WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration Between	)	Case 13
INTERNATIONAL BROTHERHOOD OF ELECTRICAL	)	No. 64428
WORKERS LOCAL 2150	)	INT/ARB-9948
and	)	Dec. No. 30700-A
CITY OF PRINCETON	)	**OPINION and AWARD**

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Appearances: For the Union, Attorney Naomi E. Soldon, Milwaukee.
For the Employer, Employment Relations Service Coordinator, William G. Bracken, Oshkosh.

On May 30, 2003, IBEW Local 2150 (referred to as the Union) filed a petition with the Wisconsin Employment Relations Commission (WERC) pursuant to Section 111.70(4)(cm) of Wisconsin's Municipal Employment Relations Act (MERA) to initiate arbitration. The Union and the City of Princeton (referred to as the Employer or the City) had bargained for a successor to their collective bargaining agreement but failed to reach agreement on all issues in dispute. On September 9, 2003 following an investigation by a WERC staff member, the WERC determined that an impasse existed and that arbitration should be initiated. On October 29, 2003, the undersigned, after having been selected by the parties, was appointed by the WERC as Arbitrator to resolve the impasse. By agreement of the parties, she held an arbitration hearing on January 21, 2004, in Princeton, Wisconsin, at which time the parties were provided with a full and fair opportunity to present evidence and make arguments. The hearing was transcribed. Both parties filed post-hearing briefs. The last brief in this proceeding was received on March 23, 2004.

ISSUES AT IMPASSE

Although the parties reached tentative agreement on many issues to be included in their three year 2003-2005 collective bargaining agreement, they were unable to resolve their differences regarding wage increases. The Union's final offer proposes a 3% increase for each of the three years while the Employer's final offer proposes a 1%, 2%, and 2% across-the-board wage increase for 2003, 2004, and 2005 respectively.

STATUTORY CRITERIA

In reaching a decision, the undersigned is required by Section 111.70(4)(cm)(7)-(7r) of MERA to consider and weigh the evidence and arguments presented by the parties as follows:

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 give the greatest weight to any state law or directive lawfully issued by a state legislature 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 shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or the 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 the proposed settlement.

d. Comparisons 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. Comparisons 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 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.

POSITIONS OF THE PARTIES

The Union

The Union begins by noting that the City has the burden of proving any inability to pay argument it may assert and then contends that the City has failed to prove an actual inability to fund the Union's offer which requires only a total additional City expenditure of approximately $15,000. The Union further notes that the City's tax levy only recently increased by 3.1%, less than the average 5% Wisconsin increase in 2002 and less than the 3.8% increase in the southeastern Wisconsin region in 2003. It stresses the point that the City offered no evidence that funding the additional cost of the Union's wage proposal (only about .3% of the City's annual budget) would require increasing property taxes, decreasing public services, or deficit spending. The Union emphasizes that the City's operation of this municipal utility in fact produces a surplus and thus is a "cash cow" which permits the City to subsidize its other operations.

Accordingly, since the Union believes that neither the factor to be given "greatest" weight (_ 111.70(4)(cm)(7)) nor the factor to be given "greater" weight (_ 111.70 (4)(cm)(7g)) applies, the Union turns to the traditional "other" factors covered by _ 111.70(4)(cm)(7r), particularly external public sector comparables, to support its final wage offer. The Union contends that the Employer's evidence on external public sector comparables is erroneous because it fails to use comparable positions and ignores the supervisory duties performed by some Princeton bargaining unit employees. Based upon distances from Princeton (averaging 62.9 miles and ranging from 39 to 91 miles) and customer base data, the Union also disagrees with the Employer's selection of comparable communities. It notes that the average wage increase contained in the City's final offer is less than increases for all Union comparables while the Union's proposed average increases compare favorably to the increases for Employer external comparables. Accordingly, the Union concludes that external public sector comparables favor its final offer.

