

BEFORE THE ARBITRATOR

In the Matter of the  
Interest Arbitration between

CITY OF MARSHFIELD  
(ELECTRIC & WATER UTILITY)

And

GENERAL TEAMSTERS UNION LOCAL 662

Case 148 No. 61621  
Int/Arb-9747  
Dec. No. 31081-A

**INTEREST ARBITRATION AWARD**

Appearances:

Mr. Steven C. Zach, Boardman, Suhr, Curry and Field, LLP, on behalf of the Marshfield Electric & Water Utility.

Ms. Andrea F. Hoeschen, Previant, Goldberg, Uelmen, Gratz, et. al. n behalf of the General Teamsters Local 662.

The above-captioned parties, hereinafter referred to as the Utility and the Union respectively, have been parties to a series of collective bargaining agreements throughout the years. The parties were able to resolve all of the issues for the 2002-2003 successor agreement except for the issues of wages. The Utility filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the Union. The Utility requested that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The undersigned was selected as arbitrator from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Marshfield, Wisconsin on January 19, 2005. No stenographic transcript was made of the proceedings. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on March 25, 2005. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

**ISSUE AND FINAL OFFERS:**

The Arbitrator is charged with selecting a final offer for incorporation into the parties' collective bargaining agreement. Both parties had the following language in their respective final offers:

Except as set forth in this Final Offer, or in the Tentative Agreements reached between the parties, the terms and conditions of the Agreement shall become the terms and conditions of the 2002-2003 Agreement.

### **UNION'S FINAL OFFER**

2002 - Three percent (3.0%) + \$.40 increase across the board retroactive to January 1, 2002 which raises the wage rate to \$23.31 per hour.

2003 - Three percent (3.0%) + \$.40 increase across the board retroactive to January 1, 2003 which raises the wage rate to \$24.43 per hour.

### **UTILITY'S FINAL OFFER**

2002 - Four percent (4.0%) increase across the board retroactive to January 1, 2002 which raises the wage rate to \$23.12 per hour.

2003 - Four percent (4.0%) increase across the board retroactive to January 1, 2003 which raises the wage rate to \$24.04 per hour.

### **SUMMARY OF DISPUTE:**

The dispute between the parties for a successor agreement is limited to a disagreement on wages. Prior to 1999, the Utility's bargaining unit was comprised of craft and non-craft employees. The craft employees filed a severance petition and eventually formed a separate bargaining unit negotiating a separate contract for the years 1999 to 2001. This arbitration involves a successor contract for the years 2002 and 2003. Both parties take the position that the statutory "greatest weight" and "greater weight" criteria are inapplicable to the instant dispute. Therefore, it is the lesser factors that dictate the outcome in this case.

### **STATUTORY CRITERIA:**

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis. Stats., 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 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.
- 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 under subd. 7r.

- 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized in this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
- a. The lawful authority of the municipal employer.
  - b. Stipulations of the parties.
  - c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
  - d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of employees performing similar services.
  - e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
  - f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
  - g. The average consumer prices for goods and services, commonly known as the cost of living.
  - h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
  - i. Changes in any of the foregoing circumstances during the pendency of the arbitration.
  - j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in 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.

## **POSITION OF THE PARTIES:**

### UTILITY'S INITIAL BRIEF

The Utility contends that the cost of the stipulations of the parties, the comparison of wages of municipal and private employees, the cost of living and other factors support the Utility's final wage offer.

Pointing to the stipulations of the parties, the Utility notes that it has agreed to increase the standby pay from \$1.50 to \$1.90 per hour which results in a \$.10 per hour

increase in employee costs for 2002 and an additional \$.10 per hour in 2003. The additional personal holiday will cost the Utility \$.09 per hour in 2002 and \$.10 per hour in 2003. Health insurance cost increases have also been absorbed by the Utility which paid \$.27 additional per hour in premiums in 2002 and \$.48 per hour in 2003. The stipulations and health insurance increases resulted in increased benefit costs of \$.46 per hour in 2002 and \$.68 per hour in 2003, an increase of 2.1% in 2002 and 2.9% in 2003. The Utility maintains that when the linemen bargained separately, they raised catch-up arguments for 1999, 2000 and 2001 resulting in wage increases of 5.4%, 4%, and 4% respectively. The Utility's proposed wage increases for 2002 and 2003 are consistent with this past bargaining pattern.

