

BEFORE THE FACT FINDER

In the Matter of the Arbitration
of a Dispute Between

VILLAGE OF RIVER HILLS POLICE ASSOCIATION,
LOCAL 326

To Initiate Fact Finding Between
Said Petitioner and

VILLAGE OF RIVER HILLS (POLICE
DEPARTMENT)

Case 23
No. 71558 FF-765
Decision No. 33857-A

Appearances:

Mr. Benjamin M. Barth, Labor Consultant, Labor Association of Wisconsin, Inc.,
N116 W16033 Main Street, Germantown, Wisconsin 53022, on behalf of the
Association.

Buelow, Vetter, Buikema, Olson & Vliet, LLC, Attorneys at Law, by Ms. Nancy Pirkey,
20855 Watertown Road, Suite 200, Waukesha, Wisconsin 53186, on behalf of the
Employer.

FACT FINDING RECOMMENDATIONS

Village of River Hills Police Association, Local 326 of the Labor Association of Wisconsin, Inc., hereinafter referred to as the Association, and Village of River Hills, hereinafter referred to as the Village or Employer, met on several occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms expired on December 31, 2009. Said agreement covered all police sergeants and officers employed by the Village of River Hills. Failing to reach such an accord, the Association on March 12, 2012, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate fact finding pursuant to Section 111.70(4)(c)3 of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties

on February 5, 2008, issued an Order dated April 27, 2012, wherein it determined that the parties were at impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of fact finding had been met, and further, wherein the WERC ordered that the parties proceed to fact finding to resolve the impasse existing between them. In said regard the WERC submitted a panel of five fact finders from which the parties were directed to select a single fact finder. After being advised by the parties of their selection, the WERC on May 14, 2012, issued an Order appointing the undersigned as the Fact Finder to resolve the impasse between the parties, and to make a recommendation to resolve the deadlock.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on August 9, 2012, at River Hills, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. The Association filed a brief on September 21, 2012 at which time the record was closed. The Village did not file a brief.

THE FINAL OFFERS OF THE PARTIES:

The final offers of the Employer and Association are attached and identified as attachment "A" and "B," respectively.

BACKGROUND:

The instant law enforcement unit is comprised of three sergeants and seven police officers. The Village has approximately 11 other employees, all non-represented. The Department of Public Works with six employees was a represented unit, but recently employees in the unit decertified and are now not represented. .

POSITIONS OF THE PARTIES:

Association's Position

Appropriate External Comparables

The Association proposes the following list of comparables: Bayside, Brown Deer, Fox Point, Shorewood and Whitefish Bay. This set of primary comparables has been established as appropriate in prior arbitration cases involving the listed North Shore communities. The Employer did not put forth any evidence in the record to the contrary, so the Association's comparables should be adopted by the Fact Finder.

Criteria

It is the Association's position that since the statute regarding fact finding does not set forth any criteria, the criteria set forth in Wis. Stats. 111.77 should be used as a basis of comparing the parties' final offers. The statutory factors are:

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
4. 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:
 - a. In public employment in comparable communities.
 - b. In private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living.
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.
7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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.

In support of its final offer, the Association relies primarily on external comparables and the lack of a *quid pro quo* in the Village's final offer for its proposed changes in the *status quo*. With respect to the other criteria, the Association argues that the lawful authority of the Employer, stipulations of the parties, interests and welfare of the public and financial ability of the Employer to meet the costs, changes in circumstances, and other factors are not relevant to the issues herein.

With respect to comparables, the Association argues internal comparables are not as important as external comparables. Arbitrators for many years have recognized that there is a distinction between the police unit and other units within the same community. Here, the Association's final offer is supported by settlements reached by other law enforcement employees within the comparable communities.

Further, arbitrators and fact finders are reluctant to award changes in the *status quo* without demonstration of a compelling need for the change and an accompanying *quid pro quo* to help offset the effects of the change.¹ The Village is asking the Fact Finder to select its final offer and have the members of the Association pay 100% of the employee's contribution towards retirement (Section 19.01) and pay 12% of the insurance premiums (Section 20.01) without any

¹ Citing Washington County Social Workers, Decision No. 29363-A (Torosian, 12/11/98), Prentice School District, Decision No. 25814-A (Flaten, 7/3/89), and Salem Joint School District No. 7, Decision No. 27479-A (Krinsky, 5/39).

quid pro quo. As the proponent of this significant change, the Village bears the burden of proof that a change is needed and that an adequate *quid pro quo* has been offered. The Village has not offered a *quid pro quo*. The Association, on the other hand, has proposed the same changes to Section 19.01 and Section 20.01; however, the Association proposed a wage increase of 0% effective 1/1/10, 2.0% effective 12/31/11, 1.0% effective 1/1/12 and 1% effective 7/1/12 as a *quid pro quo*. A total of 4.0% over three years in exchange for the employees to pay 5.9% of their wage towards the WRS and an additional 4.5% of the insurance premiums. Either way, the members of the Association will be taking home less compensation in 2012 than they are now. As pointed out in Association Exhibit No. 1110 and 1111, the Village's offer results in an over \$4,000 loss per employee.

