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**IN THE MATTER OF INTEREST  
ARBITRATION**

**OPINION AND AWARD**

between

**THE VILLAGE OF REDGRANITE**

**WERC CASE 14 NO 64183**

and

**INT/ARB-10311**

**[ Dec. No. 31235-A ]**

**WATER UTILITY AND WASTEWATER  
TREATMENT PLANT EMPLOYEES  
LOCAL 149, WPPA, LEER**

**Gil Vernon, Arbitrator**

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**APPEARANCES:**

**On Behalf of the Village:** William G. Bracken, Labor Relations  
Coordinator - Davis & Kuelthau, S.C.

**On Behalf of the Union:** Thomas W. Bahr - WPPA/LEER

**I. BACKGROUND AND FACTS**

The Village of Redgranite, hereinafter referred to as the Employer, is a municipal employer. Among other services, it provides residents with water and wastewater services consistent with the law of nature that holds: what goes in must come out. Wisconsin Professional Police Association/Law Enforcement Employee

Relations Division, hereinafter referred to as the Union, is a labor organization which represents the two hourly employees of the water department.

The parties exchanged their initial proposals and bargained on matters to be included in a collective bargaining agreement covering the years 2005-2006. On November 18, 2004, the Union filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the Village of Redgranite in their collective bargaining and, wherein, it further requested the commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the commission's staff conducted an investigation in the matter and submitted the report of the results thereof to the commission. The parties also, pursuant to the statute, submitted to the investigator their final offers.

The commission declared an impasse and ordered the parties, on February 28, 2005, to select an arbitrator to resolve their dispute. The undersigned was selected by the parties and appointed by the commission on April 5, 2005. A hearing was held on August 11, 2005. Post hearing briefs and a reply brief was filed. The record was closed on September 21, 2005.

## II. FINAL OFFERS AND ISSUES

The Union's final offer read as follows:

The Association makes the following final offer on all issues in dispute for a successor Agreement to commence on January 1, 2005 and remain in full force and effect through December 31, 2006.

1. All provisions of the January 1, 2003 - December 31, 2004 Agreement between the parties not modified by way of any previous tentative agreements, and/or by this final offer shall be included in the successor Agreement between the parties for the term of said Agreement.
2. The term of the Agreement shall be for the period of December 1, 2005 through December 31, 2006. All dates relating to term shall be modified to reflect the above cited term.
3. **Article 13.0 - Fringe Benefits** (p. 6) Amend Section 13.2 as follows:

13.2 Retirement Delete current language in 13.2 and replace with: Effective January 1, 2006, the Village shall pay one hundred percent (100%) of the Village and employee contributions to the Wisconsin Retirement Fund. Each employee covered by this Agreement shall be a participant in the Wisconsin State Retirement plan as provided by Wisconsin Statutes and rules promulgated by the Wisconsin Retirement Fund Board.

4. **Article 22.0 - Wages** (p. 12)

Effective January 1, 2005: 3.0% increase across-the-board  
Effective January 1, 2006: 0.0% increase across-the-board

The Employer's final offer read as follows:

All provisions of the 203-04 contract shall continued except for any tentative agreements reached and the final offer below.

1. Section 13.02 Retirement.

Change "\$2,000" to \$2,240 in 2005 and \$2,480 in 2006."

2. Section 22.02 Wages.

2005: Across-the-board increase of 3%

2006: Across-the-board increase of 3%

3. Section 23.01 - Duration.

Change the dates to “January 1, 2005 to December 31, 2006.”

To understand the final offers it is necessary to note that the prior collective bargaining provided (in Article 13) that employer retirement contributions be made to a plan maintained by the City. That language read:

Section 13.02: Retirement: The Village shall provide retirement benefits to regular full-time employees to equal \$2,000 yearly, paid in equal monthly installments, paid into a bona fide retirement plan adopted by the Village. The Village may change the retirement plan to an equivalent plan.

The Village plan offer by Prudential Insurance is a qualified variable investment plan that gives the vested employee options of investing their contributions in one of more than thirteen different portfolios including various stock and bond funds. The plan is commonly referred to as an IRA.

The Union proposes that, effective January 1, 2006, the Employer make 100% of the employer and employee contributions to the State of Wisconsin Retirement Fund. The contributions, under this fund, is expressed as a percentage of earnings. For the category of the employees in question, the total required contribution in 2006 is 10.4% of wages of which 5% is the employee contribution.

At the 2005 wage levels of the bargaining unit members, including scheduled mandatory overtime, this would be \$4,088 per year per employee (according to the costing in Employer exhibit 8 which shows the total employee share would be \$3,538 and the Employer share would be \$4,639 in 2006). To help pay for the conversion, the Union proposes no wage increase in 2006. A 3% wage increase is proposed, though, for 2005.