The Union further argues that external comparables should control over internal comparables in this case because wages of bargaining unit members are low in contrast to wages of the only other Princeton bargaining unit, police officers, and because bargaining unit wages are already "too far out of line" with the appropriate external comparables. The Union cites arbitral authority for its position that wage "catch-up" based upon external comparisons which demonstrate significant existing disparities needs to begin immediately for members of this Princeton bargaining unit who are receiving substandard wages.

In contrast to the Employer, the Union argues that CPI data are not relevant in this proceeding because bargaining unit wages are far below their peers' wages in comparable communities. It notes that even its proposed wage increases which are similar to increases in the comparables will only maintain, not improve, Princeton's low wage ranking. The Union also

rejects the Employer's argument that Princeton is a poor community based upon its evidence that overall Green Lake County in which Princeton is located is comparatively well-off.

Finally, the Union notes that one of the key tentative agreements relates to an agreed upon employee contribution of 5% toward health insurance costs. This important economic concession by the Union must be weighed in determining which final offer on wages should be preferred.

For all these reasons, the Union concludes that its final offer is more reasonable and should be selected by the Arbitrator.

The Employer

The Employer commences its presentation by noting that, since the Union failed to introduce costing evidence for the two final offers, the City's calculation that its total package offer averages 4.5% for each of the three years of the contract and that the Union's total package offer averages 5.5% for each of the three years must be accepted as accurate.

The Employer also notes that both parties submitted external comparables in this proceeding but believes that only its list of comparables are relevant in resolving this dispute. (The Employer's external comparables are Green Lake, Lodi, New Lisbon, Pardeeville, Port Edwards, Wautoma, Wild Rose, Winneconne, and Wisconsin Dells while the Union's comparables are Clintonville, Elroy, Gresham, Juneau, Kiel, Lodi, New Lisbon, Stratford, Vanguard, and Westby.) Only Lodi and New Lisbon are comparables selected by both parties.

In supporting its comparables, the Employer points to criteria it applied such as comparable size, number of water and sewer customers, and particularly geographic proximity since proximity defines the relevant labor market in which Princeton competes. The Employer is critical of many of the Union comparables because, unlike the Employer's comparables, the Union has chosen communities well outside the range of normal commuting and because the Union's list of comparables include municipalities with much larger populations. The Employer is also critical of the Union because of its failure to provide any requisite data relating to population, levy rates, etc. to justify the Union's selection of comparable public sector bargaining units. Instead, the Union solely relied upon two limited factors, miles from Princeton and size of customer base. Finally, the Employer is critical of the Union's comparables because of the Union's focus on larger electric utility communities which employ full-time electric linemen while Princeton has no such position (a supervisor performs these duties). The Employer summarizes this portion of its arguments by concluding that it is a very small city with a small number of bargaining unit members (4.44 full-time employees) as well as customers, a full value ranking near the bottom, a slightly above average mill rate, and with average resident income significantly below average. Accordingly, the Employer urges the Arbitrator to select its comparables as more relevant in measuring the reasonableness of the parties' final wage offers.

The Employer next turns its attention to the "greatest weight" factor which the Arbitrator

is obligated to consider and weigh heavily. After noting that the State of Wisconsin is currently in a dire fiscal condition, the Employer points out that this has already resulted in a reduction of about $50,000 in Princeton's state-shared revenues. Accordingly, the Princeton City Council has made cuts in various City departments and has also increased the tax levy from the prior year by 3.1%. Accordingly, the Employer contends that these serious cutbacks mandated by the state's economic crises makes the City's offer more reasonable in light of the "greatest weight" factor.

The Employer further contends that the "greater weight" factor relating to local economic factors also requires the selection of the City's final offer given its high municipal tax rate, the loss of jobs, particularly in manufacturing, and the depressed income of local residents.

