

BEFORE THE ARBITRATOR

In the Matter of the Petition of

CITY OF MEDFORD

To Initiate Arbitration
Between Said Petitioner
and

Case 34
No. 63025 INT/ARB-10047
Decision No. 30861-A

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 953

Appearances:

James Dahlberg, International Representative, and Dave
Loechler, Representative, appearing on behalf of the Union.

Ruder & Ware, S.C., Attorneys at Law, by Jeffrey T. Jones,
appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

International Brotherhood of Electrical Workers, Local 953
(herein "Union"), having filed a petition to initiate interest
arbitration pursuant to Section 111.70(4)(cm), Wis. Stats., with
the Wisconsin Employment Relations Commission (herein "WERC"), with
respect to an impasse between it and City of Medford (herein
"Employer") involving its clerical employees; and the WERC having
appointed the Undersigned as arbitrator to hear and decide the
issues remaining in dispute with respect to the parties' 2004-5
collective bargaining agreement, by order dated April 19, 2004; and
the Undersigned having held an evidentiary hearing in Medford,
Wisconsin, on June 3, 2004; and the parties having each submitted
post-hearing briefs, the last of which was received August 9, 2004;

ISSUES

The parties' final offers constitute the statement of issues
in this matter. I summarize them as follows:

1. Wages:

Employer: 1.5% effective January 1, 2004
 1.5% effective July 1, 2004
 1.5% effective January 1, 2005
 1.5% effective July 1, 2005

Union: The Union proposes the same wage increase, except it
proposes an additional \$.60 per hour wage adjustment for the
positions of Accounting Technician and Clerical Receptionist, the
only two positions in the bargaining unit.

2. 2005 Health Insurance: The Employer proposes that the parties negotiate the Employer's contribution for 2005 on the basis of a set dollar contribution. The Union proposes that the parties now agree to set the 2005 premium at 90% of its actual amount, but express it in the collective bargaining agreement as a dollar amount.

DISCUSSION

Under Section 111.77(4cm, Stats., the arbitrator is to select the total final offer of one party or the other, without modification. The decision is to be based upon the following criteria expressed in the statute:

7. **'Factor given greatest weight.'** In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. **'Factor given greater weight.'** In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd.7r.

7r. **'Other factors considered.'** In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c, The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours, and conditions of employment 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 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 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 private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration, or otherwise between parties, in the public service or in private employment.

The parties have agreed that neither of the greater weight factors applies to this case and, therefore, the remaining factors govern this dispute.

BACKGROUND

The Employer is a small northern Wisconsin municipal employer. The Employer has a number of bargaining units. It has a waste water unit represented by the Teamsters with about 2.5 full-time equivalent employees. It has a police bargaining unit consisting of about 7 professional police employees represented by the Labor Association of Wisconsin. The Department of Public Works unit consists of about 8 employees represented by the Teamsters. The

city library is a separate employer. Medford has had a publicly owned electric utility for many years. The employees of that unit have historically been represented by the Union. It has about four employees.

The parties agreed during the hearing that the Employer's costing of the offers of each party was correct. The Union's proposal costs 6.87% wages and 10.9% total package for the year 2004, and 3.02% wages and 7.74% total package for 2005. The Employer's proposal costs 2% wages and 7% total package for 2004, and 3% wages and 8% total package for 2005. All of the foregoing costing is based upon year-end wage rates and an assumed increase of 20% of the health insurance.

WAGE INCREASE

There is no dispute that the Employer's proposed wage increase is an appropriate general wage increase. All of the other city bargaining units have settled for the same general wage increase. There have been two employees who have had wage rate adjustments in addition to the general increase. The Employer's proposal is also heavily supported by the 2003 annual change in the cost of living standard when considered against the total package offers of the parties.

The Employer adjusted the wages of the Working Foreman in the DPW unit by an additional \$.69 per hour. I am satisfied that this change was the result of adding substantially greater supervisory responsibility to the position. The Union introduced evidence that the Police Chief increased the wages of the police secretary by an additional \$2.73 per hour in 2003. I am satisfied that this change was based primarily upon the fact that the position was paid substantially less than others in similar positions in comparable police departments. I am satisfied that the Employer has made adjustments to wage rates of individual employees when they take on new duties or when they are substantially underpaid. These changes do not, of themselves, lend weight to whether or not the specific adjustments sought by the Union herein should be granted.

The central issue is the Union's proposal for an additional \$.60 per hour for both of the two employees in the bargaining unit. The clerical and accounting work of the Medford Electric Utility was performed by Cindy Pemsteiner in a building separate from the Employer's City Hall. At that time Ms. Pemsteiner was in the utility bargaining unit represented by the Union. An employee identified only as Rita Tischdorf was an unrepresented clerk/receptionist in the City Hall. Shortly before 2000, the Employer decided to consolidate the work of the clerical and accounting work of the utility with that of the city. It planned to use technological and cross-training options to improve the productivity of its clerical and accounting functions. It moved

Ms. Pemsteiner to City Hall and combined her utility work with other accounting and clerical work of the Employer. The Employer recognized the Union as the collective bargaining representative of the clerical unit consisting of the two employees in 2000. The parties negotiated their first collective bargaining agreement for the 2000-2001 calendar years. They then negotiated a calendar 2001-3 agreement which is their last agreement prior to this dispute.