The Employer's final offer proposes to maintain the current plan and increase its contribution in each of the contract years. Its wage increase proposal is 3% in each year.

### **III ARGUMENTS OF THE PARTIES (SUMMARY)**

#### **A. The Union**

The Union analyses the final offers against each of the statutory criteria. First, regarding the Section '7R' factors, the Union contends that the "lawful authority of the municipal Employer" and the "Stipulations of the Parties," respectively, should not affect the outcome and should receive little or no weight. Regarding the "interest and welfare of the public," the association asserts that its final offer best serves the citizens of Redgranite by recognizing the need to maintain the morale and health of its employees and thereby retaining the best and most qualified employees. As for the "ability to pay," the Union notes that the financial

ability of the Employer to meet the fiscal impact of the contract has not been brought forth by the parties as an issue.

The Association views the wage comparisons of the personnel employed by Redgranite to personnel employed by similar departments as the most prevalent comparison made in these proceedings. These comparisons to other employees in public employment performing similar services in comparable communities, the Union asserts, strongly favors the adoption by the arbitrator of the association's offer. In making these comparisons, the Union believes the appropriate group of external comparables to include the following municipalities: Coloma, Omro, Princeton, Wild Rose, and Winneconne. They detail the similarities in these communities. It is also noted that all these municipalities, save Wild Rose, have employees who have collective bargaining agreements with their employer. In contrast, the Village has put forth seventeen various municipalities, eleven of which whose comparable employees for this proceeding are non-represented. Even so, the Employer's pool supports the Association's position regarding the primary issue of utilization of the Wisconsin Retirement System (WRS).

When compared to its comparable group, the Union believes its final offer is even more justified on the primary issue of appropriate retirement benefits. They believe it can not be disputed that the Association's final offer, relative to the issue

of retirement plans, is in keeping with the mainstream of comparable employee's benefits. The Association's suggested pool of five comparable employers all participate in the Wisconsin Retirement Plan. Fourteen of the Employer's nineteen comparables participate in the State plan. Only five provide a private pension plan. Thus, the overwhelming evidence is that the "standard" for retirement plans is that of the WRS. The evidence also shows that the comparable employers contribute both the employer and employee portion of the contributions for their full time employees.

As for the cost of their proposal, the Union notes the two employees, including mandatory overtime worked (in 2004) 2,130 hours yielding an annual wage of \$32,312. Under the old plan, the retirement contribution of \$2,000 equated to 6.2% of wages. If the Employer were a participant in 2004, the required participatory contribution to WRS totaled 9.8% of wage. Therefore, using 2004 as the benchmark, the Employers contribution would have, assuming participation in the WRS, cost an additional 3.6%.

The Union suggests that this cost is justified, in part, by the fact the Employer's labor rate is neither at the top nor the bottom of the wages paid similar employees. The Union's five comparables range from \$12.69 per hour to \$19.30 for similar employees. The average wage is \$16.38. Redgranite employees get

less than the average at \$15.63. The Union argues that--when this added to the fact that they receive a level of compensation that is also 3.6% below the comparable pool by virtue of non-participation in the WRS--the disparity between these groups looms even larger and the reasonableness of their offer is even more apparent. Further, in terms of cost, the Union anticipates the Employer will argue that the Union's offer should be avoided because there is the potential expense associated with the cost of crediting employees' accounts for prior years service. While this is true, the Union notes it did not include such a proposal in its Final Offer due to the extraordinary cost associated with such a proposal. While it could be bargained in the future, this substantial cost would have to be recognized by the Union, if it ever made such a proposal.

The last three factors addressed by the Union are the cost of living, overall compensation, and change in the factorial circumstances. The Union makes the following argument: (1) the best measure of the impact of the cost of living on wages is the settlements in comparable communities; (2) no singular benefit elevates the members of the Association to any level which can give cause to find its final offer as unreasonable; and (3) there have been no changes in relevant circumstances.

B. The Employer



The Employer's view of the interest arbitration process is that it is intended to place the parties in the same position as they would have achieved had the parties been able to reach a voluntary agreement. With this and the statutory criteria in mind, it is argued that the Village's offer is more reasonable and the Union's offer is unreasonable because it would force the Village to pay retirement benefits far beyond the two employees in the bargaining unit at a cost the Village simply can not bear at the current time.

