In the matter of the Interest Arbitration Between Sawyer County and Local 1213 (Courthouse) AFSCME, AFL-CIO	: : : : : : :	 Case 149 No. 64211 INT/ARB 10316 [Dec. No. 31520-B]

Appearances:
Weld, Riley, Prenn & Ricci S.C. by Ms. Kathryn J. Prenn, for the County

Wisconsin Council 40, AFSCME, AFL-CIO by Mr. James E. Mattson Staff Representative, for the Union

By its Order of March 22, 2006 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of the [Union] or the total final offer of the [County]."

A hearing was held at Hayward, Wisconsin on June 29, 2006. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed with the receipt by the arbitrator of the parties' reply briefs on October 10, 2006.

There is only one issue in dispute: the percentage wage increases for 2005 and 2006. The County's final offer is:

2% effective January 1, 2005
1% effective July 1, 2005
2% effective January 1, 2006
1% effective July 1, 2006

The Union's final offer is:

3% effective January 1, 2005
3% effective January 1, 2006

In making his decision the arbitrator is obligated to consider the statutory factors. There is no dispute about several of them: 7r.a) lawful authority of the Employer; 7r.b) stipulations of the parties; that portion of 7r.c) pertaining to "the financial ability of the unit of government to meet the costs of any proposed settlement; 7r.h overall compensation; 7r.i) changes in circumstances during the pendency of the arbitration. The other factors will be considered in turn.

Both parties presented evidence pertaining to factors 7, "Factor given greatest weight," and factor 7g "Factor given greater weight." It became clear to the arbitrator, based on the evidence presented and the briefs and reply briefs, that neither of these factors should affect

the outcome of the dispute. These factors address limitations on expenditures that may be made, or revenues that may be collected, and economic conditions in the jurisdiction of the Employer. The cost difference between the parties' final offers totals slightly less than $ 20,000 for two years, which is not a sum which is sufficient to make these factors relevant.

Factor 7r.c. addresses the "interests and welfare of the public." The Union views this factor as not favoring either party's position. The Employer views this factor as weighing in its favor because, it argues, support of the Union's position under all of the circumstances of this case, would encourage the unions with which it bargains to opt for arbitrated settlements rather than voluntary agreements. The arbitrator will address this concern in relationship to other factors, below.

Factors 7r.d and 7r.e address comparison of wages, hours and conditions of employment of the employees involved in this arbitration, with those of "other employes performing similar services," and "other employes generally in public employment in the same community and in comparable communities." The arbitrator will considers these two factors together.

One comparison is with the other bargaining units of Sawyer County. There are five bargaining units. The Employer made the same wage offer to each of the bargaining units. Two of them reached voluntarily settlements on those terms. A third unit agreed to those terms, but the agreement also contained a "me too" clause such that if any of the other units received a larger wage increase it, too, would receive the larger increase. A fourth unit is in arbitration. The Employer argues that a pattern has been established in support of its wage offer, and this should weigh heavily in favor of the Employer's offer. The Union disagrees, arguing that only two of the five bargaining units have settled voluntarily on the Employer's terms.

The arbitrator supports the Employer's arguments that a pattern has been established of voluntary settlements by the internal units on the terms offered by the Employer. This is so because the "me too" bargaining unit voluntarily reached agreement, and by doing so demonstrated that it viewed the Employer's offer as a reasonable basis for settlement. The "me too" provision is a hedge against anyone else getting a richer agreement, but the inclusion of the "me too" language does not suggest that the terms were not reasonable, and in fact they would be completely acceptable if no one else received more. Thus three of five units, representing 92 of the County's 177 employees, have accepted the pattern thus far and the other two units are in arbitration.

Another comparison is with comparable counties. The parties agree that Ashland, Bayfield Price, Rusk and Washburn Countiies, all of them contiguous with Sawyer County, should be viewed as comparables. There are two other contiguous counties, Barron and Douglas which the Union also views as comparables, but the Employer does not. The Union would also include as comparables Burnett and Iron Counties, but the Employer would not.

The arbitrator believes that all of the contiguous counties should be viewed as comparables, notwithstanding the Employer's arguments that

Barron and Douglas Counties only "touch the corners" of Sawyer County, and have much larger populations and contain large cities. The arbitrator is not persuaded that either Burnett or Iron County should be viewed as comparables notwithstanding the fact that two arbitrators in Burnett County disputes have counted Sawyer County as a comparable. The arbitrator views the seven contiguous counties as a sufficient basis for making comparisons.

For 2005, 3% wage increases were negotiated in Ashland, Barron, Bayfield, Douglas, Price and Washburn Counties. Rusk County had a 2% increase in January and 1% additional in April. Thus, all of the comparison counties had increases above the 2%/1% split offered by the County, and almost uniformly the increase was 3%, as offered by the Union.

