IN THE MATTER OF THE ARBITRATION

Between

KEWAUNEE CITY EMPLOYEES,
LOCAL 1470-B, AFSCME, AFL-CIO

Case 16 No. 57380
Int/Arb 8706
and Decision No. 29726-A

CITY OF KEWAUNEE

Appearances: For the City: Dennis W Rader, Esq.
Davis & Kuelthau

For the Union: Gerald D Ugland
Staff Representative

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on December 20, 1999. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file briefs and reply briefs. The arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the parties' briefs in reaching his decision.

ISSUES

The parties reached agreement on most of the terms to be included in the successor agreement. All of those tentative agreements are incorporated into this Award. There are two outstanding issues: wages and pay period. The parties propose the following:

ASSOCIATION

Wages

Effective	1/1/99.	3% increase ACB
Effective	1/1/00	3% increase ACB
Effective	1/1/01	3% increase across the Board

Eliminate Plant Operator II classification
Eliminate Mechanic Classification
Create Operator-in-Charge classification effective 1/1/99 with a $15.41 hourly wage rate

Pay Period
Maintain Weekly Pay Periods

COUNTY

Wages

Effective	1/1/99	3% increase ACB
Effective	1/1/00	$.39 per hour ACB
Effective	1/1/01	3% increase ACB

Eliminate Plant Operator II Classification
Eliminate Mechanic Classification
Create Operator-in-Charge classification effective 1/1/99 with a $15.22 hourly wage rate.

Pay Period
Change to a bi-weekly pay period.

BACKGROUND

The City of Kewaunee, hereinafter referred to as the City, is located in Kewaunee County in Northeast Wisconsin. Many of the City's employees have chosen to be represented by a Union. Those that are represented are in one of two bargaining units. The Police are members of one bargaining unit. A second unit contains the non-professional classifications employed at the City Hall, Parks Department, Street Department, Wastewater Treatment Facility and the Water Filtration Facility. There are twelve

employees currently in the bargaining unit. The employees in the unit are represented by AFSCME, Local 1470-B, hereinafter referred to as the Union.

The original unit certification did not include clerical positions. During the term of the current agreement, the parties agreed to add two classifications to the bargaining unit. The classifications added were the Clerk-Typist and the Deputy Clerk/Treasurer.

DISCUSSION

Wages

The parties have agreed upon the across the board increase for 1999, and 2001. All employees will receive a 3% increase each of those years. They also agreed to add $.15 per hour in 1999 to the wage of the Deputy Clerk and Clerk-Typist. That amount is added to the wage prior to calculating the 3% increase. They further agreed to include an additional step to the Street employee classification. They could not agree on the 1999 wage for the Operator-in-Charge. The parties also disagree upon the method for increases in 2000. The Union wants the employees to get a 3% increase. The Employer proposes a $.39 increase for all employees.

The parties presented charts as to the cost of the two proposals. The figures that each one presented are different. The City believes that the Union proposal costs $2,038 more than its proposal for the three years covered by the agreement. The Union states that the difference is $1830. The reason the calculations differ is because of the costing method each

uses. While both parities include the additional $.15 wage to the Deputy Clerk and Clerk-Typist and their proposed rate for the Operator-in-Charge as part of the cost, the Employer uses the cast forward method when calculating the costs of the proposals. This means it includes step increases in the total cost calculations. The Union does not use this method and does not include step increases in its costing calculations. Both parties cited cases to support their method of calculation.[1] I agree with the Union that its method is best for this unit. As Arbitrator Petrie stated in Burnet County,Dec. No. 29204 (1998):

> …the negotiated upgrading of classifications within the wage structure is a legitimate item to include in the costing of the final wage increase offers of the parties…. These types of negotiated increases are readily distinguishable from, for example, previously negotiated automatic progression through the rate ranges for each classification, the cost of which would not normally be factored into general wage increase percentages for comparison purposes.

Clearly, the increases in the Deputy Clerk and Clerk-Typist wage and the increase in the wage of the Operator-in-Charge are to be counted in the calculation. They are negotiated increases. The step progression, as Arbitrator Petrie noted, is a different matter. In addition, there is no indication that any step increases were part of the calculations offered for the comparables. They too must have had employees who received step increases. Most of the comparables require some period before the maximum is reached. That is not represented anywhere in the exhibits. If it a factor in this City, it must also be a factor in the comparable cities. All

[1] The Employer cited several school district cases. By statute, the methodology used is

that is shown for the comparables is the old rate and the new one. I would be comparing apples with oranges if I used the method suggested by the Employer for City calculations and ignored it everywhere else. For all these reasons, I shall only use the negotiated increases in making my comparisons. Using that method, I find that the City proposal represents a 3.4% increase for 1999 and a 2.7% increase in 2000 for the bargaining unit. It is 3.6% in 1999 and 3% in 2000 under the Union proposal. Those are the figures I shall use throughout.

