BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 1213-A, AFSCME, AFL-CIO

and

SAWYER COUNTY

Case 150
No. 64212 INT/ARB-10317
Decision No. 31519-A

Appearances:

Mr. James E. Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8480 East Bayfield Road, Poplar, Wisconsin 54864, on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Ms. Kathryn J. Prenn, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, on behalf of the County.

ARBITRATION AWARD

Local 1213-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Sawyer County, hereinafter referred to as the County or Employer, met on several occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 2004. Said agreement covered all regular full-time and regular part-time non-professional human services employees, excluding the Director, the Human Services Supervisor, and supervisory or confidential personnel. Failing to reach such an accord, the Union, on November 26, 2004, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties by October 24, 2005, issued an Order wherein it determined that

the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of seven arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on December 19, 2005, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on April 25, 2006, at Hayward, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial and reply briefs were filed and exchanged, and received by July 21, 2006. The record was closed as of the latter date.

THE FINAL OFFERS OF THE PARTIES:

The Union and County Final Offers are attached and identified as Attachment "A" and "B," respectively.

BACKGROUND:

The instant paraprofessional unit, with approximately 14 employees, is one of five bargaining units in the County. The others are the Courthouse (71 employees), professional (24), Highway (28) and (Sheriff's (40).

The professional, Highway and Sheriff's units have settled on the same terms the County has offered the instant Union in its final offer. Said units settled for a 2%, 1% split increase effective January 1 and July 1 of each year (2005-2006). The Highway unit contract includes a "me-too" clause in the event a higher wage increase is received by another unit.

POSITIONS OF THE PARTIES:

The parties filed extensive well-reasoned briefs and reply briefs. The parties' positions and arguments and cases cited are not reproduced in detail, but the parties should be assured that the Arbitrator has read and re-read their briefs in their entirety in reaching his decision. The parties' main arguments are discussed below in the discussion section.

DISCUSSION:

Appropriate Comparables

This is the first arbitration case between the instant parties. Sawyer County has been to arbitration one other time with another unit, but the Arbitrator made no determination as to the appropriate set of external comparables. Therefore, a determination of which counties constitutes the appropriate external comparables has not been established for Sawyer County.

The Union proposes the following counties as being appropriate comparables: Ashland, Barron, Bayfield, Burnett, Douglas, Iron, Price, Rusk and Washburn. The Union argues all except Burnett and Iron counties are contiguous to Sawyer County.

The Union contends that in terms of proximity and other relevant factors such as population, equalized value and commuter patterns its set of comparables is appropriate. Further, the Union cites awards in Burnett, Douglas and Barron counties in which the Arbitrator found Sawyer County to be an appropriate comparable.

The County differs, alleging that only the counties of Ashland, Bayfield, Price, Rusk and Washburn should be considered the primary external comparables. These counties are contiguous to Sawyer County. In this regard, it is the County's position that while Barron and Douglas counties "touch the corners," they are not directly contiguous. Furthermore, their populations are more than twice that of Sawyer County. It is argued that the most important factors to be considered are proximity and population. The County claims its comparables best meet these factors. The County argues that the Union's proposed counties of Barron and Douglas are far more populated and Burnett and Iron counties are not part of Sawyer County's local labor market.

The Arbitrator notes that arbitrators have used various indices to determine the appropriateness of comparables. But, typically, the principle factors considered are geographic proximity and size. Proximity reflects the labor market and size reflects the Employer's relative ability to compete.

After considering all of the arguments presented by the parties in support of their position, the Arbitrator finds the appropriate set of comparables to consist of the agreed-upon five counties of Ashland, Bayfield, Price, Rusk and Washburn, plus the additional contiguous counties of Burnett and Douglas. While the latter two are larger than Sawyer County, they share the same labor market as Sawyer County. This fact has been recognized by Arbitrators in awards involving Burnett and Douglas counties. In those cases, the Arbitrators found Sawyer County to be an appropriate comparable.