This relates to the fact that WRS requires all employees of the municipal employer, working 600 hours or more, enroll for coverage. As a result, 13 Village employees would have to enroll in WRS and contributions would have to be paid for all--not just the two employees in the bargaining unit. The cost to move to the WRS plan for all Village employees would be \$36,256 versus the \$14,860 the Village will spend on the current pension benefit. They describe the difference of \$21,396 as the real cost of the Union's proposal. They also express concerns: (1) that the Union asks for the employee share to be paid fully and immediately rather than gradually; and (2) that there is great potential for bargaining over prior service credits which, under WRS rules, the Union can bargain for application of the prior service credits in increments of 25 percent at any time.

The Employer believes that the current system is more preferable. It is more

affordable for the Village. It also increases the Employer's IRA contribution by 12% and 11% (from \$2,000 to \$2,240 - \$2,480). This contribution is the equivalent of 7% in salary and compares favorable to other villages who do not provide WRS coverage. Moreover, the rate of return under the Village's Prudential plan is better than the State plan.

The Employer estimates the cost/value of its total package offer at 5.6% in 2005 and 5.5% in 2006. The Union's cost/value is 5.1% in 2005 and 6.7% in 2006. In terms of the differences in the offers, the Village asserts the total salary and benefit increase under the Village's offer will be \$7,319 and under the Union's offer \$8,177. This is only a \$858 difference. However, this doesn't account for the far reaching consequences of having to extend WRS to all Village employees. It would cost an additional \$21,396 to fund WRS for all eligible Village employees on the same basis as the Union's offer.

The Employer also contends that its comparable group is superior to the Union's, as it is more comprehensive. It submitted a number of municipalities that are in the immediate geographical area of similar size and operate both a water and wastewater utility. The Village selected municipalities that were within 45 miles of Redgranite, had a population between 450 and 6,000 and have both a water and wastewater operation to be most comparable to the positions in Redgranite. They

also included two (Almond and Oxford) that do not have water plants. The Employer included all the Union comparables except Wild Rose which does not have water service--only wastewater service. The Union's group is too limited, says the Employer, and because it is a small group, the inference of Omro and Winneconne is skewed. They are bedroom communities to Oshkosh and relatively more wealthy and economically vibrant.

The Employer, as the Union, review the offers against the statutory criteria. The first criteria addressed is the one the arbitrator must give the greatest weight to and that is any State law that places limitations on revenue to be collected by the Employer. The Village expresses concern with the new budget passed by the State which would limit the tax levy increase in 2005 and 2006 to two percent or the growth in new construction, whichever is greater. A two percent tax levy increase is going to be problematic for the Village because it only allows for a \$3,770 overall budgetary increase. The cost to fund retirement for all village employees (\$21,000) far exceeds this. There is also a long list of other increasing expenses to be addressed as well. In short, the two percent levy limit will have a significant impact on the Village's ability to continue to provide its residents with the level of services they have come to rely upon. Therefore, they conclude the Village's offer is preferred under the greatest weight criterion that will impose tax levy restrictions

on the Village.

The factor to be given “greater weight” that any of the ‘7R’ factor is the “economic condition” of the municipality. The Village believes the local economic conditions in Redgranite warrant adoption of the Village’s more modest final offer.

The Employer asks the arbitrator to consider the following economic conditions:

(1) the per capita personal income in Waushara County is significantly below the State’s and all other area counties; (2) the median household income in 2000 for Redgranite was below the State average at \$26,726; (3) the median house value was below the State average at \$59,100; (4) the unemployment rate for Waushara County has been relatively high; (5) the average annual wage for all industry groups in Waushara County was at 67 percent of the State-wide average; (6) Waushara County’s per capita personal income, which includes wages and dividends, interest and rent and transfer payments such as social security insurance, welfare and pensions, is below the State and national average; (7) Waushara County has a significant elderly population of age 65 or older at 18.5 percent of the population in the County compared to 13 percent of Wisconsin’s population; (8) in Waushara County in 2000, 21 percent of the population over age 25 was without a high school diploma and 12 percent of the population had a bachelor’s or graduate degree and, in the same year, the reverse was true for the whole State of Wisconsin--15 percent

of the population over age 25 did not have a high school diploma and 22 percent of the population had a bachelor's or graduate degree; (9) in 2003, Waushara County's median hourly wage is \$11.24 which is low compared to Waupaca County's of \$11.71; Portage County's of \$12.08; Adams County of \$11.81 and the Fox Valley's of \$13.92; (10) the median family income in Waushara County is significantly below the State average; (11) the percentage of residents living below poverty in Waushara County was 9.1 percent compared to Wisconsin's 8.7 percent; and (12) most local employers do not offer the fringe benefits the village does.

