

BEFORE THE ARBITRATOR

In the Matter of the Petition of

MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO,
and its affiliated LOCAL 366

To Initiate Arbitration
Between Said Petitioner
and

Case 298
No. 56169 INT/ARB-8435

Decision No. 29453-A

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

Appearances:

Long & Halsey Associates, Inc., William R. Halsey, Attorney
at Law, appearing on behalf of the Employer.

Podell, Ugent, Haney & Delery, S.C., by Carolyn H. Delery,
Attorney at Law, appearing on behalf of the Union.

INTEREST ARBITRATION AWARD

Milwaukee District Council 48, AFSCME, AFL-CIO and its
affiliated Local 366, (herein collectively "Union") having filed
a petition to initiate interest arbitration pursuant to Section
111.70(4)(cm), Wis. Stats., with the Wisconsin Employment
Relations Commission (herein "WERC"), with respect to an impasse
between it and Milwaukee Metropolitan Sewerage Commission,
(herein "Employer" or "District"); and the WERC having appointed
the Undersigned as arbitrator to hear and decide the dispute
specified below by order dated December 3, 1998; and the
Undersigned having held a hearing, in Milwaukee, Wisconsin, on
April 29, 1999; and each party having filed post-hearing briefs,
the last of which was received July 9, 1999.

ISSUES

The parties' last collective bargaining agreement expired
April 30, 1998. Each party proposes a two year agreement.

1. The Employer proposes a 2.5% across-the-board increase
effective May 1, of each contract year. The Union proposes a
3.0% across-the-board increase effective May 1, of each contract
year.

2. The Employer proposes to change the current Washington's birthday holiday to Martin Luther King day. This would not result in an increase or decrease in the total holidays employees enjoy. The Union proposes no change in the current Washington's Birthday holiday.

POSITIONS OF THE PARTIES

The Employer takes the position that it must control its operating costs because major users are reducing their usage of the system and, consequently, the district is receiving less revenue. Salaries are a major component of the district's expenditures and must be controlled if the cost to end users is to be stabilized. Unlike other municipalities which experience growth in the property values comprising their tax basis, the district must rely on fees generated by customers. The Employer has sampled representative positions and this unit is more highly paid than those positions in seven of the ten sampled positions.

The Employer argues that the parties have agreed on one primary comparable, the City of Milwaukee. By comparison, unit employees are paid substantially more than the comparable position in Milwaukee. Further, when considering the only private sector comparison, United Water Service, this unit has equivalent wages when considering the total package of wages and benefits. The Employer's offer is consistent with expected CPI increases of 2.5% at most. The Employer proposes to substitute Martin Luther King's birthday for President's day as a holiday. It argues this change is consistent with other public sector contracts and is necessary to have consistent service days with the other major governmental units. Accordingly, the Employer argues that its final offer should be adopted.

The Union argues that internal comparables support the Union's final offer. It argues that each of the municipalities served by the Commission is an "internal" comparable and that the average wage increase obtained by the employees in those units should be used for comparison to the general wage increase offered by the Employer. By this comparison, the Union's position is heavily favored.

DISCUSSION

Process

The arbitrator is responsible to select the final offer of one party or the other without modification. The decision is to be made by applying the following statutory standards to the

evidence:

"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 this 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 shall 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 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 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 wages hours, and conditions of employment 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 employment of the municipal employees involved in the

arbitration proceedings with the wages, hours and conditions of employment of other employes generally 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 employes, 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 parties, in the public service or in private employment."

In this case, the parties agree that Factor 7 is not applicable. The District's arguments relating to Factor 7g are discussed below. The weight to be accorded to any of the remaining standards is left to the arbitrator's discretion. The issue with respect to which specific day the President's day/Martin Luther King holiday is celebrated on does not have significant weight in this matter and is not separately addressed.

Background

While the City of Milwaukee is the 17th largest city in the U.S., the Milwaukee Metropolitan Sewerage Commission is the 7th largest sewage system in the U.S. and among the most sophisticated and well-run systems in the U.S. It serves all of the cities and villages in Milwaukee County except South Milwaukee and all, or part of, 10 communities in Ozaukee, Waukesha, Washington and Racine Counties. Wastewater is conveyed by the sewer system to two processing plants, Jones Island and South Shore where the plants separate untreatable material and treat the remainder. Cleaned water is then returned to Lake Michigan. The City of Milwaukee is by far the largest user of

District services. About 60% of the user charges generated by the District come from Milwaukee. Unlike other units of government, the District is financed both by property taxes and by sewer charges. Large industrial users with major effluent pay substantial amounts of sewer charges and these are a factor in their costs of production.

In recent years the District completed a \$2.3 billion dollar deep tunnel project designed to trap sewer overflows and the District started a program to clean, inspect and rehabilitate 36 miles of interceptor sewers. The District sells a fertilizer known as "Milorganite" which produces about \$6 million in annual revenue and saves the use of landfill space.

