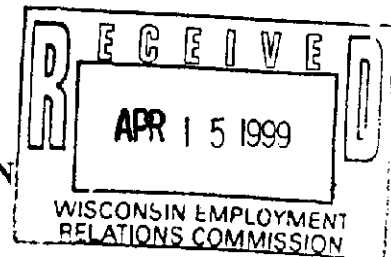


IN THE MATTER OF THE INTEREST ARBITRATION
PROCEEDINGS BETWEEN



I.B.E.W. LOCAL UNION 494,

Union,

and

ARBITRATOR'S AWARD
Case 112 No. 56504
INT/ARB 8506
Decision No. 29479-A

CITY OF WAUWATOSA (DISPATCHERS),

Employer.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Carmella A. Huser, Esq.
Quarles & Brady

For the Union: Andrea Hoeschen, Esq.
Previant, Goldberg, Uelmen, Gratz, Miller &
Brueggeman

I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.70 of the Wisconsin Municipal Employment Relations Act for the purpose of resolving a bargaining impasse between I.B.E.W. Local Union 494 ("Union") and the City of Wauwatosa ("City" or "Employer"). The City is a municipal employer. The Union is the exclusive collective bargaining representative of City Police and Fire Dispatchers, excluding supervisory and confidential employees.

The Union filed a petition on May 15, 1998, with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. Following an investigation by the WERC, it was determined that an impasse within the meaning of Section 111.70(4)(cm)6 existed between the Union and the City. The parties thereafter submitted their final offers.

On November 24, 1998, the WERC issued an order appointing the undersigned as the arbitrator in this matter. The matter was brought for hearing before the Arbitrator on January 21, 1999, in Wauwatosa, Wisconsin. At the hearing the City withdrew its offer regarding desk clerk assignments with the consent of the Union. Thus, the only issue before the Arbitrator is holiday pay.

The parties were given full opportunity to present all relevant evidence and arguments. The hearing was declared closed on March 7, 1999.

II. SUMMARY OF FINAL OFFERS

A. THE UNION

1. Increase Holiday hours to 106.8 from 100.8 to bring the dispatchers in line with the other city bargaining units.
2. Status Quo on work assignments--The Union can not agree to fill in for the Desk Clerks as this work falls within the jurisdiction of another bargaining unit.

B. THE CITY

Fill in for Desk Clerks

- a. Voluntary process.
- b. Opportunities are to be made available to part-time Dispatchers only.
- c. City will select part-time dispatchers to work on a straight time basis, whenever possible.
- d. Policy implemented only when pool of Local 35 employees is exhausted.
- e. Part-time Dispatchers to be paid their regular hourly rate.

III. STATUTORY CRITERIA

111.70(4)(cm)

...

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 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.

IV. POSITIONS OF THE PARTIES

A. THE UNION

The Union proposes increasing the holiday pay allotment by six hours a year. The Union argues that the internal comparables favor its offer. It contends that the dispatchers do not have greater benefits in other areas that would justify their having a lesser holiday benefit than the other bargaining units. According to the Union, its proposal best promotes the internal consistency that is already evident throughout the bargaining units.

The Union asserts that other bargaining units in the City with a 4-2 work schedule have at least six hours more annual holiday pay than the dispatcher unit. It argues that these groups were able to achieve the additional six hours of holiday pay without any quid pro quo.

The Union asks that its offer be selected as the more reasonable offer.

B. THE CITY

The City proposes no change in the holiday pay allotment. The City argues that for purposes of this proceeding, the parties' final offers should be analyzed with reference to an external comparable pool consisting of Brookfield, Greenfield, Menomonee Falls, New Berlin, Oak Creek, South Milwaukee, Waukesha, and West Allis. The City says that the external comparables favor the City's final offer.

It is the City's position that the Union's final offer is unreasonable because it has not demonstrated a need for an additional six hours of holiday pay and has not offered any quid pro quo for this change in the contract. The City asserts that the parties have already agreed to substantial new benefits for the Union members.

The City recognizes that City employees represented by OPEIU Local 35 who are on the same four-two schedule as the dispatchers receive 106.8 hours of holiday pay. However, it says that for purposes of its December 1997 wage proposal, the Union compared itself with dispatchers in the Street Department who receive only 88 hours of holiday pay. The City points out that the Union ranks fourth among the six internal comparables with respect to holiday pay. The City argues that the Union has not shown why its ranking on holiday pay among internal comparables should be changed.

The City concludes that its final offer is more reasonable than the Union's and that the City's final offer should be accepted.

V. FINDINGS OF FACT

A. The Lawful Authority of the Employer

There is no contention that the City lacks the lawful authority to implement either offer.

B. Stipulations of the Parties

The parties stipulated that the following items be included in their 1997-98 labor agreement:

1. Two-year agreement from January 1, 1997 through December 31, 1998 as proposed and agreed to by the parties.
2. Wage increase of three percent (3%) for each year of the agreement as proposed and agreed to by the parties.
3. Each full-time employee shall be paid in cash, \$100.00 for 1997 and \$200.00 for 1998.
4. Health Insurance Change - Outpatient and Mental Health and substance abuse benefit Plan will cover ten outpatient visits at 90 percent for a preferred provider or 80 percent for a non-preferred provider - as proposed by City and agreed to by the Parties.
5. Sick Leave - Expanded language for "immediate family" - as proposed by Union and agreed to by the Parties as follows: . . .
6. Holiday improvement - Full-time employee (sic) are eligible for two personal days after completion of 60 days of employment - as proposed by Union and agreed to by the parties.
7. Funeral leave Modification - as proposed by Union and agreed to by the Parties.