The Village also addresses the fact the Union is proposing a major change in the status quo. They argue that the move to the State retirement plan proposed by the Union should not be imposed by the arbitrator but rather negotiated between the parties. This is so, in their opinion, because: (1) the Union has failed to prove a compelling need for change; (2) the Union has failed to prove the WRS Plan solves the alleged problem; (3) the Union has failed to provide a quid pro quo adequate to meaningfully defer the cost of WRS.

Regarding the '7R' factors, the Village argues:

- A. Their offer is in the interest and welfare of the public because it is more consistent with the economic and political environment.
- B. The Village's proposed wage increase is very competitive when compared to its comparables which, generally, agreed to a similar increase as proposed by the Employer.

- C. The comparisons to private sector wages, State-wide and locally, show the Employer's offer to be very reasonable.
- D. Compared to other employees doing similar work in similar municipalities, the Village's wage rate is competitive--ranking 4<sup>th</sup> of the Union's 6 comparables.
- E. The Village's offer best meets the cost of living factor.
- F. The overall compensation factor is best met by the Village's offer that provides a generous wage and pension increase and no adverse changes to health insurance.
- G. Among the changes in the '7R' factors, the Village notes that fuel prices are rising which they believe favors their offer.
- H. The "catch all" or "other factors" criteria also favor the Village because the Union has not proposed any "phase in" of the "pick-up" of the costs of retirement as would normally be expected for adopting this kind of benefit and adoption would require conversion of all other eligible employees. Moreover, the Village's seven percent is equal to the average amount funded when compared to the five other communities that provide a private pension. This proves that the Village's current contribution of \$2,480 or seven percent of salary is competitive based on comparisons to non-WRS plans.

#### IV. **DISCUSSION AND OPINION**

This case presents a most unique set of circumstances. At the center of the unusual interest arbitration case is the fact that selecting the Union's final offer will, without question, require the Village to grant pension benefits to a number of employees that don't have them and will raise pension benefits for a total of thirteen employees. It can not be disputed the Union's final offer will, at a minimum, have

a cost impact far beyond just granting the benefit to the two bargaining unit employees. It is true that the Village's 2005-2006 cost for water and wastewater wage and benefits will only be \$858 more than the employer's. However, because WRS will require all eligible employees be covered, the Employer will have to enroll all eligible employees and pay, at least, the Employer's share, which is 6.4% for general and 8.1% for protective services. This cost won't, necessarily, be as high as the city suggests (\$21,396) because their calculations assumed the Village would pay both employer and employee share, but it still will be significant (in the neighborhood of \$12,000 to \$13,000). This cost will exceed the direct cost difference of the offers (\$858) at least by a factor of approximately 14 times.

Moreover, while it is true the Employer doesn't have to pay the employee's share, it can't be ignored that, if the Village doesn't pickup the employee's contribution of 5%, it will mean a drop in take home pay for these 13 employees, So, the Employer is between the proverbial rock and a hard place. If the Union's offer is awarded and the Village picks up the employee's share for other eligible employees, it costs a lot more money. If they don't, they will have the morale and turnover problems associated with a cut in take home pay (even though it might be in the best interest of employees in the long run).

Applying the statutory criteria to these facts, the arbitrator must give the

greatest weight to revenue limits and the greater weight to local economic conditions. While \$12,000 to \$21,000 doesn't sound like a massive amount of money, it is all relative to the size of the pie. With a cost impact approximately 3 to 5 times greater than the potential limit on revenue growth, it is difficult to say the "greatest weight" factor doesn't militate toward accepting the Employer's offer. At a minimum, there are no persuasive reasons identified in this record under these circumstances to conclude otherwise. The same thing can be said about the greater weight factor.

Even in the absence of the greatest and greater weight factors, the Union has an uphill battle. On the basis of the '7R' factors, this dispute is a classic battle of external comparables favoring one position (in this case, the Union) and internal comparables favoring another (in this case, the Employer). The external comparables favor the Union on the amount of their pension benefit. The internal comparables favor the Employer, not only on amount, but the form (IRA vs. WRS) of the retirement benefit.

The arbitrator believes the bargaining unit deserves some catch up on the amount of pension benefit. However, the administrative form (WRS vs. IRA) is too troublesome given the WRS "if one then all" rule. It is also troublesome that the Union seeks to catch up all at once. It would be more reasonable to seek a



meaningful measure of catch up on a gradual basis and on a basis (i.e. the current IRA system) that does not have cost impact beyond the bargaining unit to the whole of the Village's workforce. Ironically, the Employer's offer does a better job on this measure.

For all the foregoing reasons, the arbitrator finds the Employer's final offer more consistent with the statutory criteria.

**AWARD**

The Employer's final offer will be part of the parties 2005-2006 Collective Bargaining Agreement.

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Gil Vernon, Arbitrator

Dated this 15th day of November, 2005.