents when deciding upon the appropriateness of particular comparables. Where there is a past history as to the selection of comparables, that history is accorded great weight. This is the first arbitration between the parties. There is no past history that can provide guidance to this arbitrator. Consequently, the list found appropriate here will be the first list compiled for the parties.

The Association seeks to include Kewaunee County. Generally,

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<sup>3</sup> The City is correct that the wages paid the lieutenant when he was promoted is not relevant to this dispute. It is a non-bargaining unit, supervisory position. Further, the employee was hired from within. That tends to increase morale.

the county sheriff's are not included with city police officers. There are definite differences in the duties that they perform. While many of their duties do overlap, many do not. As Arbitrator Gunderson stated:

There are, however, certain statutory duties the sheriff must perform, including maintain a jail and serving papers, which are unique to a sheriff's department. ...While the statutory language does not refer to the most similar duties, certainly where there is a direct comparable it must be utilized.

He concluded that City and County law enforcement personnel were not comparable. That same rationale applies here. That differentiation in duties is also present in this case. In addition, the County population is almost six times larger than Algoma. It has over five times as many employees. For these reasons, I shall not include Kewaunee County.

The Association's only area of disagreement with the inclusion of Brillion, Chilton and Seymour concerns their geographic location. It states that they are too far away from Algoma. All three cities have very similar population to that of Algoma. Chilton's is almost identical. The number of officers and the property valuation of the three are also very close. All fall within the same parameters as the cities for which the parties are in agreement. Therefore, if I find that they are geographically proximate they should be included in the list of comparables.

Oconto and Oconto Falls are in Oconto County and are two Counties removed from Kewaunee County. Peshtigo is in Marinette

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\* Winnebago County Sheriff's Department, Dec. No. 19378-B



County and is three counties removed. Both parties included all of those cities. Seymour is actually as close to Algoma as any of those three cities. It is also two counties removed from Kewaunee. I find that it is sufficiently proximate to Algoma. It shall be included as comparable. Brillion and Chilton are in Calumet County. They are also two counties removed from Kewaunee. While they are slightly farther from Algoma than Peshtigo, they are not that much farther. When considering the other factors that are used to choose comparables, I find that the slightly longer distance does not outweigh these other factors. I shall, therefore, include Chilton and Brillion on the list.<sup>5</sup>

All of the comparables have settled their agreements for the year 1998. The average settlement is 3.06%. The Employer calculated the increase as 3%, but did not include Chilton. In reviewing the exhibits, it appears as though Chilton granted its employees an across the board increase of \$.58. As a result, the percentage increase in Chilton was higher for beginning wages than for the top wage. The overall average increase was about 3.7%. This figure was used for my calculations. Only four of the comparables settled their 1999 wage rate. The average increase was 3.1%. There is only one settlement for the year 2000. That was a 3% increase. The City has offered 3% and the Association asks for 3.5% for each of those years.

1998 is the most significant year for comparison purposes

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<sup>5</sup> As will be discussed later, the inclusion of these three cities actually raises the average percentage increases for them,

since all of the comparables settled for that year. 1999 figures are helpful, but less so than for 1998. Frankly, the year 2000 is of little value. This Arbitrator has noted in other cases that one is simply too small a sample for comparison. The figures show that the proposal of the City for 1998 and 1999 is far closer to the average than the Associations. It is .06% less in 1998 and .1% less in 1999. The Associations is .44% and .4% higher.

The wages of the patrol officers rank at the top of the comparables. The beginning wage for officers was \$3 higher than the average and \$1.38 above the next highest wage.<sup>6</sup> Under the Employer proposal, it moves to \$3.10 over the average and \$1.39 over the next highest. The maximum or top wage differential in 1997 was \$2.01 more the average and \$1.04 over the next highest. In 1998, it would be \$2.07 over the average and \$1.03 over the next highest. Thus, the only place that the Employer proposal gives up ground is in the difference between the maximum wage here and that paid by the next highest community and that loss is only \$.01. In all other respects it gains. It continues to stay at the top.

It is harder to gage the impact on patrol officers in 1999 because only one-half the comparables have settled. Therefore, the Arbitrator has taken the average of the four that have settled in both years and compared that to the wages contained in the

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although it does lower the average wages paid by the comparables..

<sup>6</sup> That community is Sturgeon Bay.

offers.<sup>7</sup> The average beginning wages paid by Kewaunee, Oconto, Oconto Falls and Peshtigo in 1997 was \$12.87 in 1997 and rose to \$13.62 in 1999.<sup>8</sup> The maximum average rose from \$15.45 to \$16.32. Algoma's wages rise higher than those four cities for patrol officers for both the minimum and maximum wages by the end of the two year period under the City proposal. The increase is even greater under the Association's proposal.

In 1998, the wage differential for Sergeants between Algoma and the average of the comparables increases at both the minimum and maximum. It ranked at the top in 1997, but under the Employer proposal it falls \$.01 below Sturgeon Bay in 1998. In 1997, it was \$.03 higher.