Factors to be given the Greatest Weight and Greater Weight

Wis. Stat. 111.70(4)(b) requires an arbitrator to give the greatest weight to any state law that limits the expenditures of an Employer. It then requires the arbitrator to give greater weight to the economic conditions that exist in the jurisdiction. Neither party has argued that either of these factors is applicable in this case. The Employer in its brief noted that these factors are not critical here. In reviewing the costs incurred by the City, I note that the total payroll for the 3 years is approximately $1.1 million. The difference between the two offers represents about .01% over 3 years. That is not a large difference.

The Arbitrator has considered the application of these two factors and finds that they do not impact upon my Decision.

---

different for teachers. Those cases are distinguishable.

Cost Of Living

Both offers exceed COLA. Neither offer is significantly higher. The Union offer exceeds COLA by more than the City offer in 2000. This factor favors the City.

Internal Comparables

There is only one other bargaining unit. Its 1999-2001 agreement is not yet resolved. Therefore, this factor does not provide any guidance to the Arbitrator in this proceeding.

External Comparables

Apropriate Cities to Use for Comparison

Both of the parties have proposed a list of comparables. Where there is agreement between the parties, arbitrators defer to the parties' choices. Only three cities are on both lists. Those cities are Algoma, Chilton and Oconto. I shall include those three cities in the list of comparables. There are criteria that have been utilized by Arbitrators to help ascertain which of the other proposed comparables should be included. Where there has been a previous arbitration involving the parties, the previously established list should be given deference. The parties here have not previously gone to interest arbitration. Therefore, there is no direct precedent upon which the Arbitrator can draw. Fortunately, there are then other established criteria to which an

arbitrator can look. Geographical proximity to the current employer and similarity in size are two such factors.[2]

The Union seeks to include the Cities of Denmark, Kiel, Manitowoc, Marinette, Niagra and Two Rivers. The Employer objects to the inclusion of all of these cities. Niagra is further from Kewaunee than any city proposed by either party. It is over 100 miles from Kewaunee. If for no other reason, distance disqualified Niagra from the list. It is also less than two-thirds the size of Kewaunee. For both reasons, it does not belong on the list. Denmark is not far from Kewaunee. It is as close as many of the cities proposed by both parties. However, it has a population that is roughly two-thirds of the size of Kewaunee, The property value and per capita income is almost the same. Other arbitrators have included Denmark on similar lists. Whether to include Denmark here is a close question, but given the availability of other comparables that are much closer in size to Kewaunee than is Denmark, I do not find that it should be included in this case. Kiel, on the other hand, is approximately the same size as Kewaunee in all categories and is no farther from Kewaunee than are Chilton or Oconto, both of which the parties agree should be included. Therefore, I shall include Kiel in the list. Manitowoc is a large city. It is much larger than Kewaunee. While it is geographically proximate to Kewaunee, the difference in size requires excluding it from the list. Arbitrators have traditionally found that size disparity can warrant exclusion from a list of appropriate comparables. Marinette is

[2] Village of Allouez Dec. No 26193-A (Petrie, 1990);

over four times as large as Kewaunee and is further than any of the other comparables that have already been included. I shall not include it in the list. Two Rivers is geographically close, but is even larger than Marinette. While its disparity in size is not nearly as great as was the situation in some of the cases cited by the Employer[3], I find that the difference is still enough to warrant exclusion.[4]

I shall now turn to the Employer's list. They seek to add Brilllion, Peshtigo and Seymour to the list of comparables. The population of Brillion is almost identical to the population of Kewaunee. Peshtigo and Seymour are only slightly larger. Similarly, the property value in the three cities is only slightly higher. This Arbitrator recently included all three of those cities in City of Algoma.[5] Kewaunee was also included in the list of comparables in that case. Algoma is only a short distance from Kewaunee. Seymour and Brillion are closer to Kewunee than is Oconto, which both parties include. Therefore, those two cities would be appropriate for inclusion. Peshtigo is further away than the other two, and is further from Kewaunee than it was from Algoma. On the other hand, it is closer than Marinette, a City that the Union believed to be appropriate. Whether to include Peshtigo or not is another close question. Given the inclusion of that City in the Algoma matter and its

[3] The Employer cited City of Dodgeville Decision No. 27590 (Zeidler 19930. The Union is correct that one cannot equate a comparison of Kewaunee and Two Rivers to a comparison of Milwaukee to Dodgevile.