Ms. Tischdorf's job title is Receptionist/Clerical. Her function as of May, 2001 was to act as office receptionist, perform filing, answer the telephone and redirect callers, act as cashier, accept park reservations and issue dog licenses. She also provided information to the public on property assessments. It was always her responsibility to assist the office manager in the Employer's tax collection and billing process. She also acted as secretary to various boards.

When Ms. Pemsteiner was moved to the City Hall, she was assigned the job title as Account Technician. She also reported to the Office Manager. Ms. Pemsteiner's duties were defined in May, 2001, to have exclusive authority of the Employer's billing, collection, payroll and banking. In this regard she operates the Employer's computer based accounting system. The Employer also consolidated the Electric Utility's billing, collection and account payable process into its computer based accounting system. She assists in gathering information for the Employer's budget and she also prepares the accounts payable. She also continues to perform all of the clerical functions for the City Utility. She also fills in for the Office Manager in her absence.

Ms. Tischdorf's duties have changed due to technological changes. Previously, she routinely answered incoming calls and redirected them as required. The new phone system allows the callers to redirect themselves. Ms. Tischdorf now answers the phone fewer times. The Employer has provided her with a new computer system and added duties to replace her phone answering duties. Now her duties also include responsibility for absentee ballots, but she does not otherwise participate in the election process. Ms. Tischdorf also assists Ms. Pemsteiner in sending out bills. She also administers the issuance of special gathering licenses for signature by the City Clerk. She resumed this duty after the consolidation. She reviews statutes to determine if there are any questions as to whether they should be granted. One of the new tasks which was assigned to Ms. Tischdorf was the responsibility to issue transient merchant licenses. Those are issued about four times per year. Ms. Tischdorf will also perform Ms. Pemsteiner's duties when Ms. Pemsteiner is on vacation or otherwise absent. She also performs her duties to a limited extent when Ms. Tischdorf take her breaks. Both employees field customer

complaints from utility customers and from citizens about city service.

Recently, the City Manager quit and he has not been replaced. It appears that the result of that change is that more work of their normal duties has devolved upon Ms. Tischdorf and Ms. Pemsteiner.

The Union's chief argument in this matter is that since the clerical and accounting work of the electric utility has been transferred to this unit, both employees should receive additional wage increases to achieve wage-rate comparability with similar clerical accounting positions among utilities comparable to the Medford Electric Utility.

I rendered an interest arbitration award in the contract dispute between the Employer and the Union with respect to the Medford Electric Utility bargaining unit for the term November 1, 1998, to October 31, 2000. In that award I concluded that employees in that unit should be compared to similar employees in similar public utilities of Arcadia, Black River Falls, Bloomer, Clintonville, Gresham, New Richmond, Oconto Falls, Rice Lake, Shawanoo, and Spooner. On the basis of the wage rate comparison, I concluded that the utility employees enjoyed a wage-rate leadership position among comparable employees in the other utilities. Specifically, I found that the average wage rate for Ms. Pemsteiner's cashier/clerk position at the utility was about \$4 per hour over that of the average of similar positions among comparable utilities.

The Employer has argued that wage-rate comparisons should now be made to similar positions in comparable communities. It offered comparisons to; Abbotsford, Nellsville, Phillips, Rothschild, and Tomahawk. Most of the clerical employees in these unit are unrepresented and none have electric utilities.

The Union has failed to show that any significant increase beyond the general wage increase proposed by the Employer is warranted in this unit. The evidence in this case indicates that the Employer has improved Ms. Pemsteiner's productivity by consolidating tasks similar to that which she performed at the utility and others of about the same skill level when it moved her to the new location. It appears that part of the Employer's ability to do this was the result of its adoption of computer-aided accounting. Ms. Pemsteiner enjoyed a wage leadership position when she was at the utility. Her year-end 2003 wage rate was \$15.99 per hour. Her wage rate at the end of the proposed contract will exceed the similar rate of all but one other utility proposed by the Union. The evidence does not substantiate an increase as large as \$.60 per hour. The Employer's offer as to her wage rate is to be preferred.