Lastly, the Association's final offer is consistent with the average cost of living. Association Exhibit 1400 shows that at the time the final offers were certified, the CPI was at 1.7%. The Employer's final offer is well under the CPI.

Based on the above facts and discussion, the Association requests the Fact Finder to adopt the Association's final offer as the most reasonable.

Employer's Position

Appropriate External Comparables

The Employer disagrees with the Association that the North Shore communities are comparable to the Village of River Hills. River Hills is a village while the other so-called comparables are cities. There is a significant difference in population. Also, unlike the other North Shore cities, River Hills is strictly residential.

Criteria

The Village stresses that the impasse procedure in this case is fact finding and not interest arbitration. There are no statutory criteria or factors applicable in fact finding. The statutory criteria provided for interest arbitration for police and fire is not applicable in this case.

It is the Employer's position that the most important criterion to decide the instance case is internal comparables and not external comparables as claimed by the Association. Thus, the relevant comparison is between police officers and the other employees of the Village. There are 11 other employees including six DPW employees who were, until recently, represented by AFSCME. None of the employees, except one, received a wage increase in 2010, 2011 or 2012 (Employer Exhibit 8). Further, all receive the same benefits and contribute the same amount into health insurance and pension as proposed to the instant law enforcement unit.

Lastly, the Village's economic condition does not warrant making a deviation from the internal pattern in this case. The downturn in the economy has created a budget problem for the Village which is reflected by an increase in unpaid taxes (Employer Exhibit 5) and the number of homes up for sale (Employer Exhibit 6).

Based on the above, the Village urges the Fact Finder to adopt the Village's final offer as more reasonable than the Association's.

DISCUSSION:

The Employer correctly argues that there are no statutory criteria guiding the parties and the Fact Finder in evaluating the parties' final offers. However, in collective bargaining there are factors that are normally taken into consideration in the determination of wages, hours and working conditions that the undersigned finds appropriate in this case. Thus, the instant Fact Finder finds relevant internal comparables, external comparables, the national, state and local economy, the Village's financial condition, and CPI.

To begin with, no real discussion is needed about the economy. The downturn has been dramatic at all levels, private and public. The Village of River Hills is no exception. Thus, for said reason, this unit of law enforcement personnel has been offered the same package that has been given to the other eleven Village employees; no wage increase in 2010, 2011 and 2012 with an additional 4.5% contribution to health insurance premiums and a 5.9% (of wages) contribution (from current 0%) towards the WRS. The Association has agreed to the health insurance and WRS pick-ups, but has proposed a 4% wage increase for the three-year term of the contract, 2010 through 2012.

The dispute is, in essence, over what the Association contends is a *quid pro quo* for their agreement to make additional contributions to health insurance premiums and WRS.

In this case, the internal comparables favor the Village and the external comparables clearly favor the Association. Generally stated, arbitrators give significant weight to internal comparables unless a party can establish special circumstances to do otherwise.² This is especially true with fringe benefits because of the importance of maintaining uniform benefits among all employees of the same employer. However, external comparables become important if there is a “catch-up” argument present or if the nature of the work of the unit involved is significantly different than that of the other blue collar and white collar employees of the same

² See Village of Shorewood (Police), Decision No. 31061-A (Greco, 4/22/05); City of Wisconsin Rapids (Police), Decision No. 30175-A (Michelstetter, 2/25/02); City of Waukesha, Decision No. 21299 (Fleischli, 8/28/84); City of Oshkosh, Decision No. 26923-A (Gundermann, 3/3/93); Mount Horeb School District (Auxiliary Personnel), Decision No. 7301 (Oestreicher, 12/6/95); City of Madison (Firefighters), Decision No. 21345 (Vernon, 11/84); Marinette County Department of Social Services (Professional Staff), Decision No. 22574-A (Grenig, 9/85); City of Milwaukee, Decision No. 25223-B (Rice, 9/88); City of Green Bay, Decision No. 26948-A (Vernon, 4/92); City of New Berlin, Decision No. 27293-B (Krinsky, 2/93); City of Appleton, Decision No. 25626-A (Vernon, 4/89).

employer. Thus, law enforcement personnel are typically compared to comparable law enforcement personnel, at least with respect to wages.³

The comparables proposed by the Association are Bayside, Brown Deer, Fox Point, Shorewood and Whitefish Bay, commonly referred to as the “North Shore.” The Employer takes issue with the comparables but does not offer an alternative set of comparables.

Normally, external comparables are determined by geographic proximity, similarity in size, and similarity in character criteria. Here, the Village of River Hills is proximate to the North Shore comparables, but it is significantly less in size. Importantly, however, the North Shore comparables including River Hills have been adopted in a number of arbitrations.⁴

In the opinion of the Fact Finder, the North Shore comparables are by no means perfect because of size and the fact that River Hills is strictly a residential community, but they are, nevertheless, appropriate because the Village must compete with the North Shore communities in hiring and retaining police officers. Thus, what the surrounding communities are paying their law enforcement personnel is an important factor in determining the reasonableness of the parties’ offers in this case.