The Utility claims that the impasse on wages is due in large part to the parties differing view of the external comparables with the Union relying upon a comparable group established 14 years ago by Arbitrator Krinsky. Based upon this prior award, the Union utilizes Kaukauna, Menasha and Wisconsin Rapids as the comparable group for purposes of its offer. The Utility does not believe that these utilities represent an accurate or valid external comparable group for Marshfield, claiming utilities near large metropolitan areas should not be used and that Kaukauna and Menasha are not comparable because they are too far and are located in the large Fox Valley industrial base.

While acknowledging that deviation from an established comparable group should only occur under limited circumstances, the Utility argues that a prior determination is not immutable but the revision must be supported by changes in the data typically relied upon by interest arbitrators. First, the linemen are no longer part of a larger unit including non-craft employees. Second, the electric portion of the Utility has changed in that it no longer operates a power generation plant on its premises so that the scope of the utility operations and the manner in which revenue operations are produced is different. Furthermore, the Krinsky award was less than definitive in its assessment of comparable groups. The term "focus" suggests something other than full endorsement of the comparable grouping and this type of analysis should not be binding on the Utility at this time. The Utility believes that the amount of electricity sold and revenues generated from these sales are more significant indicators of comparability than the size of the community and number of customers. Although the City of Marshfield is larger in population than either Menasha or Kaukauna, the size of the utilities as measured by sales and revenue suggests that these are much larger utility operations as evidenced by the greater electrical sales, greater revenue and number of electric employees in Kaukauna and Menasha. These two comparables are also geographically distinct and distant from Marshfield.

The Utility proposes that the comparables be within an approximate radius of 100 miles of Marshfield with revenues over \$4 million and sales which approach 100 megawatts per hour. It proposes that Wisconsin Rapids, Reedsburg, Shawano, Richland Center, Waupun, Medford and Clintonville be included in the comparability pool. Marshfield does not belong in a comparable grouping with Kaukauna and Menasha from a geographic or utility-size perspective. The wage differential, even under the Union's

offer reflects this. In 1991, Kaukauna and Menasha had average revenues of \$18.24 million compared to Marshfield's \$16.4 million. In 2003, Kaukauna and Menasha had increased revenues to an average of \$28.14 millions while Marshfield's revenue decreased to \$15.4 million. The arbitrator should eliminate Kaukauna and Menasha as comparables. It is more appropriate to measure the Utility in relation to the middle group of utilities based upon size and geographic similarities.

In the Utility's view, Marshfield is closer in size to the middle tier of the comparables, although slightly larger than those three. The Utility's proposal puts the Utility at almost exactly the median wage for these three utilities. It has been in the bargaining posture of "catching up" on wages since the creation of the new bargaining unit and the rate of the proposed wage increases is larger than the increases for Shawano and Wisconsin Rapids, but less than for Reedsburg. The past "catch-up" increases have brought the Utility into line with other comparable utilities. An employer is permitted to "catch-up" over a period of time and the Union's proposal would increase the wage rate at a percentage far in excess of increases in the other utilities.

With respect to the internal comparables, they provide no guidance in this matter. An offer of three percent (3%) plus fifty cents (\$.50) for each year to the non-craft employees involved different considerations and there is nothing in the record showing how the non-craft wages compare as a total percent package to the total package being offered to the craft unit. The Utility also points out that the non-craft wage proposal for 2002 and 2003 constitutes the first rate adjustment for a five year period and not just for 2002 and 2003.

When looking at the City of Marshfield public and private comparables, the Utility stresses that the municipal bargaining units settled contracts for 2002 and 2003 with wage increases of three percent for each year. Although two arbitrators have declined to find that the Utility was a comparable for the City, the Utility is not seeking to address whether the City units are an internal comparable for the craft unit because the line rates of pay and job duties are significantly different than those of other City positions. Both the Utility and Union Proposals are higher than three percent each year. The three percent increase, however, is significant in that it reflects the labor market for 2002 and 2003 in Marshfield and shows that the Utility's four percent proposal incorporates a degree of "catch-up" pay and is closer to the area standard than the Union's proposal of 4.8% and 4.5%. Looking at Utility Exhibit 15, a survey of wage rates for publicly owned utilities in 2003, the median wage for similarly-sized utilities is \$22.47 as compared to the \$24.04 proposed for 2003 by the Utility. The Utility also argues that Utility linemen are higher paid than any of the professions identified in the Marshfield area wage survey.