Lastly, the Employer points to a number of relevant other factors contained in _ 111.70 (4)(cm)(7r) to support the selection of its final wage offer. First, the Employer argues that the City's offer best matches the internal settlement pattern for the police, the City's other bargaining unit, and the wage freeze imposed upon its non-represented employees. The Employer believes that matching its internal settlement pattern is the best barometer for where the parties should have settled, represents the most appropriate delicate balancing of both parties' interests, and is the key factor in a number of Wisconsin arbitration awards which rely upon internal comparables to preserve the integrity and stability of the bargaining process both in the present and future.

Another "other" factor which the Employer relies upon is the "interest and welfare of the public" because the City believes that its offer promotes equity and accountability among its employees. The Employer emphasizes the paramount importance of the relationship between employees in this bargaining unit and other City employees and voices its concern that deviating from the City's settlement pattern will lead to whipsawing by the police bargaining unit in the future.

Turning to a third "other" factor, external comparability, the City concludes that its final offer exceeds the external average among its appropriate municipal comparables and thus is very competitive with other comparable communities. To reenforce this argument, the Employer notes that testimony at the hearing established that there has not been significant turnover in the bargaining unit since 1996 and the City has experienced no trouble in hiring replacements for positions which have become vacant. The City also observes that contractually mandated employee health insurance contribution rates for Princeton employees are relatively low when compared to the significantly higher rates found in the Union's external comparables. Thus, when total compensation offered by the Employer is examined, only the City's final offer strikes a fair and proper balance.

The City next argues that its offer is to be preferred because it and prior City wage increases since the early 1990s exceed the cost of living (CPI) and there is support for recognizing this important "other" factor in a number of Wisconsin arbitration awards.

Lastly, the Employer emphasizes that the total or overall compensation factor - which takes into account not only the City's wage package but also the relatively high costs associated

with maintaining existing fringe benefits - supports the Employer's position in this proceeding while the Union's approach which highlights only wages fails to acknowledge this all important statutory factor.

Before concluding its arguments, the Employer addresses an argument it made at the hearing. It takes a strong position that all evidence introduced into the record by the Union relating to the rejection of the parties' earlier tentative agreement by the City Council should be completely ignored. The City believes that there are two separate justifications for its view on this issue. First, such rejected agreements are similar to settlement offers which, as a policy matter, are universally disregarded by arbitrators. In addition, both parties final offers now differ in many important terms from the previous tentative agreement which was rejected by the City. Accordingly, the Employer rejects any attempt by the Union to rely on any aspect of the parties' prior tentative agreement or its subsequent rejection by the City Council since both the City Council and the Union membership retain the right to turn down what their bargaining teams may recommend or agree to. The Employer points to strong arbitral support for its position on this issue.

For all the above reasons, the Employer requests that the Arbitrator select its final offer.

DISCUSSION

Although wages are the sole issue at impasse, the parties have raised several issues during this proceeding which must be considered before the undersigned is able to determine which party's offer best meets the statutory criteria of _ 111.70 (4)(cm)(7-7r). Issues to be resolved include whether __ 111.70 (4)(cm)(7)("greatest weight" factor) and (7g)('greater weight" factor) are applicable, what "other" factors listed in _ 110.70 (4)(cm)(7r). are relevant in this proceeding, what municipalities constitute the appropriate external comparables, and, if there is a conflict between the internal and external comparability factors, which of the two factors should be given greater consideration.

At the hearing, the Employer presented testimony that, as part of the State of Wisconsin's plan to close its existing multi-billion dollar state budget gap, the City of Princeton was informed toward the end of 2003 that its share of state revenues would be reduced by approximately $50,000. This recent and unavoidable economic loss to the City does not mandate "limitations on expenditures that may be made or revenues that may be collected by a municipal employer" (a requirement for the application of _ 111.70 (4)(cm)(7) "greatest weight" factor) since the City retains discretion as to how to address this state revenue loss. This appreciable loss of state revenues is a fiscal fact which cannot be disregarded, however, particularly since Princeton has already begun the difficult process of making significant cuts in various City department budgets to meet this financial challenge.