There are three likely reasons why the wage rates of clerical employees in publically owned electric utilities are higher than apparently similar; a. difference in wage levels for similar duties due to differences in type of employer; b. extent of collective bargaining; and c. differences in skill/ responsibilities of duties. There is no evidence that the Employer has given Ms. Tischdorf a significant portion of duties formerly performed by Ms. Pemsteiner, nor has it shown that the work Ms. Tischdorf does with respect to the utilities requires a significantly higher skill level. There is no justification for comparing her wage rate with those of similar positions in public utilities. Ms. Tischdorf's duties have progressed. She now performs more of her higher level duties than she did before. It also appears that her position requires a somewhat higher skill level than it did before. However, the changes are of the type occurring among similar position. The comparisons offered by the Employer which are limited and predominately non-union, appear to support some adjustment in Ms. Tischdorf's wage rate, but would not justify an increase as large as that offered by the Union. I would conclude that the Employer's offer with respect to this position is heavily to be preferred.

HEALTH INSURANCE

Article II of the parties' recently expired collective bargaining agreement provides that the agreement is in effect from January 1, 2002, to December 31, 2003. It contains a provision for reopening the agreement during its term to negotiate the parties' contributions toward employee health insurance premiums. The latter provision reads as follows:

Notwithstanding the above, this contract shall be reopened for the contract years (sic) 2003 in accord with the above dates for reopening negotiations for the sole purpose of discussing the parties' contribution towards the cost of the employee's health insurance premiums and to discuss possible changes to the terms of the health insurance plan and/or changes to a different plan or carrier. Any unresolved disputes resulting from such negotiations will be subject to interest arbitration pursuant to Section 111.70(4cm), Wisconsin Statutes. [Emphasis supplied.]

This language was added by mutual agreement in the parties' first contract. It had no effect because the contract was concluded after the health insurance increase for 2003, had been determined.

The Employer proposes to amend this provision to replace the underlined portion with the words: "each succeeding contract year" The effect of this would be to require that the parties meet and negotiate with respect to health insurance on an annual, rather

than bi-annual, basis. The Union's proposal deletes this language and, instead, would predetermine the 2005 premium contribution by apportioning whatever the future rate is by 90% for the Employer and 10% for the employee. Its proposal then effectively amends the contract to express that amount in dollar (rather than percentage) terms.

The Employer and its bargaining units have used the annual re-opener approach for at least 10 years. The Electric Utility has not participated in that approach, but has maintained a provision essentially the same as that proposed by the Union herein. The city bargaining units meet jointly with the Employer to deal with health insurance in the off years. In each of the last 10 years, these joint negotiations have resulted in the parties agreeing to the Employer contributing 90% of the premium payment, but expressing that product in dollar (rather than percentage) terms. The Union's proposal herein assumes that same result. The Employer acknowledged at hearing that as of the date of hearing, it was the Employer's intention to remain at 90% of the premium. It stated that its purpose in seeking the re-opener was to be able to deal with any unexpectedly high health insurance premium increase.

The Employer relies upon internal comparability in that all other bargaining units have the same language which it proposes and also that all other units have routinely negotiated a resolution to health insurance in a manner which has been acceptable to them over the years. The Union has argued that a re-opener in a two person bargaining unit is particularly onerous.

The arguments are addressed to essentially separate considerations. The Employer's argument is addressed to the application of the comparison factor, while the Union's argument is addressed more to the arbitration process. Consideration of the costs of the negotiation and/or arbitration process itself is inherent in Section 111.70(4cm). It is a consideration as to the interests of the public under subsection c and an "other factor . . . normally or traditionally taken into consideration through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise . . ." of subsection j. Re-openers are common in collective bargaining. The re-opener used in Medford to deal with the currently highly volatile health insurance situation makes sense. This is particularly true in the way the parties have historically used it in Medford, namely, to continue their 90%/10% split unless there is an unforeseen increase in premium. On the other hand, parties rarely use re-openers for one or two person bargaining units. It unduly extends bargaining in this unit.

I would have expected that this small unit would have received the same health insurance benefit uniformly established by the negotiations with the other units. I would have expected that the re-opener approach would apply only in what both parties expect

would be a highly unusual event that there is no uniform settlement of the health insurance issue with the other units in the mid-term year. I would note for successor arbitrators that I would find it highly unusual if the Employer sought to give this unit less than the health insurance benefit uniformly negotiated with other units unless the Employer presented a very sound reason for that position.

The Union's offer in this matter, guaranteeing the 90% premium, is excessive. It is highly unlikely that the Union would receive that benefit if, for some reason, the other city units uniformly agreed to a different plan. Under the circumstances, I find that neither insurance offer is particularly good. However, I am required to select the better of the two offers. I believe that the Employer's offer is closer to what would have been appropriate at this time. This is true because the available evidence of past history of this type of provision among the other units of the city indicates that it appears to have worked well. It is also true because the parties have not yet had any experience administering this provision. In the highly unlikely event that the future administration of this provision proves it to be impractical, I would recommend that any future arbitrator consider the fact that it has proved impractical in making a decision about this provision in the future.

SUMMARY

The Employer's offer is preferred as to all of the issues and, therefore it is adopted.

AWARD

That the final offer of the Employer is to be adopted.

Dated at Milwaukee, Wisconsin, this 8th day of October, 2004.

Stanley H. Michelstetter II,
Arbitrator

