STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of an Interest Arbitration	:	
	:	
between	:	
	:	Case 74
LOCAL 1192 (DPW) AFSCME, AFL-CIO	:	No. 55877
	:	INT/ARB-8343
and	:	Decision No. 29425-A
	:	
CITY OF ANTIGO	:	

Appearances:

Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO appearing on behalf of Local 1192 (DPW), AFSCME, AFL-CIO.

Ruder, Ware & Michler, S.C., by Jeffrey T. Jones, Esq. appearing on behalf of the City of Antigo, Wisconsin.

Background

Local 1192 (DPW), AFSCME, hereafter the Union, and the City of Antigo, Wisconsin, hereafter the Employer, are parties to a collective bargaining agreement which expired on December 31, 1997. The parties exchanged their initial proposals November 10, 1997 on matters to be included in a new collective bargaining agreement. Thereafter, the parties met on several occasions in efforts to reach an agreement. On December 10, 1997 the Union filed a petition with the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm) 6 of the Municipal Employment Relations Act. On August 25, 1998

the WERC certified that an impasse had been reached and ordered arbitration.

On September 16, 1998 the WERC, on the advice of the parties, appointed the undersigned to arbitrate the dispute. A hearing was held on December 1, 1998 in Antigo, Wisconsin at which time the parties were present and given full opportunity to present written and oral evidence. Briefs were filed by the parties, the last of which was received by the arbitrator on April 2, 1999.

Statutory Criteria

As set forth in Wis. Stats. 111.70(4)(cm), the arbitrator is to consider the following criteria:

7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of the factor in the arbitrator's or panel's decision.

7g. "Factor given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

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 proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of the 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 the 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 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 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.

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.

Final Offers of the Parties

The Parties have placed before the Arbitrator seven issues. Only two of these issues, however, are in dispute. Positions are identical for the following issues: safety boot reimbursement; five year waiting period for movement from Class 3 to Class 2; contract duration; and wages. In addition, the City has proposed, without objection from the Union, a change in health insurance for retired employees. In dispute are a proposal from the City to change the contractual language covering work hours at the City's landfill operation and a proposal from the Union to modify the City's residency requirement for workers in the Department of Public Works. In the former instance, the Union proposes no change in the language. In the latter issue, the City's position is no change in the status quo. The outcome of this arbitration will necessarily turn solely on the issues of landfill hours and residency.

The Issue of Comparability

The Positions of the Parties

This is the first interest arbitration involving the City and its Department of Public Works bargaining unit. However, two previous interest arbitration cases involving the City and its Police unit occurred in 1978 and 1981.[1]

The Parties disagree over which communities should be used for comparison purposes. On the one hand, the City contends

[1] City of Antigo (Police Department), Dec. No. 16185-A, Kerkman (7/26/78); and City of Antigo (Police Department), Dec. No.

that, on the basis of economic base, population and geographic proximity, the cities of Medford, Merrill, Rhinelander, Shawano, Tomahawk and Langlade County should be adopted as external "comparables".

The Union, on the other hand, proposes a set of 13 communities: Merrill, Rhinelander, Shawano, Clintonville, Tomahawk, Waupaca, Oconto, Crandon, Marshfield, Minoqua, Stevens Point, Wausau and Langlade County. According to the Union, these communities were selected first because they had been adopted by arbitrators in the prior interest arbitrations involving the City of Antigo; and second, by using adjusted gross income as a measure of community wealth.

The logic advanced by the Union for applying the criterion of adjusted gross income is that legislative amendments made in 1996 to 111.70 require that, among other factors to be considered, arbitrators "shall give greater weight to economic conditions in the jurisdiction of the municipal employer". It offers as arbitral support Arbitrator Weisberger's award in Lincoln County (Highway Department).[2]

Discussion

First, the Kerkman and Haferbecker arbitration awards provide an appropriate beginning point for resolving the Parties' disagreement over comparability criteria. Thus, Arbitrator Kerkman accepted the City's position in that case, incorporating

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18614-A, Haferbecker, (10/4/81).

into his comparison set the communities of Clintonville, Rhinelander, Shawano, Tomahawk, Waupaca, and Langlade County.[3] While this set was conceived more than twenty years ago, the Arbitrator concludes it is still relevant and should serve as the foundation for the comparison set utilized herein.

