

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of	:	
Amalgamated Transit Union, Local 519	:	
For Final and Binding Arbitration Involving	:	Case ID 300.0006
Transit System Employees in the Employ of	:	Case Type INT/ARB
City of La Crosse	:	Decision 39800-B

Appearances: The Previant Law Firm. S.C by Ms. Jill Hartley and Miss Emma M. Woods, for the Union

Von Briesen & Roper, S.C. by Mr. Kyle Gulya, for the City

Facts:

A hearing was held on November 2, 2023 at La Crosse, Wisconsin. A transcript of the proceedings was made. At the hearing the parties had the opportunity to present evidence, testimony, and arguments. The record was completed on February 20, 2024 with the receipt by the arbitrator of the parties' briefs.

At the hearing the parties were not in agreement about which municipalities are appropriate to use as external comparables. With the arbitrator's agreement they submitted briefs in support of their positions on the issue of external comparability. On December 18, 2023 the arbitrator informed the parties that the appropriate external comparables are: Appleton, Beloit, Eau Claire, Fond du Lac, Janesville, Oshkosh, Sheboygan and Wausau. In their briefs, the parties were in agreement that these external comparables are appropriate. The Union urged that Madison and Milwaukee be added to the list, but the arbitrator did not view them as appropriate comparables.

The arbitrator is obligated under the interest arbitration statute to select one party's final offer in its entirety. A comparison of these final offers [below] shows that it is only item 2 in each offer which is in dispute: the percentage wage increase in each year 2023, 2024, 2025

The Union's Final Offer is as follows:

1. SECTION 35-TERM OF AGREEMENT

Amend to reflect a 3-year agreement, January 1, 2023 through December 31, 2025 as follows:

The term of the contract is January 2023 through December 31, 2025. Either party desiring to negotiate changes in this agreement shall notify the other party in writing at least (60) days prior to December 31, 2025 and such notice shall include therein the modifications desired.

2. SECTION 30 – CLASSIFICATION AND WAGE SCHEDULES

Modify to reflect implementation of across-the-board wage increase effective

January 1, 2023 4.5%

January 1, 2024 4.5%

January 1, 2025 4.5%

3. CITY OF LA CROSSE TRANSIT WAGE SCHEDULES FOR EMPLOYEES (currently Exhibits A and B)

Add Lead Service Worker designation, to be paid a premium of \$ 1.50 per hour more than the applicable Service Worker wage rate.

4. SECTION 23 – RULES AND REGULATIONS

Add a new last paragraph to the end of the existing language, to reflect City’s 8/9/2022 tentative agreement to the ATU’s proposal as follows:

That beginning 01-01-23 management and a labor committee must meet every 24 months to review and submit changes to the employee handbook.

5. ARCHAIC LANGUAGE CLEAN-UP AND CLARIFICATION OF ERRORS

Eliminate old and archaic language to be mutually agreed upon by the parties when updating the final agreement.

The City’s final offer is as follows:

1. SECTION 35 – TERM OF AGREEMENT:

Amend to reflect a 3-year agreement, January 1, 2023 through December 31, 2025, as follows:

The term of the contract is January 1, 2023 through December 31, 2025. Either party desiring to negotiate changes in this agreement shall notify the other party in writing at least sixty (60) days prior to December 1, 2025 and such notice shall include therein the modifications desired.

2. SECTION 30-CLASSIFICATION AND WAGE SCHEDULES

Modify to reflect implementation of across-the-board wage increase effective as follows:

January 2, 2023 2.0 %

July 3, 2023 1.0 %

January 1, 2024 2.0 %

July 1, 2024 1.0 %

January 13, 2025 2.0 %

July 14, 2025 1.0 %

3. **CITY OF LA CROSSE TRANSIT WAGE SCHEDULES FOR EMPLOYEES (currently Exhibits A and B)**

Add Lead Service Worker designation, to be paid a premium of \$ 1.50 per hour more than the applicable Service Worker wage rate.

4. **SECTION 23 – RULES AND REGULATIONS**

Add a new last paragraph to the end of the existing language, to reflect City's 8/29/2022 tentative agreement to the ATU's proposal, as follows:

That beginning 01-01-23 management and a labor committee must meet every 24 months to review and submit changes to the employee handbook.

5. **ARCHAIC LANGUAGE CLEAN-UP AND CLAIRIFICATION OF ERRORS**

Eliminate old and archaic language to be mutually agreed upon by the parties when updating the final agreement.