[4] City of Sun Prairie, Dec. no. 27686-A (Kossoff , 1993). The Union argued that Sun Prairie should be distinguished because the City failed to introduce evidence as to some of the factors cited in that case. I find the evidence that was offered provides a sufficient record to cause me to follow the precedent set in that case

similarity in size and given the fact that its distance from Kewaunee is only slightly greater than the distance from Kewaunee to some of the other comparable cities, I shall include Peshtigo on the list.

The appropriate comparables are Algoma, Brillion, Chilton, Kiel, Oconto, Peshtigo and Seymour. Having found this list appropriate, however, does not end the matter. This bargaining unit is a hybrid unit. It includes employees at the Water and Wastewater facilities as well as clerical employees in totally different departments. It is a very unusual unit. Given that fact, many of the above cities have agreements covering some of the classifications involved in this dispute, but do not have collective bargaining agreements covering all of the classifications. The Union pointed out that many of the comparables proposed by the Employer fall into that category. This dilemma, however, is not confined to the comparables proposed by the Employer. Many of the cities proposed by the Union also did not have agreements covering all the classifications contained in this agreement. It is the newly added clerical positions in both instances that are involved. The Union has argued that it is improper to compare the wage of a unionized position with the wage of a non-unionized worker. It cited numerous cases to support that proposition, including a previous case from this Arbitrator.[6] In that case, this Arbitrator subscribed to the position of many arbitrators that it was incorrect to use for comparison wages that were unilaterally set by an

[5] Case 33 No 55888 (1998)

employer as they "would not reflect the give and take which results at the bargaining table."[7] That is a notion to which I continue to ascribe.

Because of the above cases, the Union seeks to exclude a comparison of all the wages in the Cities proposed only by the Employer where that City does not have agreements covering all the classifications. For example, Seymour and Brillion have agreements covering the non-clerical positions, but not the clerical ones. The Union does not seek to prevent comparisons for only the clerical employees in those cities, but argues that a comparison of any classification in those cities is wrong. I cannot agree that the absence of a negotiated rate in a particular classification in a particular comparable means that none of the classifications in that comparable should be utilized. The fact that some rates are not the product of negotiations does not erase the fact that others were. To exclude a City simply because not all of the classifications are unionized is not the proper course to follow, and would leave the Arbitrator with little or nothing to compare, since many of the comparables fall into this group. This was not so in the cases cited by the Union. This is a unique case and it requires a unique solution. Therefore, I find that if a City has negotiated a wage rate for a classification, the fairest outcome is to use that classification in my comparison. Where the classification is not the product of collective bargaining, the fairest outcome is to disregard from my analysis that classification in that City.

---

[6] Buffalo County Dec. 53994 (1997). That case involved a first contract. That is not the situation here.

Unfortunately, there is yet another problem. While this solution would ideally be the best way to handle the anomaly that resulted from the creation of this hybrid unit, one does not always live in an ideal world. Attachment A lists the comparable cities and indicates which of the clerical positions elsewhere are unionized and whether there is an agreement in 1999 and 2000 for those that are unionized. As can be seen, for the clerk-typist there is only two cities that are left for the 2000 comparison.[8] Those cities are Kiel and Oconto. All the others have clerical positions that are either non-union or they have unionized employees, but have not yet settled their agreements for that year. Two is much too small of a sample. Given that fact, it is my belief that there is only one alternative left. I shall compare the wage increases given in the skilled positions and then transpose those increases to the clerical employees. Since all the classifications in question are part of the same bargaining unit, it is not unreasonable to consider them all together in the analysis.[9] That in essence is what the Union did for some of the Cities that it proposed. Many of the exhibits that it offered for the comparables did not include a wage for the clerical position, but did compare the skilled ones.

Wage Comparisons

---

[7] Webster School District Dec no. 23333-A (kessler, 1986)
[8] Even if I had included Denmark there still would be only two, Their clerical employees are not represented.
[9] How this method will impact the need for a flat dollar across the board increase versus a percentage increase will be discussed later in this Decision.