Second, both parties agree that Merrill is appropriate and therefore that community will be added to the comparison grouping that originated with the Kerkman award. Third, using size and geographical proximity, the Arbitrator would also add Medford from the City's proposed list. This exercise results in a comparison grouping of eight communities which is within a radius of 70 miles of Antigo and varies in population from 3,457 (Tomahawk) to 10,369 (Merrill) compared to Antigo's population 8,591: Clintonville, Medford, Merrill, Shawano, Rhinelander, Tomahawk, Waupaca and Langlade County.[4]

Finally, it should be noted that the Arbitrator is not persuaded by the Union's argument that adjusted gross income, by itself, is sufficient either for the determination of a set of comparison communities or for evaluating "economic conditions in

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[2] Decision No. 29340-A (9/2/98).

[3] Arbitrator Kerkman dismissed as too narrow the Union's proposal to limit the comparables solely to Rhinelander and Merrill.

[4] The undersigned does not find appropriate for inclusion in the comparison group for size reasons the Union's proposal for Marshfield (19,991), Stevens Point (24,430) and Wausau (38,724). For the same reason he deems Crandon (2,061) too small and Oconto too far from Antigo (84 miles).

the jurisdiction of the municipal employer."[5] The Municipal Employment Relations Act requires that greater weight be given to local economic conditions in selecting one of the Parties' final offers. To the extent that adjusted gross income, when used in conjunction with other measures of community economic wealth, provides meaningful and reliable data, the Arbitrator will incorporate it in the analysis of the Parties' offers which follows.

The Issue of Residency

The Union proposes that Article 28 – Residency be revised "to allow employees the ability to reside within a 15 mile radius to the City limits." The current language reads as follows:

> "Employees who presently own homes outside Antigo, but within the five (5) mile limit may continue that residency. Employees renting outside the City shall be give one year to find residences in the City. All future employees shall be required to reside in the City. Employees who own property outside the City limits must maintain City residency if they sell their homes."

The City proposes that the current language in Article 28 be continued.

The Union's Position

The Union argues first, its position is consistent with

[5] The Wisconsin Department of Revenue, which compiles statistics on adjusted gross revenue, urges that great care be exercised in using this information. This is necessary because the number of tax returns may be substantially overstated or understated for any given municipality. Moreover, the Department of Revenue also cautions that the state's population is more than twice the number of returns filed. For a detailed explanation of the pitfalls in using these data see "Wisconsin Municipal Per Return Income Report for 1996," (Union Exhibit #7).

internal comparables. That is, it asserts that in recent contracts the City voluntarily agreed to a similar 15 mile residency requirement. Further, says the Union, there are no restrictions on where non-represented employees may reside.

In addition to the internal comparables it claims, the Union also argues that there is an abundance of highly supportive external comparables to sustain its position on residency. Pointing to the communities in its external comparables set, the Union maintains that nearby municipalities are relaxing or totally abandoning residency requirements. According to the Union, " not a single comparable that has been used in City of Antigo disputes maintains a residency requirement as restrictive as that currently being maintained by the City of Antigo." In this regard, it adds, it is not necessary to offer a quid pro quo when the comparables establish a pattern.

Next, the Union disputes the City's concern with response delays from DPW employees in the event of snow, ice and other possible highway emergencies. According to the Union, there would be considerable advanced warning, residency would not be unlimited given the 15 mile limit that would remain and the likelihood that only a small minority of employees would choose to live outside the City. In any event, the Union maintains that the case for a residency requirement is more compelling for police and fire yet the City has taken the opposite position.

Third, the Union rejects the contention that its residency offer would have a negative economic impact on the City. No mass

movement of employees would occur and the loss in property tax would be negligible. Why let the police and fire reside outside if the economic impact would be significant, asks the Union.

Finally, the Union disputes the City's contention that its residency is unworkable and therefore not legal. Here it maintains that an arbitration brief is not the proper place to challenge the other party's final offer. This should be done through a petition for a declaratory ruling from the WERC, by means of a Prohibited Practice charge filed with the same agency or raised at the time of the exchange of final offers.