Even though the literal wording of _ 111.70 (4)(cm)(7) appears to make it inapplicable to the facts in this proceeding, an argument may be made that the same facts relating to the

significant reduction in Princeton's portion of state revenue sharing funds must be considered as part of the "greater weight" factor of _ 111.70 (4)(cm)(7g) relating to "economic conditions in the jurisdiction of the municipal employer." Again it may be argued that a literal interpretation of the "greater weight" factor precludes consideration of the impact of the state budget crises upon Princeton since there has been a state-wide adverse impact upon Wisconsin municipalities. This technical reading, however, appears inappropriate when Princeton's $50,000 loss of state revenue sharing is considered in the light of other "local conditions" found in the Princeton area such as unemployment especially in manufacturing, a recent population decline, lower County annual wages and per capita income than Wisconsin averages, and an older population on limited incomes. Accordingly, the Arbitrator agrees with the Employer that adverse local economic conditions in Princeton, including the loss of some state revenue sharing payments, are entitled to greater weight than any of the factors set forth in _111.70 (4)(cm)(7r). She does not believe that this section requires proof of an inability to pay by the municipality before the "greater weight" factor is considered applicable.

Having made a determination that _ 111.70 (4)(cm)(7g) is applicable, however, does not preclude consideration of the traditional "other" factors set forth in _ 111.70 (4)(cm)(7r). The parties and the Arbitrator believe that several of these factors are relevant. Both parties agree that external public sector comparables should be examined although, not surprisingly, they are in disagreement as to which are the appropriate comparable communities, In addition, the Employer argues that, absent compelling circumstances, the internal comparability factor is more important than external comparability and it also points to the factors relating to "interests and welfare of the public" and "cost of living" (CPI) as relevant factors in this proceeding.

It is understandable that employers generally look to and opt for internal comparability. They argue that emphasizing the internal comparability factor adds stability to the bargaining process, encourages voluntary settlements, prevents whipsawing, and generally promotes consistency and equity in the treatment of its employees. In this proceeding, however, there is only one other Princeton bargaining unit (police officers), the Union rejects an internal consistency argument on the basis that police officers' wages are significantly higher than bargaining unit members' wages, and the Union argues that it has presented evidence of the need for "catch up," an acknowledged exception to employers' preference for internal comparability. Unfortunately, the statute offers no guidance as to how internal comparability or external comparability arguments should be weighed when in conflict. Each case appears to present some unique circumstances and there is no uniformity among arbitrators as to how such conflicts should be resolved.

Looking at external comparability, the Union argues that its municipal comparables support its final offer while the Employer also believes that its external comparables support its final offer. Not surprisingly, the parties have selected different comparables as support for their respective final offers with only two exceptions, Lodi and New Lisbon. The Union has provided only information about the distance of each of their ten proposed comparables from Princeton and the number of utility (electric, water, or both) customers each comparable serves. In addition to raising the question as to whether communities in excess of an hour's commuting distance are

appropriate comparables for this bargaining unit, the Union's limited data do not provide the undersigned with sufficient information to evaluate the appropriateness of its comparables. The Employer has supplied data about number of employees, population, full value, total property tax, mill rate, and adjusted gross income (in addition to miles from Princeton and number of utility customers) for its nine comparables. However, significant differences among the Employer's external comparables ll value, total property tax, population, adjusted gross income, and number of customers , raise questions about the appropriateness of several of the Employer's external comparables. Even the two municipalities appearing on both parties' listings, Lodi and new Lisbon, do not share many of Princeton's demographic and economic features and are 57 and 58 miles respectively away from Princeton. In addition serious questions have been raised by the Union as to whether a more thorough review of job descriptions must be made before meaningful comparisons are possible even when comparable communities have been agreed upon.