Determination of the Parties' Wage Offers as Determined by the Statutory Criteria

In deciding the issue presented, Section 111.70(4)(cm)7, Wis. States., requires the Arbitrator to consider the following factors:

> 7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
>
> 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
>
> 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
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> a. The lawful authority of the municipal employer.
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> 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.
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> e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
>
> f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings

with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The sole issue in this case is the amount of wage increase for calendar years 2005 and 2006.

The Union proposes a 3% increase for each of the two years, while the County proposes a 2%, 1% split effective January 1 and July 1 in each of the two years.

The parties do not rely on all of the statutory criteria in support of their offers. The criteria not relied upon are 7, 7r. a., b., h., i. and j. Since said criteria are not addressed by the parties, the Arbitrator (as did the parties) determines them to be non-determinative of the issue presented.

With respect to the remaining criteria, 7, 7r. c., f. and g. were addressed, but, clearly, they are not as significant as the primary criteria d. and e.; internal and external comparables.

The difference between the parties' offers is only $4,266 and, as such, the parties agree that the "greatest weight" factor "has no bearing on the outcome" of this case. In the same vein, the Arbitrator finds the "greater weight" criterion to be a non-factor. The economic condition of the County is certainly healthy enough to support not only the County's offer, but the Union's final offer as well.

The Arbitrator finds that factors c. (interests and welfare of the public and financial ability to pay), f. (comparison with private sector settlements) and g. (cost of living) are secondary to internal and external comparables, and does not find them, individually or collectively, to be influential in the outcome of this case.

In this regard, the Arbitrator finds that the interest and welfare of the public is served by either of the two final offers. The difference between the two offers is slight and certainly not great enough to create an ability to pay issue. This criterion has no impact on the reasonableness of either final offer.

Criterion f. requires a comparison with private sector employees. Only one such settlement was presented; Duluth Clinic in Hayward. There is a slight dispute between the parties as to whether the two-year agreement was for a 3.5% increase each year or if the second year (7/1/05) was a 3% increase. The County points out that the benefits provided by Sawyer County are much better. That may be true, but the settlement itself even if at the lower increase of 3% the second year favors the Union's offer.

The last criterion, g., cost of living, is really not compelling. For comparison purposes the Arbitrator agrees with the Union that CPI should be compared to the actual wage increase and not the total package cost. The undersigned agrees with the arbitral authority cited by the Union reasoning that it is the wage increase and not the total package cost to the employer that

insulates employees against erosion of the dollar caused by inflation. [1] Using the County's CPI figures, the CPI increases in 2004 and 2005 were 3.4% and 4.3%, respectively. The cost of living, therefore, favors the Union's offer. This, however, is tempered by the fact that all other settlements, internal and external, were negotiated with the same CPI increases as a factor.

Lastly, the County argues that the Arbitrator should take into consideration the fact that the parties reached a tentative settlement with the County's offer, but it was rejected. It is the County's position that the fact of a tentative agreement establishes the reasonableness of the County's final offer.

The instant arbitrator was faced with this issue in Marathon County (Courthouse Professionals), Dec. No. 29519-A, 10/99. The Arbitrator reaffirms his conclusion in that case as follows:

> The issue is whether a tentative agreement reached by the parties in negotiations, but rejected by one of the parties, should be allowed as evidence in an interest arbitration proceeding. For reasons stated previously by many other arbitrators, I think not. Simply put, parties should be encouraged, not discouraged, to voluntarily settle their differences in negotiations (and mediation) without fear of subsequent consequences. To allow the introduction of rejected tentative agreements during negotiations would have the opposite effect and hinder the free exchange of ideas and positions in bargaining.

What remains, then, are the internal and external comparables. As discussed earlier, these are the most significant criteria and will determine the outcome of the case, unless the result is so close that the other factors discussed above tip the scale.

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[1] Whitewater School District, Dec. No. 30740-A, 9/10/04 (Yaeger); Manitowoc Public School District, Dec. No. 30473-A, 5/22/03 (Eich); Monona Grove School District, Dec. No. 28339-A, 10/95 (Kessler); Brown County, Dec. No. 26207-A, 5/90 (Kerkman); and Village of Butler, Dec. No. 26501-A, 12/90 (Slavney).