As was the case for patrol officers only one-half have settled for 1999. Therefore, the Arbitrator has again taken the average of the four that have settled in both years and compared that to the wages paid by the City. The average beginning wages paid by them in 1997 was \$15.46. Algoma was \$2.09 over that average. In 1999, the average minimum wage for those four cities will be \$16.91. The Algoma wage under the Employer proposal would be \$1.71. above the average. Under the Association proposal it would be \$1.89 over the average. Both show a smaller differential

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<sup>7</sup> An Employer exhibit takes the 1999 average for those that have settled as the overall average wage. Since the 1999 average does not include all the same cities that were used to calculate the average in 1998, it does not give a true picture.

<sup>8</sup> The precise percentage for Kewaunee is difficult to determine. It appears as though there are alternative wages depending upon COLA increases. Thus, the actual wages could vary from the wage used to calculate the average.

for the beginning wage over the average for Sergeants when just the four cities are used. The average maximum for the four rises from \$15.85 to \$17.19. In 1997, Algoma was \$1.70 higher and in 1999 it will be \$1.43 higher. It stays at the top of those five.

It is clear from all the above that the proposal of the City as it relates to patrol officers is in accordance with the wages paid by the comparables. That is true for the actual percentages and the ranking. While the percentage proposed by the City for the Sergeants is in line with the comparables, there does seem to be an effect on the wage differential among those that have settled for 1999. The proposal of the Association is well over the average percentage increase, but is better in keeping with the differential for those four communities in 1999. Notwithstanding that one deviation,<sup>9</sup> I find that on balance the external comparables favor the City.

The Association argues that comparisons should not be limited to the years covered by this new agreement. It asks the Arbitrator to also compare the percentage and actual dollar increase for the period 1993-1997. It notes that the average percentage increases for the comparables was 16.1% and the increase in the City was 15.02%. It argues that there is now a need for catch-up. It should be noted that the averages used by the Association include Kewaunee County and do not include Chilton, Brillion and Seymour.

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<sup>9</sup> It should again be noted that the relationship to the average could stay perfectly in line when all the comparables have settled. The Arbitrator recognizes that Figures may tend to be distorted when only a portion of the sample is available for

The average minus the County is 15.9%. The average dollar increase on the Association exhibit without Kewaunee County was \$367.93. This is \$.75 less than was given to the City's officers. It is unknown what these figures would be if the three missing cities were added to the mix.

This Arbitrator and other arbitrators have noted in numerous cases, that where wage increases are the product of voluntary negotiations, past wage comparisons are not significant. The parties chose to put themselves where they did. I also noted that there are exceptions to that rule under certain circumstances. I find that no circumstances exist here that would fall under any of those exception. As has already been observed, these employees rank remains unchanged under the Employer proposal. They stay at number one. The wage disparity is roughly the same. Under these facts, an argument for catch-up cannot be sustained.

#### Internal Comparables

There is only one other bargaining unit. It has agreed to the same percentages that are offered by the City here. The City argues that a pattern has been set which should be followed. To the extent that there is uniformity between that unit and this proposal, that is true. However, that argument would be more persuasive if the sample were somewhat larger. While it certainly is no one's fault that there are only two bargaining units, the fact remains that this is so. With so few bargaining units, it is

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comparison.

harder to conclude that a pattern has been set.

There is merit to the Association's argument that internals are less persuasive when dealing with police personnel. Because their duties and hours are so unique, it is difficult to compare them with other city employees. As Arbitrator Fleischli noted in Portage County Sheriff's Department:

Logically, there is a sound basis for comparing law enforcement personnel with other law enforcement personnel. Not only is the nature of their work significantly different than that which is performed by blue collar and white collar employees in the same community, a separate statutory procedure exists...

The internals favor the City, however, the weight that this factor is accorded given my above findings is slight.

#### Cost of Living

The City has presented evidence concerning the level of increase to the cost of living in 1997 and 1998. COLA rose by less than 3% in 1997 and by less than 2% in 1998. Each party's offers exceed COLA. The Association's exceeds COLA by a greater amount than does the City's. I find that this factor favors the City.

#### Conclusion

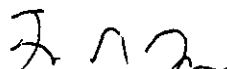
Many of the factors listed in the Statute have little or no relevance to the ultimate determination in this case. The City's proposal is closer to the average percentage increases for the external comparables. I find that this factor is the most relevant in this proceeding and that it favors the City proposal. Internal

comparables and COLA also favor the City's proposal. A review of all of the statutory criteria leads to the inescapable conclusion that the City's wage package and consequently its proposal should be adopted.

AWARD

The final offer of the City will be incorporated into the Labor Agreement for the three year term of this agreement.

Dated: December 28, 1998

  
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Fredric R. Dichter,  
Arbitrator