The City's Position

First, the City contends that the Union has not provided specific language that would be required to implement its proposal. According to the City, this would leave the Arbitrator with the task of constructing the necessary language if the Union's final offer were selected. In the City's view, under the MERA the Arbitrator lacks the authority to write such language.

Moreover, without specific language, says the City, the Union proposal would create uncertainty and ambiguity. In the City's words, "It certainly would not be a model of clear contract language."

Second, the city also argues that the Union's proposal is unworkable in that it permits employees to live within a 15 mile radius of the City limits. Every year the City's boundaries change with the result that employees may be in compliance one year and not the next.

Third, adoption of the Union's residency proposal, says the City, would not be in the public interest. Employees would not be available for snow removal and they would not contribute to the City's tax base. The City also argues that it relaxed the residency requirements for police officers and fire fighters because these services are staffed on a 24 hour day seven days per week schedule and, if need be, the City can call on nearby communities with whom it has a mutual aid pact.

Fourth, the City asserts that the Union has not demonstrated a need for change or offered a quid pro quo by which it would "buyout" the existing language. Here the City cites a number of arbitral awards supporting its position. It contrasts the bargaining with the Police and Fire unions in which according to the City, in exchange for relaxation in the residency requirements, those unions offered a substantial quid pro quo in the form of elimination of longevity schedules.

Finally, the City disputes the Union's evidence that its residency position is supported by external comparables. In this regard, the City challenges the majority of cities in the Union's set of comparables as differing substantially in population, tax levy and rates, equalized value and distance. Thus, says the City, they are not truly comparable to Antigo.

Discussion

The first matter to resolve is the City's contention that the Union has failed to propose specific residency language, thereby making its final offer defective. These defects include

the possibility that the Arbitrator would have to construct the language, that the acceptance of the Union proposal would cause uncertainty and ambiguity and that, as it stands the residency proposal is unworkable.

It is clear from even a cursory reading of the statutory language of MERA that the Arbitrator has no authority to construct language in order to carry out his functions under the law. The Arbitrator can only choose one or the other of the Parties' final offers. It is clear also that if either of the Parties to the dispute believes that the other side's final offer is defective, such objections must be made before the WERC has certified the final offers and declared an impasse. As Arbitrator Kerkman noted in Shorewood Professional Firefighters "Once the offers were certified by the WERC and the Arbitrator was appointed the questions of the propriety of the offer are moot."[6] There is no evidence in the record to indicate that the City raised such objections and to do so now is untimely.

In addition, the City objects that the Union's residency proposal is ambiguous and would create uncertainty. The Arbitrator agrees that the proposal "would not be a model of clear contract language." However, it is often the case that contract language adopted during negotiations falls short of the parties' expectations. In the instant case, there is no indication that the Union attempted to obscure its intent or to mislead the City. The City acknowledges that the parties held

numerous bargaining sessions from the initial exchange of proposals in December 1997 until the WERC declared impasse in August 1998. During this time the Parties meet jointly with a WERC mediator and apparently reached a tentative agreement. Under the circumstances, the undersigned is not persuaded by the City's position. In a similar case in which an employer had not specified the duration of the contract it was seeking Arbitrator George Fleischli ruled, "While the selection of the Employer's offer might require the implementation of language to effectuate its intent, that problem does not constitute grounds for finding the offer to be defective."[7]

Moreover, in a case offered by the City in support of its own position, Arbitrator Baron concluded,

> "There are several proposals by both parties which the arbitrator find to be excessive or to create future interpretation problems. Some of the language proposals, for example, are not models of clarity and may result in future disagreement as to applicability. The District's desire to determine employee qualifications in hiring from posted positions, trial periods, layoffs, etc with little attention to seniority is problematic. If the arbitrator had the authority to select the more reasonable proposal on an item by item basis, some of these difficulties could be avoided, however, under Wisconsin law this is not permitted. Thus, the arbitrator, albeit reluctantly, must select one final offer, flaws and all."[8]

The City also contends that its boundaries change frequently and that employees who at one point were in compliance with the residency requirement would no longer be so. According to the

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[6] Dec. No. 26625-A, 7/21/91.

[7] District 1199W/United Professionals for Quality Health Care, Dec. No. 22588-A, (11/19/85), p.12.

