

BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

LOCAL 133, MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO

and

CITY OF ST. FRANCIS

WERC Case 77, No. 61015, Int/Arb-9604
Dec. No. 30632-A

APPEARANCES:

For the Union:

Mark A. Sweet, Attorney, 705 East Silver Spring Drive, Milwaukee, Wisconsin 53217.

For the Employer:

Crivello, Carlson & Mentkowski, SC, by Ms. Michele M. Ford, 710 North Plankinton Ave., Milwaukee, Wisconsin 53203.

ARBITRATION AWARD

The Union has represented a bargaining unit of City Hall and Public Works employees since at least the 1970s. The parties' most recent collective bargaining agreement expired on December 31, 2001. On March 19, 2002, the Union filed a petition with the Wisconsin Employment Relations Commission requesting arbitration pursuant to Section 111.70(4)(cm)6, Wis. Stats. Efforts to mediate the dispute by a staff member of the Commission were unsuccessful, and an impasse investigation was closed by the Commission's order requiring interest arbitration, dated June 5, 2003. The undersigned Arbitrator was appointed by Commission order dated June 26, 2003. A hearing was held in this matter in St. Francis, Wisconsin on November 11, 2003, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, briefs and reply briefs were filed by both parties, and the record was closed on January 14, 2004.

Statutory Criteria to be Considered by Arbitrator

Section 111.70 (4) (cm) 7

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 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 the parties, in the public service or in private employment.

The Union's Final Offer

Article 6 -- RATES OF PAY

1. Effective January 1, 2002, 3.15% across-the-board.
2. Effective January 1, 2003, 3.50% across-the-board.

The Employer's Final Offer

3.03 Contracting subcontracting: The Union recognizes that the City has statutory rights and obligations in contracting for matters relating to municipal operations. ~~The right of contracting and subcontracting shall not be used for the purpose or intention of undermining the Union, nor to discriminate against any of its members. This section will not effect (sic) past practices of the City regarding contracting and subcontracting.~~

4.02 ~~No employee shall be displaced, laid off, reduced or deprived of any of the benefits herein because of any future consolidation between the City of St. Francis and any other municipality.~~

6.01 The parties agree that wages paid to the employees covered by this Agreement shall be in accordance with the salary schedule hereinafter set forth for 2002 and 2003.

1/1/2002	3.15%
1/1/2003	3.5%

13.04 All holidays shall be guaranteed when they fall during vacations, ~~active sick leave~~ and duty incurred disability leave.

17.01 ~~All employees of the bargaining unit are guaranteed forty (40) hours, five (5) consecutive eight (8) hour days, Monday through Friday. No split shifts shall be allowed.~~

17.05 ~~Such~~ All employees shall be required to work overtime as required by the department head.

The Union's Position

The Union notes that its final offer contains only a wage proposal, and characterizes the wage rates identically proposed by both parties as consistent with wages in comparable communities and with wage increases for 2002 and 2003 in the City's Police Department. The Union argues for a list of comparables including a wider selection than those initially argued for by the City; the Union argues for inclusion of Cudahy, Franklin, Greendale, Greenfield, Oak Creek, Hales Corners, West Dallas, West Milwaukee, and South Milwaukee, and as secondary comparables Bayside, Brown Deer, Glendale, Shorewood, Wauwatosa and Whitefish Bay.

The Union argues that as proponent of six language changes, the City is under an obligation to demonstrate that existing contract language has given rise to conditions that require amendment; that the proposed language can reasonably be expected to remedy the situation; and that an alteration will not impose an unreasonable burden on the other party. The Union argues that the City has not done this in respect of any of its proposals, beginning by failing to demonstrate that it had ever proposed any of these changes prior to its final offer. With respect to the subcontracting language, the Union argues that it first heard the City's argument at the hearing, and that the City's contention that this language should be removed because it is already a prohibited practice for the City to engage in subcontracting "for the purpose or intent" of undermining the Union or discriminating against its members is illogical, because a number of other protections in the agreement are also covered by statute and the City does not propose to remove all of them. The Union further argues that the City's desire to delete the sentence that preserves the City's past practice in subcontracting brings into question whether or not past practice in regard to contracting out is now in some unexplained way affected by this change. The Union also notes that in the one grievance arbitration in the record concerning this provision, the City prevailed. The Union argues that the provision is comparable to a majority of the contracts among the primary and secondary comparables and that some have stronger language that prohibits the right to contract out if this causes layoff. The Union argues that City Administrator Ralph Voltner admitted in his testimony that the City had not discussed this matter during bargaining nor provided to the Union the City's rationale for the proposed change.