The statute enumerates the various factors that the arbitrator is to consider in making his decision. At the hearing and in their briefs, the parties agreed that several of them did not favor one final offer over the other: the lawful authority of the City to satisfy either party's final offer; stipulations of the parties; comparison of the wages, hours and conditions of employment with employees in the private sector; changes in circumstances during the pendency of the proceedings. The remaining factors will be considered in turn below.

Section 111.70(4)(cg)7 specifies the factor which must be given "greatest weight." The arbitrator "...shall consider and shall give the greatest weight to the economic conditions in the jurisdiction of the municipal employer..."

The Union argues that the greatest weight factor "is not applicable because economic conditions of the municipal employer are not relevant when the economic conditions experienced by and within the City are the same conditions as those experienced by every one of the comparables and every other county in the state." In the Union's view, exhibits presented by the City "do not demonstrate that La Crosse is suffering economic distress to any greater degree than its comparable municipalities. La Crosse leads the comparables in debt (or borrowing) per capita...but this fact alone does not offer a clear picture on how La Crosse's balance sheet compares to its neighbors...While the other municipalities may have less debt per capita, the exhibits do not offer historical context, such as revenues, changes in tax base, debts, state imposed limitations, or other factor that could explain how La Crosse's total financial picture compares to its neighbors...Without a substantive comparison between La Crosse and the comparable municipalities, this factor is inapplicable..."

In arguing that the greatest weight factor favors its final offer the City cites a variety of circumstances including: in 2023 "the City faced a budget deficit of \$4 million; in 2024 "the City

is facing a projected deficit of \$3 million; “In order to close the \$4 million budget gap in 2023, the City used one-time revenues including ARPA funds, CARES Act funds and fund balance monies...”

The City argues further that it is currently taxing to the maximum amount allowed by statute; its fund balance is down to the minimum reserve requirement; its net new construction has been minimal allowing the tax levy to increase but not sufficiently to result in a balanced budget (increases in net new construction allow the City to increase its tax levy); it has taken steps to reduce its expenses and services including not filling vacant positions, reducing overtime, and closing a swimming pool and a library.

The City argues, “...over the three years of the contract, the Union’s Final Offer will cost \$264,433 more than the City’s Final Offer... In a City that is facing a \$3 million deficit, is already taxing to its maximum allowable amount, and has no general funds to tap into, this additional \$264,433—for just 49 positions out of the City’s total workforce of 500—is...unreasonable.”

The “greatest weight” factor, quoted above, pertains to “the economic conditions in the jurisdiction of the municipal employer.” It does not require or suggest that the City’s economic condition must be compared to the economic conditions in comparable municipalities. The Union argues, correctly, that the City is not asserting that it does not have the ability to pay the Union’s final offer, and that the City is able to reallocate funds within its budget to pay the Union’s final offer. It argues that the City’s fund balance and incurred debt and the size of its budget are matters within the City’s control and can be adjusted.

The arbitrator has concluded that the economic conditions in the City of La Crosse, described above and discussed further below, are such that the City is attempting to find ways to reduce its deficit and not incur additional costs. The Union has not persuaded the arbitrator that its arguments about what the City is able to do by making other budgetary and/or financial choices should be given more weight than the ways that the City is addressing its financial problems. In the arbitrator’s opinion the “greatest weight” factor favors the City’s final offer.

Section 111.70(4)(cg)7g specifies the factor which must be given “greater weight.” It specifies that the arbitrator “shall consider and shall give greater weight to any state law...that places limitations on expenditures that may be made or revenues that may be collected by a municipal employer than to any of the factors specified in subd. 7r”

As discussed above, the City is currently taxing to the maximum allowable amount and the amount of new construction in the city does not permit the tax levy to be increased in an amount sufficient to enable the City to balance its budget. The available dollars from net new construction are \$248,640. The City notes that “the additional cost of the Union’s Final Offer for 2023 and 2024 is \$133,508, which equates to almost 54% of the available net new construction dollars for

2024.” The arbitrator agrees with the City that it is not reasonable that almost half of new City revenues should be allocated to pay the cost of the Union’s final offer.

The arbitrator is persuaded that the “greater weight” factor favors the City’s final offer.

Both parties cite Section 111.70(4)(cg)7e “Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hour, and conditions of employment of other employees ...in the same community...,” the so-called internal comparables.

The City argues that its final offer continues its long-standing pattern of fair and equitable treatment of this bargaining unit and its other bargaining units, as well as non-represented employees, with respect to annual wage increases. It argues that the Union’s final offer breaks this pattern by demanding much larger wage increases than have resulted from voluntarily bargained settlements, and that implementation of the Union’s final offer would have a negative effect on the morale of other City employees and would have a negative effect on the collective bargaining process since other bargaining units would likely not reach voluntary settlements but would instead hold out in hopes of getting higher wages from an arbitrator.