City, this would make the proposal unworkable. The Union disputes this argument and the Arbitrator is inclined to agree. While the City's logic would presume that its boundaries were contracting it is more reasonable to assume that they will expand. This would incorporate individuals into the City's limits rather than exclude them. At any rate, neither Party has provided concrete evidence describing actual changes in the City's limits in recent years.

The City also asserts that the Union's proposal is not in the public interest: it would be harmful to the tax base and create response problems in meeting highway weather emergencies. Both Parties agree that the number of DPW employees who would potentially exercise the opportunity under the Union's residency proposal is small. However, with a 1997 population of 8,591 and an equalized value of $205,781,500 it is difficult to accept the argument that the migration outside the City of the numbers of employees envisioned here would negatively impact Antigo's tax revenues in any significant manner.[9]

With regard to response delays during bad weather it is difficult to draw definite conclusions in the absence of concrete evidence. Much of the testimony on both sides was speculative and while the Arbitrator shares the City's concern that delays in clearing the roads may create public safety problems this is insufficient to influence the undersigned's judgement of the

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[8] Merton Joint School District #9, Dec. No. 27568-A, 8/30/93.

Union's proposal.

We turn now to the Parties' arguments over the external and internal comparables. The Union argues that both sets of comparables support its position while the City chooses only to challenge the specific communities the Union selects as its external comparison set.

External Comparables: The table below shows the extent of residency requirements of the eight comparables selected by the Arbitrator. Six of the eight comparables have no residency requirements: Rhinelander, Shawano, Tomahawk, Merrill, Waupaca and Langlade County. The seventh, Clintonville, by city ordinance, permits employees to live within 12 miles of the city hall. The Parties provided no information on the remaining municipality, Medford.

RESIDENCY ISSUE
EXTERNAL COMPARABLES

Municipality	Residency Regulation
Rhinelander	No Residency Requirement
Shawano	No Residency Requirement
Tomahawk	No Residency Requirement
Merrill	No Residency Requirement
Waupaca	No Residency Requirement
Langlade County	No Residency Requirement
Clintonville	Live within 12 Miles of City Hall
Medford	No Information
Antigo (DPW Workers)	Residency Restricted to City Limits

As the Table shows the external comparables clearly support

[9] Employer Revised Exhibit #58.

the Union's residency proposal. Moreover, as the Union contends Wisconsin Public policy both at the state legislative level and within local government in recent years has moved away from imposing restrictive residency requirements.

Internal Comparables: The Union also maintains that its position is supported by the fact that the City recently agreed to relax the residency requirements for its police and fire bargaining units. These units are now governed by a requirement that they must reside within 15 air miles of the city hall. The Union also notes that there are no residency requirements for nonrepresented, nonmanagerial City employees.

The City responds that it agreed to relax the residency requirements for the Police and Fire bargaining units only after those unions provided a quid pro quo in the form of giving up longevity payments. In contrast, says the City, the DPW unit offers no quid pro quo. In addition, the City says there is no compelling safety reason for nonrepresented employees to reside within the City's limits.

The question of quid pro quo will be considered below. In the meantime, it is clear that on whatever basis they have occurred, the internal comparables support the Union's residency offer.

As indicated above the City argues that the Union offers no quid pro quo for the residency change it seeks. The Union agrees that it has not made such an offer, contending that it does not need to. In support of this position it offers a number of

arbitral decisions. The Arbitrator, however, finds most pertinent a series of awards provided by the City in support of its position on the landfill issue of the instant dispute. As shall be discussed, the City defends its effort to change landfill hours, in part, by the argument that no quid pro quo is required where need for change is demonstrated or comparability patterns establish the reasonableness for the change. Among the decisions cited, Arbitrator Byron Yaffe states the general line of reasoning as follows:

> "Though the District argues that no adequate quid pro quos have been offered by the Association in exchange for the improved benefits the Association seeks, the undersigned believes said concept is applicable where a union seeks exceptional or unusual benefits or where the employer seeks concessions from its employees in the form of take backs. It does not apply where, as here, an Association is simply asking that employees be brought into the comparable mainstream."[10]

The test then is whether the sought after change is consistent with prevailing patterns among an accepted set of comparables. The undersigned concludes that the Union herein has met this test and therefore no need for a quid pro quo is required.