This case is a classic case of one party relying on internal comparables and the other party on external comparables. Here, as is usually the case, the Employer relies on its internal settlements while the Union relies on external settlements.

There are five bargaining units in the County: Courthouse, Highway, Human Services Paraprofessionals, Law Enforcement and Professionals. The Highway, Law Enforcement and Professional units have settled for 2005 and 2006 for the same wage increase and package as proposed to the instant unit. Said units represent somewhat more than half (92/177) of the County's represented employees.

It is the County's position that a pattern has been set. Further, the County argues that from 1989 to the present the five internal bargaining units have voluntarily settled with the same wage increases and health insurance changes. It is the County's position that internal comparisons are more important and should prevail over external comparables.

The Union takes issue with the City's assertion and claims that an internal settlement pattern does not exist among the five bargaining units. The Union argues that the Highway unit while agreeing to the same package as offered by the County, settled conditionally with wages tied to a "me too" clause. Thus, only two units have unconditional settlements for 2005 and 2006. It is noted that in addition this unit, with 14 employees, not settled, the largest bargaining unit, the Courthouse, with 71 members is also unsettled and in interest arbitration. Thus, there is no pattern.

The external comparables are as follows:

EXTERNAL WAGE INCREASE
COMPARABLE COUNTIES

COUNTY	2005	2006

Ashland	3 %	2 % -Jan. 1
Barron	3 %	3 %
Bayfield	3 %	2.5 %
	. . .	
Douglas	3 %	2.5 %
	. . .	
Price	3 %	3 %
Rusk 2	2 % -Jan. 1 1 % -April 1	2 % - Jan. 1 1 % - July 1
Washburn	3 %	3 %

2. Primary issue in dispute involved a health insurance benefit issue.

The Union argues that the external comparables clearly support its offer. Using its set of comparables, the Union points out that for 2005 all but one, Rusk County, settled for 3%. Rusk settled for a 2/1 split. In 2006, there is a combination of 3% and 2%/1% split settlements. Two settled for 2.5% but another for a 2%/2% split. All in all, the Union argues that its offer of 3% is more in line with the comparables than the County's.

If this case only involved a comparison with external settlements and no internal settlements, the Arbitrator would undoubtedly select the Union's offer as the more reasonable. While the two offers are very close and both reasonable, the Union's offer is more in line, and does not exceed, the settlements among its comparables.

However, there is considerable arbitral authority that where a pattern exists among internal comparables, significant weight should be given to the internal pattern. In City of Milwaukee, Dec. No. 25223-B (9/98), Arbitrator Zel Rice held:

> Forgetting the concept of parity, the mainstream of arbitral opinion is that internal comparables of voluntary settlements should carry heavy weight in arbitration proceedings. . .If the Employer is to maintain labor peace with the many bargaining units with which it negotiates, changes in wages and benefits must have a consistent pattern.

More recently, Arbitrator Thomas Yaeger in City of Tomah, Dec. No. 31083-A (2/05) stated the significance of internal comparisons as follows:

> An employer's ability to negotiate to a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight.

Likewise, the undersigned Arbitrator in several interest arbitration cases[2] has held internal comparables to be of significant importance. In Washington County (Department of Social Services), Dec. No. 30459-A (5/03) the instant Arbitrator discussed the issue as follows:

> Generally stated, both employers and employees have the same interest when it comes to internal comparables. Both recognize that consistency among various bargaining units and equitable treatment of employees promotes stability in the collective bargaining process and positively impacts employee morale. It is for said reason that arbitrators favor internal comparables over external comparables where a pattern exists, unless there is good reason to deviate. (p. 21)

Here, the only issue in dispute is the wage increases, and the parties' final offers are fairly close. The wage rate build-up is the same under both offers,[3] but, under the County's offer, the

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[2] See also City of Cudahy (Firefighters), Dec. No. 30434-A (4/03) and Rio Community School District, Dec. No. 30092-A (10/01).

[3] Actually, the County's wage rate is one or two cents higher because of the compound affect of the split increases.

effect of a split increase is that employees must wait six months each year before receiving 1% of the total wage increase.