With respect to inflation, both proposals are above the inflation rate but the Utility's proposal is closer to the cost-of-living. Insofar as other factors are concerned, craft employees enjoy an annual cash out of accumulated sick leave valued at \$.43 per hour in 2002 and \$.55 per hour in 2003. Potentially this benefit has a value to the unit of \$1.07 in 2002 and \$1.11 in 2003. Only Waupun, Medford and Shawano allow an annual

cash out of accumulated sick leave. So that only these linemen along with those in the Marshfield craft unit are receiving an additional sum of money on an annual basis. Considering this amount in the compensation package places the Utility's offer at a much higher wage rate than is available to the middle level utilities and approaches Kaukauna's and Menasha's wage rate.

The difference between the two proposals in 2002 is \$.19 or 8.5%. In 2003 it is \$.39 or 1.7%. The only support for the Union proposal is that it brings the Utility closer to the Kaukauna and Menasha wage rates. The Utility's proposal is more appropriate with respect to the statutory criteria, closer to the CPI and median wage rate for public utilities around the country. Most importantly the utility proposal reflects a bargaining history of "catch-up" with respect to the wage rates and continues the 4% pattern of wage increases. The four percent in each year is higher than the increases in comparable utilities and craft employees' ending wage rates would be at the median of the three utilities more closely aligned with it in terms of size and geography.

### UNION'S INITIAL BRIEF

The Union submits that the parties agree that the bargaining unit's wages justify catch-up. However, the Utility is offering insufficient catch-up and is trying to change the established comparables to justify its unreasonable offer. In the Union's view, its offer provides a modest and reasonable amount of catch-up. If the bargaining unit received no catch-up for 2002, lineman wages would be 6% less than lineman wages in the three established comparables and would continue to increase in 2003. Neither longevity pay nor benefits justify the gap between Marshfield wages and wages in the comparables. Even when longevity is factored into the hourly wage, the 2002 wage rate for a Marshfield lineman with ten years of service would still be significantly below the wage rate in all of the comparables.

In response to the Utility's argument that its sick leave payout program justifies lower wages, the Union points out that Marshfield employees receive two or three fewer paid holidays than employees in the comparable utilities, although the parties did agree to an additional holiday for the 2002-2003 contract. Furthermore, Marshfield employees are the only employees among the comparables without prescription drug coverage in their health insurance plan. Fewer holidays and no prescription drug coverage offsets the economic benefit employees may receive from the sick leave payout. Furthermore for employees who actually utilize their sick leave, the benefits are no greater than the sick leave benefits in the comparable utilities.

The poor wages in Marshfield have led to retention problems with four linemen leaving for other lineman positions since 1996, three using the bargaining unit as little more than a training center and leaving shortly after completing their apprenticeships. None of these employees went to significantly larger or smaller communities. Marshfield has been unable to retain qualified linemen given its salary schedule and benefits.

The Union argues that the comparables support its offer because its offer brings the bargaining unit closer to the comparable wage rates without changing their ranking among comparables and begins to establish a reasonable pattern of percentage wage increases by separating the catch-up from the percentage increase. Although this arbitration is not about taking the bargaining unit out of last place, the Union's offer ensures that the bargaining unit will not lag that far behind the others. Looking at the most useful comparable, Wisconsin Rapids, if the Utility's offer is adopted, linemen in Marshfield will earn \$.84 less per hour than Wisconsin Rapids linemen did in 2002, even with the inclusion of longevity. Under the Union's offer, the Marshfield linemen will only earn \$.64 less. As such the Union's offer is more reasonable.

The Union argues that there is no justification for changing the established comparables. It noted that the Utility barely tried to justify its offer using the established comparables but has resorted to attempting to change them. The existing comparables are as appropriate now as they were when Arbitrator Krinsky identified them. Arbitrator Krinsky in 1991 rejected the Utility's proposed comparables of Medford and Shawano as well as several utilities that neither party is presently proposing. The Utility has not adequately supported its argument that the established comparables are no longer the appropriate pool. There is no evidence that Marshfield has significantly fewer employees than the current comparables nor is the Marshfield utility significantly different in character from the other comparables because it no longer operates its own power plant. There is no evidence that power plant operation affects the nature of the remaining bargaining unit positions or the Utility's ability to pay. Power plant operation is not a consistent characteristic among the comparables. Wisconsin Rapids does not operate a power plant while Marshfield owns a part of a power plant.