Until the parties are able to agree upon more than two municipalities (which are almost 60 miles from Princeton) to look to for external municipal comparisons and until more detailed job duty and qualification data are supplied by the parties about their bargaining unit jobs and comparable jobs in the external comparables, it appears impossible for any arbitrator to make rational judgements about appropriate external comparables at this time. Accordingly, while the undersigned believes that external comparability is often relevant, in this proceeding she finds she has been provided with insufficient data - even as to the two agreed upon comparables, Lodi and New Lisbon - to make reasonable determinations relating to what other municipalities should be considered as appropriate external comparables for this Princeton bargaining unit.

Several additional factors also need to be addressed. Three arguments have been put forward in this proceeding which merit attention. First, in the undersigned's judgement, the Employer has presented convincing evidence that there has been no turnover problems in the bargaining unit as suggested by the Union and qualified applicants have been available to be hired to fill vacancies. This is a significant indicator that the level of bargaining unit wages has not presented serious recruitment problems over recent years. Second, it is important to consider and compare, whenever possible, total employee compensation and not only wages. One of the most important economic fringe benefits in today's workplace is health insurance and, unfortunately, health insurance costs are again rapidly escalating. It is important to note that the parties reached a tentative agreement on this item which provides for some increase in employee contributions (including co-pays) while the Employer remains the primary payer. While the record herein does not permit a complete total compensation analysis, it is critical to emphasize whenever possible the increasing relevance of a total compensation approach. Third, it is clear that the cost of living factor supports the Employer's final offer unless the need for "catch up" becomes a more pressing factor. As discussed above, the Arbitrator was unable to make any determinations on this latter issue due to insufficient external comparability data.

Accordingly, the Arbitrator concludes that the "greater weight" factor relating to local economic conditions favors the Employer's final offer and that further support for the Employer's final offer is found in the "other" factors discussed above. She, therefore, selects the Employer's final offer based upon the criteria she is required to weigh according to _ 111.70 (4)(cm)(7-7r) .

In reaching this conclusion, the undersigned wants to emphasize that in no way should members of this bargaining unit be expected to experience a disproportionate or inequitable share of various budget cutbacks.

Before ending this discussion, the Arbitrator would like to address two additional issues which were raised at the arbitration hearing. First, she has given no weight to the parties' previously agreed upon tentative agreement rejected by the Princeton City Council. She believes that the statutory factors applicable to Wisconsin interest arbitration proceedings do not contemplate any role for such a document or the process which led to rejection. If the Union believes that one or more members of the Princeton City Council rejected the Employer bargaining committee's recommendation to ratify the parties' tentative agreement for an improper reason, that issue need to be addressed by the WERC in a prohibited practices proceeding. Further, if no economic crises rationale was voiced at the time the tentative agreement was rejected by the Princeton City Council, the Arbitrator believes that the City cannot be precluded from using economic crises arguments to support its final offer in this arbitration as long as its arguments are tied to the statutory factors which the Arbitrator is obligated to consider.

Second, at the hearing it was explained in testimony that for some purposes the City Utility may be considered a separate municipal entity which generates a surplus used to fund other functions of the City of Princeton. The Utility is not separate for purposes of labor relations under MERA, however. The designated employer of this bargaining unit is the City of Princeton and almost all bargaining unit members receive City, not separate Utility, paychecks. A reimbursement system has been worked out to account for City and City Utility functions and expenses. These arrangements differ significantly from the legal situation involving Princeton Library employees whose employer is the Library Board. Although not detailed in this proceeding, the City appears to have a legal obligation to enact without modification the Library's budget (including wage increases) which have been approved by the Library Board and to set the tax rate for Library services accordingly. Thus, the rules applicable to determining wages and other terms and conditions of Library employees are not relevant to this bargaining unit comprised of City employees.

AWARD

Based upon the statutory criteria, the evidence and arguments of the parties, and the discussion set forth above, the Arbitrator selects the final offer of the Employer and directs that it be made part of the parties' collective bargaining agreement together with the items contained in their tentative agreement.

May 3, 2004
Madison, Wisconsin

June Miller Weisberger
Arbitrator