Attachment B is appended to this Decision. In this attachment, the comparable cities average wage and the average percentage increase are set out. This comparison is done for the Street employees, the Plant Operator and the Operator-in-Charge, They are then ranked with Kewaunee and the wage disparity between Kewaunee and the average are listed. It should be noted that the chart does not use the same figure contained on Employer Exhibit 25 for Algoma for the Operator-in-Charge. In the Employer exhibits, the Algoma rate for the Operator-in-Charge is actually listed as lower than the rate for the Operator. The foreman rate, which is the rate that I used, is a more accurate rate to use for comparison. The chart reveals that in 1999, the overall average percentage increase for the comparables was 3.3%. This rate is compared with the Union's overall 3.6% increase and the Employer's 3.4%. The Employer's proposal for 1999 is clearly closer to the average. In 2000, the Union offer of 3% is closer to the average, but is still below it.

The chart also compares rates by classification. The wage of the Street Employee ranked 2nd out of six in 1999. Brillion and Kiel had no similar unionized positions to compare. Kewaunee's wage was $.71 over the average. Under either parties proposal, the wage continues to rank 2nd in 2000.[10]The wage differential between Kewaunee and the average falls to $.65 under the Union proposal and falls to $.59 under the City's. For the Operator, the rank is 3rd in 1999 and 2000 under both proposals. In

[10] In order to ascertain the rank in 2000, the average increase for the cities with settled agreements was utilized to compute the wage for the cites without settled agreements.

1999, the wage was $.03 over the average. It increases to $.05 if the Union proposal is adopted and falls to $.01 under the average adopting the Employer proposal.

The above figures demonstrate to this Arbitrator that the increases for the Street Employee and the Operator for 2000 sought by the Union more closely follow the increases given by the comparables than does the City's. Both the Operator and the Street Employee would receive less than 3% in 2000 under the City proposal compared to an average of 3.3% While the ranking remains the same, the employees would lose some of the differential that they had in 1999. Therefore, I find that this factor favors the Union proposal for these classifications.

The rate for the Operator-in-charge is new. The Union proposes a $15.41 rate in 1999. The Employer proposes a $15.22 rate. The average for those comparables with similar bargaining unit positions is $16.32. Both proposed rates are well below the average. In 1999, Kewaunee ranked 5th out of 6 cities. It maintains that rank under the Union proposal in 2000, but falls to 6th under the Employer's proposal. The wage is $.91 and $1.10 below the average respectively under the two proposals in 1999. It falls to $.96 below in 2000 under the Union's proposal and falls to $1.22 below under the City's. The rank of the City is near the top for the Street employee and Operator, but near the bottom for the Operator-in-Charge under both proposals. It actually falls to the bottom in 2000 under the Employer's proposal. There is no explanation as to why this rate should compare so much less favorably to the other

cities than it does for the other classifications. I find that the rate proposed by the Union in 1999 is not out of line. It is still well below the average. The situation is exacerbated even further under the Employer's proposal for 2000. It puts the employee even further behind. While it probably would have been more desirable for the Union to have gradually increased the rate over two years, that does not change the fact that its wage proposal for the Operator-in-Charge is more appropriate.

The total City offer more closely approximates the increases granted by the comparables in 1999. Both offers exceed the average. The Union offer exceeds it more. The only difference between the offers in 1999 is the rate for the Operator-in-Charge. This is a new rate caused by the elimination of previous classifications. As was discussed above, the rate proposed by the Union can hardly be considered excessive. It is still near the bottom. Special increases in the wages of some classifications are needed from time to time to bring the classification in line with the wages of others. Given the situation that exists for the Operator-in-Charge, I do not find the fact that the Union proposal causes the total cost to exceed the average to be unreasonable. This is especially so when the wage proposals for 2000 are considered. In 2000, both offers are less than the average for the comparables. The Employer's is much less. For both 1999 and 2000, the average percentage increase in the Union proposal is exactly the same as the average increase among the comparbles. It is one-half a percent less under the Employer's proposal.

Percentage v. Dollar Increases in 2000

As has been pointed out above, the City's proposal for 2000 equates to a 2.7% increase. Its proposal is below the average increase among the comparables. This lower rate would tend to favor the Union proposal regardless of whether the City proposal was in the form of a percentage or a flat dollar increase. The Employer flat dollar proposal would have more credence if the percentage equivalent that it represented were closer to the percentage increase for the comparables. To seek a flat dollar increase that translates to less than the average diminishes its arguments for its adoption.

There is a problem with the Employer offer for a second reason. The Employer argues that the method of increase is "irrelevant." It notes that the wages paid the clerical employees in other communities is far higher than the wages paid in this City. That is so even though the wages elsewhere were not derived through the negotiation process. It believes that it is necessary for this City to now catch up to those other cities. It argues that this need warrants the wage distribution contained in its 2000 proposal. The City cited several cases to support its contention. In Iowa County Dec. no. 27608-A (1994) Arbitrator Tyson remarked that "general salary levels between employees ... are not to be significantly disturbed except for compelling reasons." To the same effect, Arbitrator Rice stated that "In the absence of some compelling reason, existing relationships with other employees of the employer should be

maintained."[11] A flat dollar increase as proposed by the City would disturb that balance. Does the disparity shown by the City provide the compelling reason for change referred to by the two Arbitrators?