The Union argues that there is not a pattern of settlements within the La Crosse municipal bargaining units, and therefore there is no requirement that the Union take the same increase as police and fire units. It argues further, “...in 2018 the transit employees received a 2%-.5% split increase while police employees received a 4%-1% split and firefighters received either a 2.5%, 3.5% or 4.5% increase. Similarly in 2019 the police and firefighters received increases multiple points higher than transit...the City has no pattern of keeping municipal union increases within strict identicality. These past increases also illustrate that a 4.5% increase per year is not outside the realm of reasonableness. Transit should be allowed to catch up after several years with minimal wage increases.”

In the years 2020, 2021 and 2022, the three years prior to the present dispute, all three of the bargaining units in the City reached voluntary settlements.

In 2020 both the Police unit and the Police supervisory unit agreed to a 2% increase. The Firefighter unit agreed to a 2%-1% split. The Transit unit agreed to a 2.5% increase.

In 2021 the two Police units agreed to a 1%-2% split increase. The Firefighter unit agreed to a 2% increase. The Transit unit agreed to a 2.5% increase.

In 2022 the two Police units agreed to a 1%-2% split increase. The Firefighter unit agreed to a 1% increase. The Transit unit agreed to a 2.5% increase.

These data show that from 2020-2022 the settlements were voluntary and followed a pattern with only slight variations. The arbitrator does not know whether for those years the transit union sought a catch-up increase, but if it did the resulting voluntary settlement did not reflect a catch-up increase.

The focus on internal comparables in interest arbitration is on collectively bargained wage settlements, not on wages unilaterally given to non-represented employees. The arbitrator notes, however, that the City's non-represented employees received a 1% increase in 2020, and received no increase in either 2021 and 2022.

Addressing the Union's contention that there is a need for catch-up pay for transit employees, data presented by the City shows that the cost of wage increases from 2015-2022 was 18.5% for the transit unit, higher than the cost of wage increases for the other employees of the city (16% for both police units, 17.5% for the fire unit and 8.5% for non-represented employees). This data suggests that there is not a need for a catch-up increase for the transit unit.

The current dispute involves the wage increases to be in effect from 2023-2025.

In 2023 the Firefighter unit voluntarily agreed to a 2%-1% split increase. The two Police units agreed to the same 3% wage lift, but as a 1%-2% split increase. Thus, for 2023 the City's final offer of a 2%-1% split increase maintains the internal wage pattern whereas the Union's final offer of a 4.5% wage increase does not.

In 2024 the Firefighter unit voluntarily agreed to a 2%-1% split increase. The two Police units had not reached a settlement as of the date of the arbitration hearing. Clearly at this time there is not a pattern established among the internal comparables, but the City's final offer of a 2%-1% split increase would appear to be a more likely outcome than the Union's proposed 4.5% increase.

For 2025 there have been no voluntary agreements reached among the internal comparables. As shown above, the City is proposing that the Transit unit receive a 2%-1% split increase; the Union is proposing a 4.5% increase.

The Union argues also that its 4.5% per year final offer should be considered in relation to the wage increases which the City has giving to its management employees in the Transit Department. First, it must be noted that the interest arbitration statute does not mention comparisons with management employees. Second, the arbitrator is not aware of past cases in which other arbitrators have considered, or relied upon, management wage increases in making their decisions. In its brief the City cites several past decisions in which arbitrators have viewed such comparisons as inappropriate.

Based on the incomplete data before the arbitrator at the present time, it is his speculation that the City's final offer with respect to internal comparability will be closer than the Union's final offer to the settlements of the other bargaining units. In any case, the Union has not persuaded the arbitrator that in relationship to the other internal comparables the Transit unit should receive annual increases of 4.5%.

Both parties cite Section 111.70(4)(cg)7e "Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hour, and conditions of employment of other employees...in comparable communities.." and Section 111.70(4)(cg)7d "Comparison of wages, hour and conditions of employment...with the wages, hours, and conditions of employment of other employees performing similar services," the so-called external comparisons.

In 2023 seven of the eight comparables have reached settlements for their transit employees. These settlements are characterized correctly in the City's brief: "The Union's wage demand exceeds all but one of the settled comparables (Janesville). Wage increases range from a low of a 1.25%/1.25% split...to a high of 5% in Janesville...The average increase among the settled comparables for 2023 is 2.66%." The City's final offer has a "wage lift of 3%"...while the Union proposes a 4.5% wage increase.

For 2024 five of the eight comparable have reached settlements for their transit employees. The range of wage increases is from 0% to 2%, and the average increase among these comparables is 1.38% The City's final offer has a "wage lift of 3%"...while the Union proposes a 4.5% wage increase.