The Union argues that the City's evidence regarding any need for elimination of Section 4.03 of the Agreement is limited to testimony that the City has engaged in "very informal" discussion regarding possible consolidation of services. The Union contends that this language has been in the parties' contract since 1973 and there is no evidence that the City has ever sought to change it until now; the Union argues that the City confuses the concepts of consolidation and shared services, but that nothing in the provision would bar the City from entering into an agreement for shared services or from entering into consolidation of services with other communities, with the sole limitation being the impact on the bargaining unit employees. The Union argues that

the testimony of the City's South Milwaukee witness to the effect that these provisions would bar consolidation is based on supposition. The Union argues that consolidation would probably create a contracting out/subcontracting situation from at least one and likely more than one of the municipalities involved, and that other South Shore communities would be barred under their own contract language from consolidation of it caused layoff, demonstrating that this language does not place an undue burden on St. Francis compared to other employers.

With respect to the elimination of the guarantee of payment for holidays that fall during active sick leave, the Union argues that the City made no effort to discuss this proposal with the Union or to provide a rationale, and that the City's expressed reason in Voltner's testimony is that the City did not know what the language means. The Union argues that since the City never made any attempt to secure a mutual understanding of the language through discussions with the Union nor to propose alternative language that would be clearer, this explanation should be disallowed. The Union argues that Cudahy, Franklin, Greendale, Greenfield, Oak Creek, and West Milwaukee have similar language.

With respect to the proposal to eliminate the guaranteed work week, the Union argues that Voltner's explanation in testimony gave only a vague description of the City's reasons, which were never offered to the Union in bargaining, and that the City has offered no explanation of the impact of its proposal on the two-hour call-in provision in Article 17.03. The Union dismisses the City's argument that the guaranteed 40 hours provision violates the Americans with Disabilities Act And Workers Compensation provisions because it does not allow employees to work less than 40 hours, noting that the City admitted that the hearing was the first occasion upon which it made this argument known and that the City had made no attempt to address this allegedly illegal provision by use of the contractual savings clause. The Union characterizes this proposal as gutting any reference to a defined work day or work week or scheduling of consecutive days, all language which has been in the contract since 1969. With respect to the City's proposal to replace the word "such" with the word "all" in the third paragraph of Article 17.05, the Union argues that the City has offered no reason for this proposal, that the result of the proposal would be mandatory overtime for all employees rather than, as at present, clerical employees and the custodian, and that there is no basis to find this proposal reasonable.

The Union argues that the wage rates of "primary comparable" employers for 2002 average out to 3.17% compared to the City's 3.15%, and that the 3.5% in St. Francis for 2003, while it is slightly higher than the 3.15% in the average of the primary comparables, is comparable as a total economic package when coupled with the increase in the employee share of health insurance premiums provided for in the tentative agreements. The Union argues that health insurance rates for St. Francis are sixth highest out of ten for single coverage and seventh highest out of ten for family coverage,

which shows that the City is not adversely affected compared to other employers, and thus there is no quid pro quo visible in the City's offer to offset its language proposals.