As a final point, Sec. 111.70(4)(cm)7, "Factor Given Greatest Weight," has not been considered in evaluating the Parties' final offers on residency. They have chosen neither to argue this criterion nor to present evidence by which its applicability to the instant dispute can be judged.

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[10] Delevan-Darien School District, Dec. No. 27152-A, 8/31/92. See also Maple Dale-Indian Hill School District, Dec. No. 27400-A, Stern, 2/18/93; and Glenwood City School District, Dec. No.

In view of the above, the Arbitrator finds the Union offer on residency more reasonable.

The Issue of Landfill Hours

The City proposes that under Article 17 - Hours of Work paragraph E be deleted and the following inserted:

> Full-time WPRC employees shall normally work Tuesday through Saturday, eight (8) hours per day, forty (40) hours per week. Normal daily work hours will be from 7:45 a.m. to 4:15 p.m. Employees may request a change in the Tuesday through Saturday work schedule for certain periods of the year. If such request is made, City and Union officials shall meet to discuss the requested change.

The Union proposes no change in the status quo.

The current language states:

> WPRC Employees' Hours: WPRC employees shall work a normal workweek of eight (8) hours per day Monday through Friday, and four and one-half (4 1/2) hours on Saturday, for a total of forty-four and one-half (44 1/2) hours per week.
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> The parties shall meet to discuss the terms of this provision if the Landfill's operations are subject to change and either party so requests. If the parties are unable to reach an agreement with respect to the terms of this provision, either party may utilize the interest arbitration procedures under the Municipal Employment Relations Act to resolve the dispute. The parties' agreement to meet and discuss the terms of this provision if the Landfill's operations are subject to change does not waive other contractual rights the parties may have under other provisions of the Collective Bargaining Agreement.

The Employer's Position

The City argues first that the external and internal comparables support its offer. On the one hand, the City notes that although the current language provides 44.5 hours per week it proposes to establish a 40-hour workweek for the landfill

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26944-A, Zeidler, 1//30/1992.

employees. The City contends that the external comparables do not provide guaranteed overtime pay for any of their employees. A forty hour work week, says the City, is the standard among the comparables.

On the other hand, asserts the City, the internal comparables also do not provide guaranteed overtime. Fire and Police employees work Saturday and Sunday without guaranteed overtime pay as well as some members of the Sewer Department. It is not fair or reasonable to allow expensive overtime pay for landfill employees when other City employees work weekends without it. Thus, says the City, its proposal will bring fairness and equity among employees while still leaving open discussion to change the Tuesday – Saturday schedule.

Second, the City maintains that its final offer is in the best interest and welfare of the public. It argues, citing Arbitrator Stanley Michelstetter as an example, that arbitrators "have recognized that where circumstances have changed, an employer should be permitted to change employee work schedules in accord with the public's best interest."[11]

According to the City, the landfill is operating at a deficit, unit costs are higher in the face of reduced flows of trash, the City can not compete with other landfills and there is a need to have the landfill open on Saturdays. It is not in the best interest of the City taxpayers to operate the landfill at a loss. In the City's view, the elimination of Saturday overtime

will substantially reduce the operating deficit.

Third, the City maintains that its proposal is supported by its comparables and meets a reasonableness standard. Here it bases this argument in a series of cases decided by Arbitrators Zeidler, Yaffe, Stern, Baron, and Michelstetter.[12] According to the City, so long as it meets the arbitral standards it does not have to offer a quid pro quo.

Fourth, the City argues that should it be required, however, to offer a quid pro quo, it has done so. Its wage offer has exceeded its external comparables as well as the consumer price index measure of inflation. In addition says the City, it is offering safety boot reimbursement and a health insurance benefit that will permit retiring employees to remain in the City's health insurance plan until they reach 65 or become eligible for Medicare.

Finally, the City maintains that it submitted numerous proposals to the Union in a good faith attempt to reach an agreeable change to the Landfill employees' work schedule. Thus, says the City, "if [it] cannot secure a change in the landfill employees' work schedule through the arbitration process, it is unlikely that the City can obtain a change at all."

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[11] City of Medford (Police), Dec. No. 26674-A, 7/12/91.