In reviewing the Utility's proposed comparables, assuming the Utility's exhibits to be correct with regard to the total number of unionized employees for every utility proposed, Marshfield has three times as many employees as Reedsburg, the largest new proposed comparable. In reviewing the 2003 Municipal Electric Utilities member statistics from 2003 annual reports, the data with respect to customers, population, megawatt hours, revenue and geographical location show that the proposed new comparables have little in common with Marshfield. Marshfield has almost three times as many customers and provides at least 30 percent more megawatts than any of the proposed new comparables and the new comparables are about the same distance from Marshfield as the established comparables. The current established comparables have established customer bases similar to Marshfield's.

The Utility has not met its burden of showing that changed circumstances justify substituting new comparables for the established ones. Because previously established comparables should only be modified under extremely limited circumstances, the Utility's proposed new comparables should not be considered.

## UTILITY'S REPLY BRIEF

With respect to Union representations that four linemen have left the bargaining unit since 1996, the Utility notes that all four departures were prior to the signing of the first labor agreement between the craft unit and the Utility, which was signed on February 10, 2003 covering 1999 to 2001. Their departure is irrelevant given the fact that they left prior to the beginning of catch-up pay under the 1999-2001 agreement.

The Utility explains the difference in the Union's rates as represented in its brief, i.e. 2002 rate of \$23.29 and a 2003 rate of \$24.38 as being based upon the method of calculation. The Utility calculated the 2002 and 2003 Union proposal by adding the \$.40 to the base wage rate and then applying the 3% wage increase. The numbers utilized by the Union add the \$.40 after the application of the 3% increase to the base wage rate. The Utility defers to the Union's method of calculation with respect to the final offer in this matter.

If customer base is considered to be a relevant factor, the Utility argues that not only the depth of the customer base but the layers of the customer base must be considered. It is easier to spread utility costs to industrial and business customers than it is to residential customers. Kaukauna and Menasha have a high industrial and business usage given the similarity in total customer base between those utilities and Marshfield's and the dissimilarity between the three utilities' revenues. This disparity suggests that Kaukauna and Menasha are levying a significantly greater share of their electrical rates on other entities than a residential base. This makes them inappropriate as comparable utilities.

The Utility urges the arbitrator to re-evaluate the comparables and to find its offer to be the most reasonable.

## UNION'S REPLY BRIEF

In response to the Utility's contention that Marshfield should not be compared with utilities "near large metropolitan areas such as Minneapolis, Madison or Milwaukee, the Union argues that Kaukauna, Menasha, and Wisconsin Rapids are no closer to any of those cities than is Marshfield. Furthermore, two of the Utility's proposed comparables, Richland Center and Reedsburg, are considerably closer to Madison than any of the Union's comparables.

With respect to the argument that the separation of the craft and non-craft bargaining units justifies a change in comparables, the Utility has failed to explain the relevance of this fact and why it distinguishes Marshfield linemen from other utility linemen for purposes of determining wages.

The Union takes issue with the claim that the Utility is languishing while the established comparables are growing citing the Utility own website which suggests that growth and technological improvements have been made. The Union relies on additional



decisions to justify maintaining the current comparables including a 1990 decision by Arbitrator Vernon including Marshfield, Wisconsin Rapids, and Menasha as comparables for the Kaukauna utility, a 2000 decision by Arbitrator Michelstetter concluding that Marshfield was too large to be an appropriate comparable to Medford's utility, and a 1994 Reedsburg award where neither party considered Marshfield as a comparable utility.

The Union urges the arbitrator to reject the data in the Utility exhibit which is a national survey of publicly held utility wages because there is no information about the geographical distribution of the responding utilities or whether they are unionized. In sum, the Union claims that its offer is the most reasonable.

### **DISCUSSION AND OPINION:**

From the outset, it is evident that both final offers are reasonable. The parties have agreed that the Utility can afford either offer. They have also agreed that the dispute should be decided by the 'other factors' criterion.