In its reply brief the Union argues that the City's argument that there was no meeting of the minds between the parties with regard to the terms "active sick leave", "such", and the "past practices" portion of the contracting/subcontracting provision is without merit both factually and legally. The Union notes that the parties have a process to determine the meaning of a clause if there is a practical disagreement, and that in the one dispute which has arisen concerning any of these clauses, the parties proceeded to arbitration and the City prevailed. The Union argues that contracting and subcontracting language in comparable communities has similar safeguards to those in Section 3.03 of the Agreement here. The Union argues that the City's desired goal of clarification would not occur in the event of the unilaterally implemented decision by an arbitrator deleting the entire provision, because such a decision would leave unanswered the question of how the proposed deletions would affect the remaining provisions of the contract. The Union points particularly to the City's failure to clarify how other benefits in the contract would be affected if the City was permitted to delete the section of Section 17.01 that guarantees 40 hours and five consecutive eight hour days to all bargaining unit employees. With respect to the two cases cited by the City, the Union describes the first as completely inapposite because it involved an individual employee, not a labor union, and the second as miscited, with no case by that name at that location. The Union further argues that the mere fact that the City may have a question regarding the meaning of a term in the contract is not evidence of a compelling need to remove the provision in question, and that the City should instead have raised these issues in bargaining. With respect to the City's argument that it has offered a quid pro quo, the Union responds that the City's wage proposal is the same or less than offered by the City to police, fire and non-represented employees, and that comparable employers have offered similar or greater wage increases. The Union responds to the City's contention that it is vulnerable because of state funding uncertainties by arguing that the City failed to demonstrate the cost of the status quo or the manner in which reduced shared revenue would impact the City's ability to maintain the status quo, and argues further that while the City's brief cites the 2001-2003 budget adjustment bill, it fails to cite the budget repair bill of 2003, which reinstated \$20 million in shared revenue that had been removed by the earlier bill.

The Employer's Position

The City characterizes its wage increase proposal and the tentative agreement on insurance premium contributions as favorable to employees and as a quid pro quo for the City's proposed language changes. The City initially argued for a short list of comparables, but in its brief states that it does not take issue with the Union's list of "primary comparables", defined as Cudahy, Franklin, Greendale, Greenfield, Oak Creek, West Milwaukee, Hales Corners, West Allis, and South Milwaukee.

The City argues that eliminating the anti-discrimination and “past practice” portions of Section 3.03 merely ensure that employees’ rights are consistent with those afforded by law, and that the contract is unclear. The City, in this as well as other respects, describes the contract as “an aging agreement.” The City argues that it was unable to determine what “past practice” meant in the context of contracting or subcontracting, and that the Union has not shed light on its interpretation of this phrase during the hearing. The City argues that the City’s other collective-bargaining agreements do not include similar provisions, and that most of the comparables’ contracting and subcontracting provisions are dissimilar from the one here, while those that do contain a provision barring discrimination against the union or employees apply to the exercise of management rights in general, as opposed to contracting and subcontracting. The City further argues that its own final offer preserves article 1, Section 1.02, an antidiscrimination clause covering management rights in general, which therefore places the contract following the City’s proposed change in the same position as most of the comparables.

The City argues that Voltner’s testimony demonstrates that the City cannot do very much to develop its tax base to offset loss of shared revenue funding, because the City imposed a moratorium on new construction (with certain exceptions) from May 2003 through November 2003 to allow for development of a smart growth plan, and also enacted a second ordinance imposing a moratorium on new construction till May 2004, in order to preserve existing land use pending revision of zoning ordinances. Voltner also testified that even in the absence of these moratoriums, increased taxes “in most cases” would result in a commensurate reduction of shared revenue funds, with the result of no net increase. The City argues that under this fiscal situation, it is imperative to consider consolidation of services with other South Shore communities, but that the existing Section 17.01 effectively prevents consolidation of services. The City cites Voltner’s testimony as well as that of South Milwaukee Interim Administrator Tammy LaBorde. The City further argues that although the disputed contract was scheduled to expire on December 31, 2003, pursuant to the statute it would continue in effect for a substantial time while the parties negotiated a new one, and this language issue is therefore of continuing relevance. The City argues that the primary comparables do not have similar consolidation provisions, nor do the City’s other bargaining units.

Related concerns, the City argues, led to the proposed elimination of the minimum hours provision in Article 4.02. The City argues that with this language in place, if there are losses in shared revenue the City has no alternative but to lay off staff, which it would prefer not to do in order to maintain a full complement of employees so that they will be available in emergency situations such as heavy snowfall. The City argues that the minimum hours provision is not present in the comparables or in other St. Francis contracts. With respect to the active sick leave provision and the overtime provision, the City argues that it is simply seeking to clarify the language because it is

unable to discern what “active sick leave” is, and that the Union has not provided any testimony rebutting the City’s position that “active sick leave” is so vague as to be meaningless, nor has the Union addressed the proposed change in the overtime provision or disputed the rationale underlying it in testimony. Both provisions, the City argues, do not appear in comparable external agreements or in other St. Francis union contracts.