For 2025 only one of the comparables has reached a settlement, Janesville with a 1.5% wage increase.

Based on the incomplete data before the arbitrator at the present time, it is his speculation that the City's final offer with respect to external comparability will be closer than the Union's final offer to the settlements of the other external bargaining units. In any case, the Union has not persuaded the arbitrator that in relationship to the other external comparables the Transit unit should receive annual increases of 4.5%.

Another factor in the statute which the arbitrator is to consider is Section 111.70(4)(cg)7g "The average consumer prices for goods and services, commonly known as the cost of living." The Union notes that during the period of it last contract with the City (2021-2022) "the average consumer price index increased about 4.5% in Wisconsin." It notes further that "in 2023 the consumer price index increased by 7.61%" and in 2024 "the index is already trending high (nearly 5%)."

The Union argues, "While 1% to 2% increases may have made sense in previous contract cycles, that increase is effectively a pay cut when workers are faced with 7% to 8% increase in prices. This pay cut has been accompanied by additional responsibilities and increased dangers for bus operators. This factor favors the Union's proposal because workers should be able to expect to stay on par when they are performing the same job year to year, let alone faced with increased responsibility and danger in their job."

The City argues with respect to the cost of living factor that "arbitrators have long opined that the weight to be given the CPI generally is not determinative and voluntary settlements among external comparables are a much better indicator of the cost of living than the CPI." The City argues further, "The Union's wage demand of 4.5% increases in each year of the contract far outstrips any other external comparable wage increases. The City's wage offer, on the other hand, is more than reasonable when measured against the external comparables and will not result in any deterioration of wage rates."

Given the magnitude of the percentage changes in the cost of living index in 2023 and thus far in 2024, which exceed the wage increases in both parties' final offers, the cost of living factor favors the Union's final offer.

Another factor which the arbitrator is to consider is 111.70(4)(cg)7r.h., "the overall compensation presently received...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 data presented by the parties does not evidence that the transit unit is at a disadvantage with respect to overall compensation in relation either to internal or external comparisons. Therefore, it is the arbitrator's opinion that this factor does not favor either party's final offer more than the other.

Section 111.70(4)(cg)7rc requires that the arbitrator consider "the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement." As discussed previously, the City has the financial ability to meet the costs of the Union's final offer. With respect to the interests and welfare of the public, the Union argues that its final offer should be selected because "...the relatively minimal cost of its proposal over the City's is wholly worth it for the many benefits transit brings to the ...community." The City argues that its financial condition is such that it is not reasonable to incur greater costs which might result in the necessity of eliminating personnel or further reducing services. It cites what it views as the public's interest in having "fairness and equity for all City employees, as well as budgetary stability..." and in that connection it argues, "Why should the City and other employee groups have to cut more in order to fund higher wage increases for the Transit Union than any other employee group received, especially when Transit wage rates are already significantly higher than the external comparables?"

In the arbitrator's opinion the "interest and welfare of the public" factor favors the City's final offer more than the Union's final offer.

The last factor which the arbitrator is to consider is 111.70(4)(cg)7r.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..."

The Union argues that recent events which have affected bus operators justify an award in favor of the Union's final offer. It cites: an increased number of assaults; having to be concerned with bus passengers who openly carry guns; changes in technology which increase their job responsibilities; the threat to their health as a result of the Covid-19 virus. While the Union acknowledges that "the City is working to address this concern by adding barriers between drivers and passengers, not all buses are equipped with these barriers."

The City acknowledges these changes, but argues that "they do not represent changes in the Bus Operator role itself; instead, they constitute changes in the way Bus Operator duties are carried out in today's modern world." It has responded to the problems caused by assaults and Covid-19 by installing plexiglass germ barriers between the driver and passengers, and notes that many of the newer buses also now have sturdier steel doors and "full-sized assault barriers." The City cites the costs which it has incurred in making these improvements: \$ 28,300 for temporary protective driver barriers; \$ 98,000 for permanent protective full shield barriers; \$ 75,000 for UV filtration systems; \$ 10,000 for an updated security camera system.


It is clear to the arbitrator that both parties have an interest in protecting the safety of the transit employees and are seeking and implementing safety improvements. The arbitrator does not view the "such other" factor as favoring one party's final offer more than the other.

As noted at the outset, the statute requires that the arbitrator select one of the final offers in its entirety. Having considered and discussed each of the factors, it is the arbitrator's decision that the City's final offer should be selected.

Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD:

The final offer of the City is selected.

Dated this 6th day of March, 2024 at Middleton, Wisconsin


Edward B. Krinsky, Arbitrator