This case is unique in that there is not a long history of bargaining over the wages for the clerical employees. It is not as though the relationship between the wages of the clerical employees and that of the others is the product of successive contract negotiations. This is the first contract negotiated for the clerical employees. Until the clerical employees recent inclusion in the bargaining unit, the City alone determined the wages to be paid to them.[12] What the City has not shown is that the wage relationship between the lower paid classifications in this unit and the higher paid classifications is not properly aligned, Even if it could show that, it could not possibly argue that any misalignment was caused by the bargaining process. Here, even if the lower paid employees make too little, the other employees in this bargaining unit played no part in creating that situation. They are being asked to give up something that they would otherwise be entitled to in order to rectify a situation not of their own making. For all of the reasons discussed, I can find no compelling reason to justify the flat dollar increase proposed by the City in 2000.

Other Factors

[11] City of Superior, Dec. No. 20786-A (1983)
[12] The parties did recognize that there was a need for increases in the clerical pay when they granted an increase of an additional $.15 to those positions in 1999.

The Employer requests that the Arbitrator consider other concessions made by it in evaluating the proposals. For example, it raised the sick leave percentage payout on retirement, it added a paid day off and it added a step to the pay scale of the Street Employee. Those factors are relevant. However, there is no indication as to whether these same benefits are given to other City employees or whether the comparables have similar benefits. It is not known how much these benefits cost the Employer. Therefore, it is difficult to assess the amount of credit the Employer should be given for these changes.

Pay Period

There is one other provision on which the parties did not reach agreement. The current agreement requires the City to pay employees on a weekly basis. It has been that way since the mid-1970's. The City wants to change the payday to every other week. It argues that the Union failed to show that the change would be a burden. The Union contends that the City has failed to present a "convincing argument why this benefit should be taken away." The City cited Reedsville Board of Education Dec. Mo. 19926-A in support of its position. In that case, the Union wanted to change the payday when the payday fell on a holiday or vacation period. Arbitrator Pegnetter refused to make the change. What is significant in that case was his finding that absent evidence of hardship "the past contract is the most reasonable basis for selecting an offer.' The past contract here favors the Union. The City's argument

appears to attempt to shift the burden to the Union to demonstrate that it is harmed by the change. According to Arbitrator Pegnetter and consistent with the holding of most arbitrators, it is the one seeking to change the status quo that has the burden.

The City has offered some evidence to support its change. The Employer changed the pay period for the non-represented employees to bi-weekly. It proposed the same change to the Police unit. The City offered evidence on the cost of payroll functions. It argued that there would be substantial savings by going to a bi-weekly payroll. The City points out that its proposal is consistent with the manner in which the comparable cities pay their employees. For this type of change, internal comparables carry the most weight. Clearly, the City's argument would carry more weight if the other bargaining unit had agreed to the change. That has not happened. The Police Unit has not accepted the change either. Furthermore, there is no indication that the costs associated with payroll are significantly higher in proportion to other costs than they were when the change to the weekly payroll method was made over 25 years ago. The Arbitrator is sympathetic to the arguments raised by the City. He understands that the time spent by payroll employees could be utilized for other functions if they only had to do the paychecks every other week. Their request is not unreasonable. However, it is a change best made by the parties at the table. To date, neither of the Unions has been willing to make the change. Given that fact, I do not find that I should do so.

CONCLUSION

On the wage issue, the external comparables strongly favor the Union. Their proposal for 2000 is superior. Even though, the proposal in 1999 exceeds the average, there is some justification for it. That its proposal for the two years is exactly even with the average also favors it. On the other hand, COLA favors the City. The other factors carry little weight, except to recognize that there were concessions in some areas by the City that should be credited. Overall, I find that the wage proposal of the Union is favored. The Union's proposal for status quo on the pay periods is also favored.

I find when all factors are considered together that the Union's offer is the better offer. While there are valid points raised by the City, they do not weigh nearly as much as the factors favoring the Union. Therefore, the Union proposal is adopted.

AWARD

The Union offer together with the tentative agreements is adopted as the agreement of the parties.

Dated: March 31, 2000

_____

Fredric R. Dichter,
Arbitrator