The City argues that both its wage and its insurance premium proposals constitute a quid pro quo for the proposed changes, acknowledging that the City does have such an obligation. The City argues that the 2002 and 2003 increases to which the City has agreed exceed those of Cudahy, Franklin, Greendale, Greenfield, Hales Corners, West Allis, and South Milwaukee, with only five of the 16 municipalities offered as primary and secondary comparables offering wage increases greater than the City’s. The City’s health-insurance contributions, also, are more favorable to St. Francis employees than many of the primary comparables, according to the Employer. Thus the City has offered a quid pro quo in two forms, for changes proposed in reaction to three concerns regarded as an essential: meeting revenue limits, eliminating vague terms on which the parties had no meeting of the minds, and correcting language to insure legality of provisions. The City further argues that the revenue caps imposed by the state legislature trigger the “greatest weight” factor here, citing two school district cases. The City also characterizes it as “uncontested” that the Union’s final offer will force the City into layoffs. The City argues that the “greater weight” factor is also triggered by this dispute. Each of these, the City argues, favors a finding that its proposal is more reasonable than the Union’s.

In its reply brief, the City concedes that it must establish the need for the proposed changes and a quid pro quo, and argues that it has done both, providing ample proof of the need for the language changes, the remedial nature of the proposals, and the absence of any unreasonable burden on employees as a result. The City contends that the 2001-2003 budget adjustment bill reduced shared revenue payments, a large part of the City’s total revenue, and that the City is caught in a squeeze in which it cannot develop its tax base to offset the loss of shared revenue by allowing development, because of a moratorium on new construction. The City characterizes the evidence that the Union’s final offer would require layoffs to meet the budget as uncontested at the hearing. The City reiterates that the antidiscrimination and “past practice” portions of Article 3.03 are unclear and to the extent that they are clear, unnecessarily duplicate statutory protections. The City cites Kock v. Minocqua Country Club, 665 N.W. 2d 305 (Ct. App. 2003) to the effect that a contract is unenforceable to the extent to the parties do not have a mutual understanding as to the meaning of its terms, and Kernz v. J.L. French Corp., 2003 WI App 140, 663 N.W. 2d 268¹ (Ct. App. 2003) to the effect that “It

¹ The City mislocates this case, but it is available as 667 N.W. 2d 751 via Lexis-Nexis.

is not enough that the parties think they have made a contract; they must have expressed their intentions in a manner that is capable of understanding.” The City argues that there is no practical effect on employees’ rights from eliminating the antidiscrimination provision except to clarify that their rights are controlled by state law, and that “making sure the contract is consistent with law must be deemed to be compelling need, since illegal provisions may render entire contracts enforceable (sic), and at minimum, are themselves without legal effect.” The City also reiterates that the comparables, both internal and external, do not include similar provisions. The City notes, however, that six antidiscrimination provisions do exist in the comparables, and argues that four of the six apply to management rights in general, contending that by preserving article 1, Section 1.02 of the Agreement, the City has matched these provisions.

The City argues that it has also adduced extensive evidence of need to change the consolidation provisions, because of its inability to develop its tax base in the face of a moratorium on new construction and because of the reduced revenue limits imposed by the budget adjustment bill. The City reiterates the arguments made previously concerning this provision. With respect to the minimum hours provision, the City argues that layoff of specific employees has an obvious adverse impact on those individuals and that the City’s final offer allows use of across-the-board hours reduction instead, if needed to ensure that revenue limits are not exceeded. The City argues that the minimum hours provision is not present in other St. Francis agreements or in the external comparables, and the City explains the fact that this provision has been unchallenged for more than 20 years as because budgetary constraints were not such as to trigger a need for flexibility as to minimum hours. The City’s reply brief also reiterates its earlier contentions concerning the “active sick leave” and overtime provisions.

The City argues that its 3.15 per cent proposal for 2002 wages is higher than the corresponding figure offered to police, fire and unrepresented employees, and that the proposed increase for 2003 exceeds the increase accepted by both the fire and police units. The City also characterizes these increases as equaling or exceeding those of Cudahy, Franklin, Greendale, Greenfield, Hales Corners, West Allis and South Milwaukee in similar bargaining units to the one at issue, and argues that of the five municipalities offering larger wage increases, three are secondary rather than primary comparables. The City likewise reiterates its previous arguments concerning the value of the insurance premium tentative agreement, and the greatest and greater weight factors.