In prior years there were 4 bargaining units of employees. Building Trades, Operating Engineers, Machinists and this unit. In about, 1996, the District began to study ways to improve its service and reduce its costs to rate payers. In January, 1998, the District entered into a ten year subcontract of most of its operations to United Water Service a private contractor. It expects to save 140 million of its operating costs over the years of the contract. All of the employees of the District, except those in this unit were transferred to United Water effective March 1, 1998.

Analysis

7g factor given greater weight

The District has not specifically advanced an argument addressed to this factor. The evidence offered by the District as to the economic status of industries in Milwaukee is not sufficient to be considered under this factor.

Other factors which may be considered

1. Cost of Living

A direct comparison to cost of living and other economic growth indicators favors the position of the District. For example, the Milwaukee CPI-U for 1997 and 1998 respectively is 1.9% and 1.6%. This factor favors the position of the District.

2. Interests and welfare of the public

The central argument of the District, that it needs to reduce the impact of its operating expenses on the local economy,

is addressed to factor 7r. (b), the interests and welfare of the public. Some of the largest employers in the Milwaukee metropolitan area pay heavy usage rates because of their high volume and other factors. All are cost conscious. Some are considering flight to less costly environments. Some are in financial trouble.

Another factor affecting the District is the fact that there has been a decline in total usage in that some large users have closed and other cost-conscious users have reduced their effluent. The result is a reduction in total billable usage with no reduction in the District's substantial fixed costs.

It is difficult to assess this issue on the limited record, but the District's actions over recent years has demonstrated the sincerity of its position. Even the Union's conduct has appeared to recognize the importance of the need for change. It is important to note that the District has emphasized improving efficiency over merely cutting wages and staff. This emphasis is discussed below. Accordingly, this factor is entitled to heavy weight.

3. Comparison Factors

The parties each addressed a substantial portion of their argument to the factors 7r. (d), (e), (f). The District relied upon comparisons to other waste and water districts and large public employers in other parts of the state: City of Green Bay Water Commission, City of Kenosha, City of Madison, City of Racine, Racine Water and Wastewater, Kenosha County, and Madison Metropolitan Sewerage District. It offered comparison to some of the large taxing units in Milwaukee County; City of Milwaukee and Milwaukee Area Technical College. Finally, it offered comparison to the former employees of the District now employed in the private sector by United Water Services. The Union heavily relied for its position to external comparisons as to percentage wage increase granted in local communities which are at least, in part, served by the district. They are City of Milwaukee, Village of Bayside, City of Brookfield, Village of Brown Deer, Village of Butler, Caddy Vista, City of Cudahy, Village of Elm Grove, Village of Fox Point, City of Franklin, Village of Germantown, City of Glendale, Village of Greendale, City of Greenfield, Village of Hales Corners, Village of Menomonee Falls, City of Mequon, City of Muskego, City of New Berlin, City of Oak Creek, Village of River Hills, City of St. Francis, Village of Shorewood, Village of Thiensville, City of Wauwatosa, City of West Allis, Village of West Milwaukee, Village of Whitefish Bay.

Most of these employers share the same basic local economic

circumstances of the Milwaukee metropolitan area. The Union also offered comparisons to the wage increases granted in the same years among the major taxing units in Milwaukee County; Milwaukee County, City of Milwaukee, Milwaukee Public Schools, and the Milwaukee Area Technical College. While all of these comparisons have some degree of merit, I have emphasized in my analysis comparisons to the United Water Services unit, and the major taxing units in Milwaukee County. I have given weight to some extent to wage rate comparisons for positions unique to the waste water function to similar positions in the larger waste water employers around the state, giving recognition to the fact that they are in dissimilar local economies.

The District supported its argument that wages in this unit are generally substantially ahead of comparable employees elsewhere, and, therefore its offer is sufficient to maintain the wage leadership position of unit employees, with the testimony of its Human Resources Manager. She stated that she chose the above group to make comparisons. She used other similar sewerage and water utilities because some of the positions were unique to this type of work. She used comparisons to some of the major taxing units in Milwaukee because that had been the historical reference group for the district. Finally, she used the United Water Services group because of its relationship to the District and the unit. She stated she used her judgment in selecting positions which she thought were comparable-and called personnel directors of the various employers help find comparable positions when she had a question.

I have assumed for the purpose of discussion that the comparisons are to like positions. As noted above, I have not necessarily relied upon simple averages in looking at these figures, but emphasized the comparisons which have a closer community of interest.

There are now 107 filled positions in this unit. The major positions are Engineering Aide IV (10 positions), Laboratory Technician (14 positions) and Monitoring/Sampling Specialist I and II (30 positions combined). Combined this technical group is about 70% of the unit. Significant clerical and white collar positions are Account Clerk II (5 positions), Clerk Steno II (4 positions), Clerk/Typist (2 positions). There are also 3 custodians in the unit.