Factor (b), the stipulations of the parties, slightly favors the Utility because it has agreed to an additional holiday and increased standby pay and increased health insurance costs which it absorbed for 2003. Neither party argues that the internal comparables or bargaining units in the City of Marshfield provide guidance in choosing between the two offers so Factor (e) does not favor either offer. Factor (f) does, however, slightly favor the Utility offer from the standpoint that the Utility's proposed 4% includes some catch-up, given 3% wage proposals in both years in the City of Marshfield. While no determination is made as to whether or not the City of Marshfield is an internal comparable, the Utility is correct in its assertion that the 3% for both 2002 and 2003 reflects the labor market wage in the area for those years. Although both offers exceed the cost of living, i.e. factor (g), the Utility's offer is also slightly preferred because it comes closer to the cost of living. Factor (h), the overall compensation of this bargaining unit does not favor either offer given that the unit enjoys a generous sick leave pay-out benefit but does not have the benefit of prescription drugs or as many holidays as other craft units

The determinative factor in the selection of one offer over the other is the appropriate comparables for this particular bargaining unit, and the comparison of wages for this unit to other craft employees similarly situated, i.e. factor (d).

Because Arbitrator Krinsky, in his 1991 award, set appropriate comparables for the bargaining unit which included these employees at that time, the Utility has the burden of persuasion to show that this established comparability group should be changed. Furthermore, once an arbitrator has made such a determination, disruption of the established comparables should be discouraged because continuity and stability of the comparables are important to provide the parties with an appropriate base for making comparisons from year to year in bargaining. As Arbitrator Grenig observed, "The use of

different comparison groups from contract to contract encourages the parties to go comparable shopping.”<sup>1</sup>

Thus, while established comparability groups are not immutable, there must be a very good or compelling reason to change them. Here, the Utility has not established such a rationale. Marshfield, like Wisconsin Rapids and Kaukauna, has almost three times the customers that all of the Utility’s proposed comparables have with the exception of Shawano. Marshfield also has the highest population of all of the comparables. Number of customers is a strong indicia of comparability because it reflects the type of workload employees might have and the ability of the utility to spread out costs.

While it is true that Marshfield produces substantially less megawatts per hour than Kaukauna and Menasha, it produces substantially more megawatts per hour than all of the Utility’s proposed comparables with the exception of Reedsburg and Shawano. With respect to revenue, only Wisconsin Rapids and Reedsburg produce in excess of thirteen million dollars and could be considered middle-tier with respect to this data. It is true that Kaukauna now has substantially more revenue and produces substantially more megawatts per hour than Marshfield.

Geographic location is definitely relevant to the establishment of comparables. However, with the exception of Medford, which arbitrator Krinsky explicitly rejected in 1991, all of the other proposed comparables are over one hundred miles from Marshfield with Waupun exceeding any of the current comparables in geographical distance.

The Utility makes much of the fact that Marshfield no longer operates a power generation plant on its premises with its own employees while Kaukauna and Menasha continue to do so. If this dispute involved non-craft employees, this argument might have some merit. However, given that Marshfield owns one third of a power plant and continues to generate revenues from that operation, it is not so persuasive as to result in excluding Kaukauna and Menasha from the comparable pool.

Were the undersigned to determine a comparability group considering all of the data with respect to all of the proposed comparables *de novo* at this time, Kaukauna may very well have been rejected and Reedsburg and/or Shawano included. However, simply put, the Utility has not provided compelling evidence to suggest that comparisons between Kaukauna and Menasha and Marshfield are no longer meaningful or that Shawano and Reedsburg must be included. This is especially true, given the fact that Arbitrator Krinsky originally rejected Shawano in establishing the comparability grouping and that neither the utility or labor organization representing the craft unit in Reedsburg considers Marshfield as a comparable.

The undersigned accordingly will not change the established comparability group.

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<sup>1</sup> City of Marshfield (Firefighters) Dec. No. 29027-A (Grenig, 1997).

All parties recognize that Wisconsin Rapids is comparable to the Utility. Wisconsin Rapids' status as a comparable is particularly persuasive as it most resembles Marshfield under any set of data provided. Neither offer will change Marshfield's ranking with respect to wages in comparison to Wisconsin Rapids. However, as the Union has succinctly observed, the Union's offer will better insure that Marshfield linemen do not fall too far behind Wisconsin Rapids linemen with respect to wages. Factor (d) strongly favors the Union's offer and is determinative.

### **AWARD**

Having considered all of the factors as set forth in Section 111.70(4)(cm), Wis. Stats, the final offer of the Union for 2002-2003 is adopted as the award in this proceeding and incorporated into the parties' collective bargaining agreement.

Dated this 16th day of April, 2005, in Madison, Wisconsin.

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Mary Jo Schiavoni, Arbitrator