Discussion

Comparables

While the list of comparables was initially at issue, the City’s brief resolves the conflict by accepting the Union’s list of “primary” comparables. Cudahy, Franklin, Greendale, Greenfield, Oak Creek, West Milwaukee, Hales Corners, West Allis and South Milwaukee are therefore stipulated. The Union’s secondary comparables are also not an unreasonable secondary grouping.

Article 3.03

While the City has some justification for arguing that the anti-discrimination language in Article 3.03 is duplicated in the statute, it has been commonly recognized that many parties find value in being able to pursue a grievance and arbitration process rather than a lawsuit — the obvious underlying reason why so many contracts contain such provisions. The language in question has been in the contract for many years, and the City has shown no instance in which it has caused difficulty; the necessary demonstration of need for a change is therefore absent. Furthermore, the City’s argument makes little sense as to its desire to consolidate enforcement of any violation within statutory procedures, when the City itself argues that the exercise of management rights in general continues to be subject to the anti-discrimination clause in Article 1.02. It is predictable that if the City’s position prevailed here and the anti-discrimination language of Article 3.03 was removed, in the event of alleged anti-union discrimination where exercise of management rights in subcontracting was the specific occasion, the parties would then be in dispute over whether the removal of Article 3.03 had the effect of abrogating the more general effect of Article 1.02. The City’s proposal therefore does nothing to simplify the parties’ possible future arguments. Similarly, the reference to preservation of past practice in Article 3.03 has not caused any recognizable problem for the City in the past, and indeed the City prevailed in the only subcontracting dispute on record.²

Article 4.02

It is predictably difficult for a party to argue a compelling need for a retroactive language change when the record, because of delays in bargaining, will not be closed until after the contract in question has expired; at the same time, to argue “compelling need” in such circumstances primarily based on the principle of continuation of the status quo during bargaining over a *successor* contract puts the cart before the horse. In either such circumstance, strong proof of the alleged need should be expected. But the

² I must note also that the City’s two cited cases come nowhere close to establishing that ordinary, everyday ambiguities or lack of clarity in a contractual provision make the contract unenforceable.

testimony with respect to possible consolidation with other municipalities was notably vague. In this instance there is nothing in the record to demonstrate anything more than speculation that the existing contract language *might* make it difficult to consummate a consolidation of municipal services, a consolidation which is quite evidently not close to consummation. The City also made no effective response to Union representative Yunk's testimony that in the event of consolidation, the existing language would allow "red-circling" of existing employees till any lesser rates or benefits of employees of consolidated departments caught up — a common enough strategy of parties in a variety of situations where organizational changes put some employees out of balance with others. The need for a unilaterally-imposed change in a contractual protection of many years' standing is thus not demonstrated.

Article 13.04

While the City has a point in that the term "active sick leave" implies ambiguity if not comedy, decades of experience with this language have apparently left the City unable to produce a single instance in which it had caused any actual dispute or other difficulty of interpretation in practice. A demonstration of need for a change is therefore lacking.

Article 17.01

The City's argument boils down to the proposition that in the event that layoffs are required, it would be better for the public, should there be an extreme snowfall or other street maintenance emergency, for a larger crew to be available for immediate call-in. This, however, can scarcely be news to either party, as the logic of the City's position should have been evident when this language was originally negotiated decades ago, and ever since. While layoffs may be somewhat more likely in the present fiscal environment than at some other times (not necessarily *all* other times, for those with an extensive memory), they have self-evidently not occurred during this contract, which has now expired. The necessary level of need for a change, in long-standing contract language that represents a major benefit to employees, is therefore not demonstrated.

Article 17.05

For similar reasons as with Article 17.01, the City may well have its reasons for believing that extension of mandatory overtime to all classifications should be in the contract; but the City made no attempt to demonstrate any problem that had actually occurred as a result of the existing contract language. Its entire argument is speculative, even if the fact that the contract has expired is overlooked. A need for the proposed change is therefore not demonstrated.