The evidence with respect to the technical positions in the unit is insufficient to establish that that portion of the unit enjoys a wage leadership position. The Employer was unable to find comparisons for the Monitoring/Sampling Specialist I and II

positions, almost a third of the total unit. The evidence with respect to the Laboratory Technicians would tend to indicate that that position is almost \$400 per month higher than comparable positions in the City of Milwaukee. This strong comparison indicates that about 15% of the total unit enjoys a substantial wage leadership position. The Engineering Aide IV is paid about \$100 less than the comparable position in Milwaukee and the other comparisons are not instructive.

About 30% of the total unit is non-technical (clerical and custodial). The available evidence does tend to indicate that the non-technical portion of the unit tends to enjoy a significant wage leadership position, even taking into account longevity available among some other employers for senior employees. For example, the Account Clerk II position includes two people who have more than twenty years of service. Even taking this account, this position is at least \$100 ahead of comparable positions state-wide and among the available evidence of other major taxing units in the Milwaukee area. This is true for other major positions in this part of the unit as well. I am giving somewhat less weight to the comparisons of clerical and custodial positions because there is no data for the remainder of the major taxing units in the Milwaukee area.

The evidence with respect to wage increases for 1998, in the major taxing units in Milwaukee County is the following:

	1998	1999
City of Milwaukee	2.75%	2.75%
Milwaukee Area Technical College	2.7%	4.0%
Milwaukee Public Schools	3.0%	3.0%
Milwaukee County	3.0%	3.5%

This is consistent with the offer of the Union and is entitled to considerable weight as to the appropriate size of a general wage increase. The evidence with respect to other similar employers about the state and the evidence offered by the Union all are consistent with the proposal of the Union.

The most important evidence in this case is the District's treatment of other units in 1998 and the treatment of the United Water Services group. Prior to the United Water Services contract, the District regularly granted essentially similar increases to each of its four units, even though contract dates were staggered among the units. The 1996-98, agreement with the Operating Engineers called for a 3% general increase in that unit in 1998. Effective March 1, 1998, all four units were

transferred to United Water and all employees receive a 3% wage increase. As a result, the Operating Engineers received two 3% increases in the same year. Some of the positions in this unit are now also in the United Water Service unit. Those employees have received the 3% additional increase and are paid more than employees in their same positions in this unit. The United Water Services agreement calls for a 3% wage increase in 1999, as well.

It is important to note that in the determination to privatize and to select United Water Services, District literature stated that it had been its policy to enter into privatization for reasons other than reductions of staff and wage rate reductions, the literature states:

Throughout the process the District was concerned about the impact of competitive contracting on its represented and non-represented employees. Therefore, a second agreement was signed that included a promise from United Water that no employees would be laid off during the term of the contract.

United Water also agreed that its compensation and benefits packages would equal or exceed existing District programs.

The largest wastewater operation and maintenance agreement ever signed in the U.S. and the first major privatization in Wisconsin guarantees substantial savings to District rate payers. But before that agreement was reached, the use of a private contractor had to prove itself each step of the way.

It would not have happened otherwise.

United Water Services responded to that approach by achieving its savings by methods other than layoffs and minimizing wage rates.

Specifically, United views itself as able to meet its commitment to increased efficiency and still grant increases consistent with that proposed by the Union. Further, the District's approach tends to be inconsistent with its stated approach in that it tends to weaken the guarantee it imposed on United Water and in that it has not shown that it cannot make greater efforts in efficiency in this unit.¹ The literature also documents that there were substantial efforts by the District in its studies over the years to improve its efficiency. However, there was no direct evidence as to whether or not the same is now possible in this unit after the restructuring. Most importantly, there is no showing that the Union was ever offered the chance to assist in that regard or ever failed to cooperate in any efforts at improved efficiency in this unit. Had that been the case, the result herein might well have been different.

¹ I do note that the District is treating its unrepresented employees in the same fashion it is proposing to the Union here.

Conclusion

The available evidence suggests that some positions in this unit have a very strong wage leadership position, but the evidence is insufficient to say that the same is true of the whole unit. The wage increases proposed by the Union are consistent with that granted by other large public employers, this employer and by United Water Services. The Employer has gone to great lengths to improve the efficiency and economy of its operations to better serve the interests of the Milwaukee area community in maintaining a vibrant economy. Improved efficiency is very much in the public interest and the public interest is entitled to great weight in this proceeding. The Employer by its own policy sought to achieve these results by increased operating efficiency, rather than by staff reductions and simply limiting wages. United Water has indicated by its conduct that it believes it is able to grant wage increases consistent with the Union's offer here and still meet its commitment for greater efficiency. The Employer's case is inconsistent with its stated policy in that there is no evidence that it ever sought efficiencies in this unit. If none can be made, it might be appropriate to take a careful look at restructuring wage rates. However, the approach of the District is premature at this time. Accordingly, the offer of the Union is adopted.

AWARD

The parties agreement shall contain the final offer of the Union.

Dated at Milwaukee, Wisconsin, this 5th day of August, 1999

Stanley H. Michelstetter II