Here, the final offers of the parties on health insurance and WRS are the same. The Employer will make a maximum contribution of 88% of the premium of the lowest cost health insurance plan and employees shall contribute 100% of the required employee contribution. The

³ See City of Glendale (Police), Decision No. 30084-A (Dichter, 10/01); Portage County, Decision No. 25971-A (Fleischli, 9/89); City of River Falls, Decision No. 21523-A (Boyer, 10/84).

⁴ See Village of Shorewood, Decision No. 31061-A (Greco, 4/05) and again in Decision No. 30195-A (Honeyman, 6/02); City of Glendale, Decision No. 30084-A (Dichter, 10/01); Village of Bayside, Decision No. 29456 (Callow, 7/99) and again in Decision No. 28725-A (Anderson, 9/96).

health insurance represents an increase of 4.5% in premium payment and the WRS represents a 5.9% increase for employees.

Thus, the only issue in dispute is wages. The Association argues that its wage proposal is a *quid pro quo* for the significant changes in existing benefits demanded by the Employer and agreed to by the Association. The Employer has offered no *quid pro quo*; it has offered no wage increase.

As stated earlier, the internal comparables favor the Employer. However, the Fact Finder finds external comparables to be more appropriate and should be given considerable weight because it is a comparison of law enforcement units, as opposed to internal blue collar and white collar personnel. The neighboring communities in close proximity to River Hills have all settled for wage increases during the three-year period 2010-2012. The settlements for the three-year period range from a high of 6% (Bayside) to a low of 3.75% (Shorewood). The average is 4.73%.⁵

The Association's final offer is end loaded with a 0% increase in 2010 and basically a 0% increase in 2011 because the 2% increase is effective the last day of 2011. In 2012, the Association's offer is for a 1% increase 1/1/12 and 1% 7/1/12.

There is no question, the Village faces difficult financial times. The Fact Finder recognizes that although River Hills is a wealthy community, it still has budgetary problems to deal with. Its residents, like others, have felt the effects of the severe downturn in the economy. However, the Village, in negotiations, has never claimed an inability to pay. So the bottom line issue is whether a 0% wage increase or a 4% increase or some other increase is reasonable when

⁵ See Association Exhibit 600.

the total package is considered. Other comparable communities face the same financial conditions as River Hills and have given their law enforcement personnel wage increases. In weighing and balancing the Village's ability to meet the cost of the Association's offer and the merits of the Association's offer, the Fact Finder believes, and so finds, that the most reasonable wage package under the circumstances is the Association's offer.

Under the Village's offer, employees would lose approximately \$4,000 in take-home pay. The Association's 4% increase over three years is below the North Shore average of 4.73%. Further, even under the Association's offer, River Hills' officers will lose ground to the average salary of officers in the comparable pool. They will go from \$132 less in 2009 to \$623 less in 2012 (Association Exhibit 600). Under the Village's offer they will go from \$132 less to \$3,205 less (Association Exhibit 601).

Lastly, the Association's offer of 4% does not exceed or is it near the increases in cost of living. Normally, wage increases are based on the rise in the cost of living in the previous year. In 2009, 2010 and 2011, the cost of living rose 2.7%, 1.5% and 3.0% respectively for a total increase of 7.2%.⁶

Based on the above, the Fact Finder finds the Association's offer to be more reasonable than the Village's. Under fact finding, the Fact Finder is not limited to choosing one of the two final offers, but under the circumstances as discussed above, the Fact Finder does not find the Association's offer as is to be unreasonable. It is on the lower end of the settlements in the North Shore communities, below the cost of living for the three-year period of the agreement and is end loaded to reduce the Village's cost of the 4% rate increase in wages. Further, it is

⁶ See United States Department of Labor, Bureau of Labor Statistics.

reasonable on a total package basis that requires officers to pick up an extra 4.5% pick-up of health premiums and a contribution (new) of 5% towards WRS.

Based on the above facts and the evidence presented with regard to the offers, and discussion thereon, the Fact Finder makes the following

RECOMMENDATIONS

That the provisions contained in the 2007-2009 collective bargaining agreement between the Village of River Hills and the Labor Association of Wisconsin be continued in a new three-year agreement, 2010 – 2012, as modified by the following:

1. Incorporate Article IV, Term, Article V, Salary, and Article XIX, Pension Contributions, (numbers 1, 2, and 3 respectively) contained in the Association's offer.
2. Incorporate Article XX, Hospitalization and Surgical Insurance, as contained in the Village's offer.⁷

Dated at Madison, Wisconsin, this 16th day of November, 2012.

Herman Torosian, Fact Finder

⁷ The Association and Village are in agreement over health insurance, but their language in the Article is slightly different. At the fact finding hearing the Association agreed to the Village's written proposal.