Quid pro quo

The City admits that it is required under normal principles attending an interest arbitration to offer a quid pro quo for its effort to secure language changes unilaterally. I cannot agree with the City's position, however, that it has done so in the size of its proposed wage increases and/or insurance contribution structure. Neither provision is by any means the least generous among comparable employers, but the sum and substance of the record is that both the wage increases and the insurance contributions are well within the range of the comparables, and there is no evidence that their size changes the City's position materially in the rankings. Thus among the primary comparables, Oak Creek settled for 3.5% in both years; among the Union's proposed secondary comparables (none of which, as noted above, is outlandish) three cities have total 2002-2003 wage increases higher than St. Francis. Among the primary comparables, three cities settled at 3% in each year, with the others closer to the St. Francis tentative agreement; thus the wage increases here fall within a range that is not particularly wide. Internally, the Police unit received identical wage increases for 2002 and 2003 to the disputed unit, while the Firefighters received 2.9% in 2002 and 3.5% in 2003. Furthermore, the insurance contribution represents a change on both parties' part, with tripled health insurance contributions by employees (comparing final 2003 rates with 2000-2001 rates) as part of the tentative agreement on that provision. The police officers' contract has health insurance contributions by employees at the same levels for 2002 and 2003 as the disputed unit, while the firefighters' unit employee contributions are somewhat less. There is thus nothing in the record to pinpoint either provision as representing significantly more than the average of what comparable employees are getting in the external comparables, nor is either provision significantly more favorable than other bargaining units in the City are receiving.

The Statute's Weighing:

The City has argued that both the "greatest weight" and the "greater weight" factors apply here, but I disagree; nothing in the competing proposals in this matter triggers either the "greatest weight" or the "greater weight" provisions under the particular readings of those provisions which are customary in interest arbitration in Wisconsin, and the City's essential argument could be made by virtually any municipal employer which had a financial disagreement of any size at all with the respective union. The City also claims that it "cannot" develop its tax base to offset the loss of shared revenue funding by allowing development — despite City Administrator Voltner's testimony that it was the St. Francis City Council which imposed two moratoriums on development (thus, obviously, the City Council could choose to remove the moratoriums; but this will not be necessary, since the first of the two expired by its own terms in November 2003, while the second will expire by May 2004.) The City also argued that because of the 2001 budget adjustment bill's cuts in shared revenue, it lacks the financial ability to pay the Union's final offer, but as the Union argues, the City overlooks a subsequent budget repair bill which restored some of those monies, while all direct economic terms of both parties' offers are the same anyway.

Among the other factors, the lawful authority of the employer is not an issue, while the stipulations of the parties, on balance, represent a mainstream economic agreement, rather than evidence of a quid pro quo offered by the City and then snatched up by the Union. The interests and welfare of the public would be slightly advantaged by the flexibility the City seeks in easier negotiation of possible consolidation of services, in mandatory overtime and in removal of guaranteed working hours, but the effect is speculative; there is also a traditional recognition that the public is well served by stability of agreed-on collective bargaining arrangements, while there is no evidence that the City cannot currently meet the costs of either offer. The external comparables favor the Union's final offer because there is nothing to show that such long-standing differences as exist in St. Francis' contract compared to other cities' (e.g. the guaranteed work week) are not part of a stable area-wide series of bargains in which an overall balance has developed, as well as because none of the City's proposed language changes is supported by a compelling demonstration of need or a quid pro quo. The internal comparables also favor the Union's final offer because even though the contract here is not identical to the City's police and fire bargaining units, the economic differences with the Firefighters are small and the Police have essentially the same economic settlement terms for 2002-2003, while the language differences have been in place many years without any demonstration of a significant problem being created in practice as a result. Factors "f," "g," "i," and "j" were not argued; factor "h," overall compensation, has in effect been discussed above.

Summary

The small continuing advantage to the public from imposition of substantially changed but retroactive terms, governing employee rights in the event of consolidation of services, guaranteed work week, and voluntary overtime, must be acknowledged. But the size of that advantage is speculative in view of the City's failure to demonstrate any actual past or current problem created by any of the challenged provisions of the collective bargaining agreement. The City has thus, in effect, demonstrated a list of "wants" rather than a list of needs, while it has failed to provide a quid pro quo. All of the other factors are either neutral or significantly favor the Union's proposal. I therefore find that the Union's final offer better fits the standards and requirements of the statute taken as a whole.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That the final offer of the Union shall be included in the 2002-2003 collective bargaining agreement.

Dated at Madison, Wisconsin this 6th day of March, 2004.

By _____
Christopher Honeyman, Arbitrator