Three [4] of the five units settled for the exact package offered by the County. Although the largest unit has not settled, the internal settlements cover more than a majority (92 of 177 employees) of the represented employees. Therefore, it must be given considerable weight.

Further, and importantly in this case, the bargaining history of the five bargaining units favors the internal comparison criterion. Since 1989, all five Sawyer County units have voluntarily settled for the same wage increases and health insurance changes (Employer Exhibit 13 and 14).

Based on the pattern of internal settlements and the parties' bargaining history, the internal comparability criterion must control. No compelling reason has been offered for an exception. While the wage increases of the external comparables slightly favor the Union, the wage rates of this unit are not such that a valid "catch-up" argument can be made. Evidence was introduced on the Economic Support Specialist (ESS) and Clerk-Typist classifications. [5] Under either offer, the ESS in Sawyer County ranks behind Ashland, Bayfield and Washburn counties, but ahead of Price and Rusk. Under either final offer, ESS would be below the minimum average, but above the maximum average by 31¢ in 2005 and 34¢ in 2006.

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[4] The Union argues that the Highway settlement was conditional with a "me too" on wages. But, for internal comparison purposes, the Arbitrator does not deem the "me too" important because the Union voluntarily settled on terms it, assumingly, considered reasonable. The "me too" protection the Union was able to negotiate does not debase the reasonableness of its settlement.

[5] Employer Exhibits 26-28 and Union Exhibit 9.

The Clerk Typist classification at the minimum ranks below two of the comparables (Ashland and Bayfield), but the maximum is ahead of all but one, Bayfield. Under either offer, the Clerk Typist classification is $1.45 ahead of the average in 2005 and $1.46 in 2006.

Conclusion

The difference between the two final offers if $4,266. The County concedes there is no "ability to pay" dispute. The parties agree that the "greatest weight" criterion has no bearing on the outcome of this case. The Arbitrator concludes the same with regard to the "greater weight" factor. The County's financial situation is healthy and neither the "greatest weight" and "greater weight" factors precludes a finding in favor of the Union.

Criteria 7, 7.r.a., b., h., i. and j. were not considered by the parties to be relevant in the determination of the reasonableness of the parties' final offers.

The interest and welfare of the public, criterion c., is not adversely affected by either final offer and, consequently, not a factor.

The criterion requiring comparison with the private sector favors the Union, but with only one private sector settlement for purposes of comparison, the significance of this factor is minimal.

The cost-of-living criterion favors the Union, but the weight of this factor is diminished by the fact that the parties in all of the internal settlements, who were faced with the same CPI increase, agreed to the same wage increase as offered by the County here.

The internal and external comparability criteria are the most important in determining which of the two final offers is the most reasonable. It is well-established by arbitral authority that internal comparables are given greater weight than external comparisons unless there is good reason to deviate. Here, while the external comparables favor the Union's final offer, the

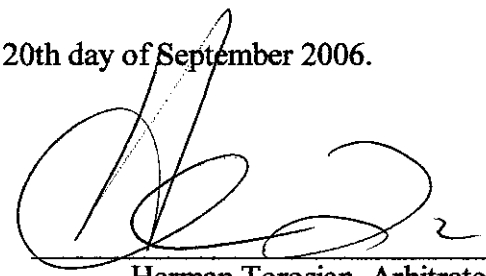
internal pattern of settlements favor the County. Furthermore, the bargaining history of Sawyer County and its units, including this unit, overwhelmingly supports settlements on the basis of an internal pattern. Since there is no compelling reason to deviate from the internal settlements (like a catch-up agreement), the internal comparables must prevail and the pattern followed.

Having considered the statutory criteria, the evidence and arguments presented by the parties, the Arbitrator, based on the above and foregoing, concludes that the offer of the County is more reasonable than the offer of the Union, and in that regard the Arbitrator makes and issues the following

AWARD

The County's offer is to be incorporated in the 2005-2006 two-year collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement that they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 20th day of September 2006.



Herman Torosian, Arbitrator