[12] Aburndale Education Association, Dec. No. 26257-A, Zeidler, 9/90; Delevan-Darien School District, Dec. No. 27152-A, Yaffe, 8/31/92; Glenwood City School District, Dec. No. 26944-A, Zeidler,1/30/92, Mapledale-Indian Hill School District, Dec. No. 27400-A, Stern, 2/18/93; and Rusk County (Sheriff's Department), Baron, Dec. No. 28253-A, 7/95.

The Union's Position

The Union cites three principal objections to the City's landfill offer: (1) loss of income for three employees. Each of whom would lose $4,500 or 20% of their yearly income; (2) the across the board wage increase would be unfair since all employees would receive an increase while the reduction would apply only to the three landfill employees; and (3), working a full Saturday is less preferable than one-half day on Saturday. Thus, says the Union, the landfill employees suffer a double "whammy": reduced income and a less desirable workweek. The Union also objects to the change in language that would delete the arbitration mechanism if either side seeks reopen the contract when landfill changes occur.

The Union contends, first of all, that the City is seeking a change in the status quo. According to the Union, arbitrators have applied a series of tests to evaluate the propriety of such efforts that would alter the status quo. While arbitrators differ somewhat in the tests which they apply one such approach said by the Union to be representative of arbitral reasoning on this matter is that advanced by Arbitrators Frederick Kessler and Sherwood Malamud. Kessler, after Malamud, proposes a three-pronged test specifying a need for change, a quid pro quo and clear and convincing evidence.[13] As applied to the Employer's

[13] Columbia County (Health Care Center), Dec. No. 28960-A, Kessler, 8/20/97; D.C. Everest Area School District, Dec. No. 24678-A, Malamud, 2/15/88; and City of Verona (Police Department) Dec. No. 28066-A, Malamud, 12/30/94. The Union also applied a

landfill offer, says the Union, there has been no demonstration of a meaningful need. In this respect, asserts the Union, the costs associated with the landfill operation represents about 10 percent of a nearly $5 million city budget. The $15,000 to be saved by eliminating Saturday overtime, in turn, is less than one percent of the landfill budget.

The Union also contends that there is no operational need to cut 12 hours of work per week from the landfill schedule. According to the Union work exists and needs to be done.

Second, in the view of the Union the wage increase offered by the Employer is not a genuine quid pro quo. Half of the City's wage comparables are not settled, says the Union, and agreed upon wage increases have generally been consistent with or above the 3.25% offered by the City.

With regard to landfill hours, the Union maintains that "this issue does not readily lend itself to meaningful comparisons." The Employer's own exhibits, says the Union, suggest a wide diversity of practices and weekly schedules which are not consistent with the City's final offer.

Third, the Union maintains that the sole reason motivating the City to attempt to cut the landfill budget is economics. Therefore, says the Union, it is important to consider the changes made in the 1996 amendments to MERA which require interest arbitrators to give greater weight to local economic

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modified three pronged methodology advanced by Arbitrator Robert L. Reynolds, Adams County Highway (Department), Dec. No. 25479-A,

conditions. Here it argues that per-capita income is a meaningful measure of a community's wealth. In support of this contention the Union presents adjusted gross income figures for its comparables which indicate that the AGI for Antigo apparently significantly exceeds that for the average in its comparison group. The Union concludes from these data that "the City of Antigo can well afford the economic costs associated with the status quo."

As a final related point, the Union asserts that as established by commuting patterns, Langlade County and Marathon County share a common labor market. According to the Union, the latter county is among the most prosperous in the state of Wisconsin and that therefore Langlade County residents have been able to share in this prosperity.

Discussion

Economic Conditions: The Union argues that Antigo is enjoying economic prosperity exceeding that of comparable communities and therefore Sec. 111.704(4)(7)g is relevant. According to this section of the MERA in interest arbitration disputes arbitrators "shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the other factors specified in subd. 7r." Basically, the Union contends that the City has the ability to pay to continue the status quo in landfill employees' work schedules.

11/22/88.