C. The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet these Costs.

This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of ap-

propriate municipal services. There is no contention that the City lacks the financial ability to pay either offer.

The public has an interest in keeping the City in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the City. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

D. Comparison of Wages, Hours and Conditions of Employment

1. Introduction

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience..

2. External Comparables.

West Allis, Waukesha, Brookfield, New Berlin, Greenfield, Menomonee Falls, Oak Creek, and South Milwaukee are appropriate comparable communities. They are geographically proximate to the City and have paid fire departments.

The City's Dispatchers receive 12 holidays per year. The Union's proposal would increase this to 12.71 holidays per year. The number of holidays in the comparable communities ranges from a low of 10 holidays to a high of 13 holidays (6 days pay plus 7 days off). The average number of holidays in the comparable communities is 11.13 and the median number of holidays is 11.

3. Internal Comparables.

The number of holidays enjoyed by City employees ranges from 156 hours "off-time" for firefighters to 88 hours (11 days) for public works employees. The Dispatchers currently receive 100.8 hours (12 days) of holidays. The firefighters' work schedules and conditions of employment are very dissimilar from those of the other City employees and the number of holiday hours are far outside the range of holidays received by other employees (both in the internal and the external comparables). Accordingly, inclusion of the firefighters in the internal comparables (at least with respect to holidays) would be illogical and statistically invalid.

Excluding the firefighters, the number of holiday hours ranges from 109.2 hours to 88 hours. (Non-represented employees received 100 hours or 12.5 days of holidays. However, their hours are not included here as the conditions of employment of these employees are not the result of collective bargaining.) The average of the holiday hours in

the three bargaining units (two of the bargaining units have two different levels of annual holiday hours) is 100.4 hours. The median holiday hours is 102 hours. When the holiday hours of the two groups of employees (other than the Dispatchers) who work a 4-2 schedule are considered, the police officers who work a 4-2 schedule receive 109.2 hours of holiday time and the office employees who work a 4-2 schedule receive 106.8 hours of holiday time.

E. Changes in the Cost of Living

This criterion is not material in this dispute.

F. Overall Compensation Presently Received by the Employees

In addition to their salaries, Dispatchers represented by the Union receive a number of other benefits. While there are some differences in health and welfare benefits received by dispatchers in comparable municipalities, it appears that Dispatchers employed by the City generally receive benefits equivalent to those received by employees in the comparable municipalities.

G. Changes During the Pendency of the Arbitration Proceedings

No material changes during the pendency of the arbitration proceedings have been brought to the attention of the Arbitrator.

H. Other Factors

This criterion recognizes that collective bargaining is not isolated from those factors which comprise the economic environment in which bargaining takes place. See, e.g., *Madison Schools*, Dec. No. 19133 (Fleischli 1982). There is no evidence that the City has had to or will have to reduce or eliminate any services, that it will have to engage in long term borrowing, or that it will have to raise taxes if either offer is accepted.

VI. ANALYSIS

A. Introduction

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (See, e.g., *D.C. Everest Area School Dist. (Paraprofessionals)*, Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. The arbitrator must determine which of the party's final offers is the most reasonable, regardless of whether the parties would have agreed on that offer, by applying the statutory criteria. In this case, there is no question regarding the ability of the Employer to pay either offer. The most significant criterion here is a comparison of wages, hours and conditions of employment.

B. Comparables

One of the most important aids in determining which offer is more reasonable is an analysis of the compensation paid similar employees by other, comparable employers. Arbitrators have also given great weight to settlements between an employer and its other employees. See, e.g., *Rock County (Deputy Sheriffs' Ass'n)*, Dec. No. 20600-A (Grenig 1984). While arbitral authority establishes the principle that internal settlements are to be given "great weight," such internal settlements are not conclusive. It is still necessary to examine the other criteria, including external comparables.

In this case, the Employer's holiday offer is closer to the holiday hours received by dispatchers in comparable communities than is the Union's. The City ranks first among the comparable municipalities. Both offers would maintain that first place ranking, although the Union's offer would move the City farther ahead of the comparable municipalities.

With respect to the internal comparables, the Union's offer is closer to the holiday hours received by employees in other bargaining units who work 4-2 schedules. The City's offer is closer to the average and median holidays hours received by all represented employees. Neither offer would worsen the Dispatchers' relative position with respect to the internal comparables. Furthermore, there is nothing showing an erosion in the Dispatchers' relative position with respect to compensation and benefits.

C. Conclusion

The City's final offer results in the Dispatchers maintaining their first place ranking among the external comparables at the maximum wage rate, while the Union's offer would increase the gap between the City and the external comparables. The City's final offer is closer to both the average and median wage rates at this benchmark than the Union's. The Union has neither shown a compelling need to change the status quo nor offered a quid pro quo for its proposed change.

VII. AWARD

Having considered all the relevant evidence and the arguments of the parties, it is concluded that the City's final offer is the more reasonable offer. The parties are directed to incorporate into their 1997-1998 collective bargaining agreement the City's final offer together with all previously agreed upon items.

Executed at Delafield, Wisconsin, this tenth day of April 1999.

Jay E. Grenig