For 2006, Barron, Price and Washburn Counties had a 3% increase. Bayfield and Douglas Counties had a 2.5% increase. Ashland and Rusk Counties had 2%/1% splits. The median increase was 2.5%, which is closer to the Employer's offer than to the Union's offer.

Viewed over the 2005-2006 period, the median lift for the two year period was 6%. Both the Union's and the Employer's offers have lifts of 6%. Thus, both final offers are reasonable in comparison to the lifts given in the comparable counties, although during the term of the Agreement, the Union's final offer provides the employees of the bargaining unit with more income than does the Employer's final offer. Income for two years is half of one percent above the median of the comparables under the Union's final offer, and half of one percent below the median of the comparables under the Employer's final offer.

Both parties argued at length about the affects of their offers on particular job classifications in the bargaining unit compared with those classifications in comparable units. They were not in agreement, however, about which comparisons were the appropriate ones. Neither party included adjustments for particular classifications in their final offer. If wages for particular classifications are out of alignment, currently or historically, with identical or similar classifications in comparable counties, specific adjustments may be in order and may be bargained, but those matters are not determinative in reaching conclusions about the reasonableness of general wage increases in relationship to general wage increases given in the comparable counties. In the present matter, there is no indication that the parties addressed catch-up pay for specific classifications in the bargaining, and they did not address that issue in their final offers.

Another comparison is with public sector bargaining units which are not counties. The Union presented evidence with respect to Hayward Schools and Winter Schools. These data do not clearly favor one final offer more than the other. The data for the Town of Round Lake and Town of Spider Lake are incomplete. In the arbitrator's opinion these comparisons do not clearly favor one final offer more than the other, and in any event these comparisons are less significant than the comparisons with other counties.

Factor 7r.f addresses wages, hours and conditions of employment of the employees involved in this arbitration, with those of "other employes in private employment in the same community and in comparable communities." The Union cited one private sector, unionized comparison: Hayward Clinic. This private sector comparison favors the Union's final offer more than the Employer's, but the arbitrator does not attribute great significance to a comparison with only one employer.

Factor 7r.g addresses the cost-of-living. The most relevant figure relating to the cost of living is the increase which occurred in 2004, since that is what the parties would have taken into account as they bargained for a 2005-2006 Agreement. The index for non metropolitan urban areas for the North Central states for that period increased 3.4%. If only wages were taken into account, then the 3% offered by the Union for 2005 would be closer to the cost of living change than the 2%/1% split wage offer of the County. The CPI index includes more than wage increases, however, and includes changes in employer provided health care costs. The arbitrator is of the opinion that it is reasonable to consider increases in costs of employee benefits, particularly health insurance, which are borne largely by the Employer. The cost of the Employer's total package increase for 2005, calculated by the Employer is a 3.62% increase, while the Union's offer is calculated to cost 4.02%. Both offers exceed the increase in cost of living when total packages are taken into account, and therefore both final offers are reasonable in relationship to the change in cost of living. While it is not a determinative factor in this case, it is the arbitrator's view that the cost of living factor favors the Employer's offer slightly more than the Union's offer.

Factor 7r.j. addresses such other factors which are normally or traditionally taken into consideration through collective bargaining, mediation and arbitration. There is one such factor which the Employer views as relevant, a view with which the Union disagrees. During the bargaining for the 2005-06 Agreement which is in dispute in this matter, the Union's Bargaining Committee reached a tentative agreement with the Employer and agreed to recommend it to the Union membership for ratification. What was recommended was the wage offer which the Employer has included here in its final offer. The membership rejected the tentative agreement.

The Employer is correct in arguing that the significance of the tentative agreement is that the Union's bargainers viewed the wage offer as reasonable and one which should be accepted. The Union is correct in arguing that the membership had a right to reject the tentative agreement as it did, and that to count a rejection of a tentative agreement against the Union would put a chill on future bargaining, as it would make the Union bargainers reluctant to reach voluntary agreement knowing that it would count against them if they did so and the agreement were not ratified.

The arbitrator views the tentative agreement as relevant only as it signifies that its terms were viewed as reasonable by those most intimately involved in the bargaining process, i.e., the bargainers.

The arbitrator is required under the statute to select one final offer or the other. In his view the arguments for internal consistency of

wage increases among the bargaining units where, as here, a pattern has been established, is more persuasive than external comparisons where both offers are reasonable and one offer is not clearly more compelling than the other in relationship to those external comparison. As mentioned above, the Employer was concerned about the effects on future bargaining of a decision in favor of the Union in this matter. No further discussion of that argument is necessary, given the arbitrator's decision to select the Employer's final offer.

Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD:

The final offer of the Employer is selected.

Dated this 23rd day of October, 2006 at Madison, Wisconsin

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Edward B. Krinsky
Arbitrator