As discussed above, the Union's evidence for this assertion is data on adjusted gross income (agi) which purports to show that Antigo's agi significantly exceeds that of comparable communities. The undersigned has examined the Union's evidence and concludes that it does not support the Union's position. First, although the Union characterizes the data as per-capita income it is adjusted gross income per tax return. The Wisconsin Department of Revenue, which compiles and reports the data, expresses great caution concerning their use.[14] Moreover the Department of Revenue indicates that it is no longer using per capita income as such because it misrepresents the relative well being of many municipalities.[15]

Second, the data the Union presents is flawed. In Union Exhibit #6 the Union constructs a table which shows that the adjusted gross income for Antigo is $31,163. This is in contrast to an average of $26,287 for its local government comparables. However, the Department of Revenue Report indicates that the true adjusted gross income per return figure for the City of Antigo is $21,596.[16] The higher number reported by the Union, according to the WDR report is actually for the Town of Antigo. These are two different municipal entities.

Finally, ignoring for the moment the WDR cautions and the accuracy of the figures, a single number such as adjusted gross

[14] See footnote # 5.

[15] Wisconsin Department of Revenue, Wisconsin Municipal Per Return Income Report for 1996, October 13, 1997, p.1.

income is inadequate for drawing meaningful conclusions about the economic condition within the jurisdiction of a municipality. More useful would be time series numbers over several years covering such local economic variables as unemployment rates, average hourly/annual wage rates, equalized property values, bankruptcy rates, and agricultural income, among other possible measures. The Union has not placed any of this or related information in evidence.

Given the above the undersigned is not prepared to accord any weight to statutory factor "7g" in the determination of the outcome of this dispute.

Comparables: Looking at the external comparables first, the Arbitrator finds little here that is relevant to the landfill work hours issue. Only one (Shawano) of the six community comparables offered by the City operates a landfill. In that single case a Scale Clerk not in a DPW unit works a half day Saturday from April to November at an overtime rate.[17] There is no information for the two additional communities in the Arbitrator's grouping, Clintonville and Waupaca. Meaningful comparisons about work schedules and overtime can only be made between employees doing similar work. The data drawn from the external comparables does not permit us to do that.

The City also cites as internal comparables its employees in the Police, Fire and Sewer operations. Here it argues that no

[16] Ibid. p.21.

other group of City workers receives guaranteed overtime payments. This is unfair and inequitable to such workers. The Arbitrator is not persuaded by this argument. On the one hand, there is no evidence in the record that the workers in question are dissatisfied with the work schedules and overtime arrangements negotiated by their Unions. If there was a general belief that the current contractual arrangements were unfair or inequitable such issues would be manifest.

On the other hand, it is also difficult to conclude that a pattern exists concerning work schedules by comparing such diverse groups of employees as police officers, fire fighters and sewer workers. For example, the Firefighters' Contract (Union Exhibit 13) calls for a 56 hour work week in which employees work alternating 24 hour periods over six days. The unique requirements of staffing fire fighting operations on a 24 hour/7 day week have been devised over many years to accommodate the fire safety needs of communities like Antigo. In a similar vein, police operations also are staffed continuously but in this case on a six day on, two day off work week in which officers, unlike fire fighters, are assigned to shifts.(Union Exhibit #14). The City has also indicated that Sewer Department employees, covered by the contract in dispute, also work weekends without overtime. Review of the Section 17.D of the Contract reveals that only one such worker is assigned to work on a weekend, the worker works a half day each on Saturday and Sunday morning and in compensation

[17] Employer Exhibit #21.

works only four days the following week with Friday, Saturday and Sunday off. This is an alternative method of dealing contractually with the need to staff certain functions on weekends. The historical hourly schedule adopted for landfill operations is unique to its needs in the way that the Police and Fire scheduling approaches are to their needs.

The Arbitrator concludes that the internal comparables do not support the City's landfill scheduling offer.

The Interests and Welfare of the Public: The City mounts a strong case that the deficits incurred in operating its landfill operations are not in the public interest and that it is making significant efforts to put the operations into the black. While the undersigned is persuaded by the evidence adduced by the City, he is less inclined to accept the contention that few alternatives remain to the City than to abolish the landfill employees' guaranteed overtime and to restructure their workweek. Such a move would have serious repercussions on the targeted employees with no assurance that it would be more than a temporary expedient.

However, it is not the undersigned's function to second guess the City in the method it has chosen to deal with the budgetary problem it faces with this public function. It is enough to grant the City its argument that the problem is real and it must be addressed. Rather the question for the Arbitrator now becomes, what is the City prepared to pay to offset the loss that landfill employees will incur if the City's proposal is

implemented?

The Status Quo and the Quid Pro Quo: The City has argued the question of the quid pro quo two ways. That is, first it contends that it doesn't need to offer a quid pro quo to change the current landfill hours language. But second, the City also asserts that it has offered a quid pro quo anyway. The undersigned agrees with the Kessler/Malamud arbitral theory that postulates that even if the moving party proves a need for change it must offer a quid pro of value equivalent to that which would be given up.[18] The Arbitrator found, on the one hand, the prevailing practices of its comparables do not support the City's position. On the other hand, however, the Arbitrator is prepared to accept the City's position that there is a need to deal with the problem of deficits in the landfill operations. The City must therefore provide an adequate quid pro quo.

We turn now to the City's offer and the question of whether it's value will offset the landfill employees' loss. The major part of the quid pro quo the City says it has offered is a 3.25% wage increase, which it contends exceeds that of comparable local governments. The table below reproduces City Exhibit 41 that shows wage settlements among the City's chosen comparables.

[18] See footnote #13.

City of Antigo
DPW Settlements

Comparable	1997	1998	1999	2000
Medford	3.00%	3.00%	N/S	N/S
Merrill	$.44	2.50%	3.00%	1/1 2.00% 7/1 2.00%
Rhinelander	$.51	1/1 3.00% 7/1 1.00%	3.00% 1.00%	N/S
Shawano	1/1 2.00% 7/1 1.50%	N/S	N/S	N/S
Tomahawk	$.54	$.54	N/S	N/S
Langlade County	3.25%	3.25%	3.25%	3.25%
Antigo	3.25%	3.25% (ER Offer)	3.25% (ER Offer)	3.25% (ER Offer)

N/S = Contract Not Settled.

The Arbitrator finds little in the City's own evidence to support its assertion that the wage increase it has offered the Union exceeds its comparables by a magnitude sufficient to constitute an equivalent quid pro quo. Out of the six comparable local governments proposed by the City, only Merrill for two years and Medford for one agreed to wage increases smaller than that proposed by the City of Antigo. Four of the six are unsettled for the year 2000, three are not settled for 1999 and one remains without a contract for 1998. While the lack of settlements clouds the picture the City's premise is that it has exceeded increases granted by its comparables and it carries the burden of proving this premise in a clear and convincing manner. It has not done so.

Moreover, the City also argues that other components of its offer could be construed as part of its quid pro quo. Among these are reimbursement for books and a healthcare insurance privilege for retirees. The City provides no calculation of the value of these two items. The Arbitrator's own sense is that the marginal value of each is insufficient by themselves or in combination with the wage increase offered to counterbalance the loss incurred to the landfill employees were the City's offer to be implemented.

Finally, the City points to the Consumer Price Index (CPI) contending that its offer substantially exceeds increases in the CPI.[19] The general line of arbitral reasoning, to which the undersigned has long subscribed, is that the cost of living measure considered most significant is that established through the voluntary agreements of comparable bargaining relationships. This was true when inflation rates greatly exceeded negotiated salary increases and are equally applicable in the current period of relative price stability. If the cost of living criterion is to be weighted heavily then the record must contain evidence that inflationary pressures are different in Antigo from those faced by the comparable local governments considered here. The record, however, does not support this conclusion. Despite its claims to the contrary, the City's wage offer is no more than that of the voluntary agreements of its comparables.

In view of the above, the Arbitrator concludes that the

City's evidence does not support clearly and convincingly that it has offered a quid pro quo of equivalent value to the change in the landfill status quo it seeks. Therefore, the Union's offer on this issue is to be preferred.

Summary

In sum, the Arbitrator finds that the Union has prevailed in its position on both the issue of residency and the issue of landfill hours.

AWARD

In light of the above discussion and after careful consideration of the statutory criteria enumerated in Section 111.70 (4)(cm)7 Wis. Stat. the undersigned concludes that the Union's final offer is more reasonable. Therefore, the final offer of the Union shall be incorporated into the Collective Bargaining Agreement for the period beginning January 1, 1998 and extending through December 31, 2000.

Dated at Middleton, Wisconsin this 31st day of May, 1999.

Richard Ulric Miller, Arbitrator

[19] See City Exhibits 44 and 45.