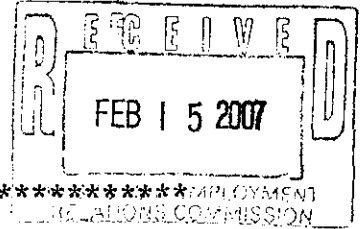


STATE OF WISCONSIN



*****EMPLOYMENT RELATIONS COMMISSION*****

**IN THE MATTER OF INTEREST
ARBITRATION**

OPINION AND AWARD

between

THE CITY OF WAUSAU

Case 109, No. 64536

INT/ARB 10403

and

[Dec. No. 31532-A]

**Wausau City DPW Employees
Local 1287, AFSCME, AFL-CIO**

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the City: Dean R. Dietrich, Attorney -- Ruder Ware

On Behalf of the Union: John Spiegelhoff, Staff Representative --
AFSCME Council 40

I. BACKGROUND AND FACTS

The City's Department of Public Works (DPW) (which includes water, wastewater, utilities and electrical departments) and the Union (which represents the employees in the DPW) have been parties to a series of collective bargaining agreements over the years. Prior to the contract which was due to expire at the end of 2004, the Parties, on September 2, 2004, exchanged initial proposals for a

successor agreement to cover the calendar years of 2005-2006. On February 24, 2005 a petition was filed requesting that the Wisconsin Employment Relations Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On June 20, 2005, and July 1, 2005, a member of the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by September 22, 2005, the Parties submitted to the investigator their final offers. Subsequently, the Commission ordered the Parties to select an Arbitrator. The undersigned was selected and his appointment was ordered January 17, 2006. A hearing was scheduled and held on June 7, 2006. Post hearing briefs and reply briefs were filed, the last of which was received July 31, 2006.

II. FINAL OFFERS AND ISSUES

There are six discrete issues raised by the final offers. They are: health insurance, wages, funeral leave, sick leave, call pay and uniform/clothing allowance. The two main issues are health insurance and wages. Concerning health insurance, the City proposes that, effective July 1, 2006, all employees contribute 9% toward the monthly health insurance premium cost. The Union does not make any proposals regarding health insurance contributions, instead suggesting that the status quo prevail. Under the prior contract, employees contributed 8%

toward the monthly health insurance premiums. Thus, the City is proposing to increase employee contribution by 1% of the premium.

Concerning wages, the Union proposes a 3% general wage increase effective January 1, 2005, and a 3% general wage increase effective January 1, 2006. The City proposes a 2% general wage increase effective January 1, 2005, a 2% general wage increase effective January 1, 2006, and a 1% general wage increase effective July 1, 2006. The City also proposes that effective December 31, 2004, an additional \$0.06/hour be added to the hourly rate of the Equipment Operator III position to equal an hourly rate of \$17.75.

The offers on the remaining issues are summarized below:

- (1) Funeral Leave: the City proposes the definition of relative for purposes of funeral leave be changed to include daughter-in-law, son-in-law, and grandchild. The Union proposes the definition of relative for purposes of funeral leave be changed to include daughter-in-law, son-in-law and foster children.
- (2) Sick Leave: The City proposes adding a catastrophic sick leave account that can be used when an employee is absent from work due to illness or injury. The Union proposes adding a catastrophic sick leave account that can be used when an employee is absent from work due to injury.

- (3) Call-In Pay: The Union proposes status quo with respect to the call pay language already contained in the Collective Bargaining Agreement. The City's final offer contains language that if an employee works in a higher classification for 3 or more hours in a "call in" situation, the employee will receive the rate of the higher classification. Furthermore, the City proposes deleting the last sentence of Section A regarding pay when an employee is called in more than once during a calendar day.
- (4) Uniform Allowances: The Union proposes status quo with respect to uniform/clothing allowance provision of the existing contract. The City proposes to, basically, increase the weekly allowance from \$5.50 per week to \$6.75 per week. The City also seeks to exclude employees classified as Engineering Technicians from this clothing allowance.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

At the outset, the Union addresses the greater weight and greatest weight criterion. They note the City was able to exceed the 2% levy limit by .911 and that again (as it has been since 1995) the City undesignated fund balance exceeded \$5

million at the end of 2004. The City also raises revenue for its water, wastewater and electrical departments through user fees. These fees are not counted against the tax levy. Thus, the Union concludes the City is hard pressed to argue that the greatest weight criteria should have significance, in this proceeding, given their ability to exceed the tax levy limit, strong undesignated general fund, and user fees.

As for the greater weight, the Union characterizes Wausau as having a strong healthy economy with property values almost reaching two million dollars in 2004, which is the highest of any other comparable municipality in the Union's comparability pool. Yet, the tax levy is modest near the median, suggesting the Union's offer is not inconsistent with the economic conditions. Indeed, they argue that with all of the various strong local economic conditions, it would appear that the greater weight criteria of the statutes should favor the final offer of the Union.

In making its comparisons to other communities, the Union uses the following comparability pool:

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|---------------|--|
| Merrill | Wisconsin Rapids |
| Stevens Point | Mosinee |
| Weston | Marshfield |
| Schofield | Marathon County (DPW streets dept. comparable) |
| Rothschild | Rib Mountain (wastewater dept. comparable) |

They urge the Arbitrator to adopt this comparable pool rather than the pool used in the last arbitration, which was 20 years ago and needs to be updated, to reflect that

economic conditions have changed. Moreover, subsequent interest arbitration awards have been issued changing the comparability pool.

The Union contends the more local pool is appropriate because the geographic labor market has shrunk with the high price of gas. In fact, evidence shows that nearly 87% of the workforce in Marathon County work in Marathon County. An extremely small and insignificant part of the Marathon workforce work in Langlade and Oneida (Antigo and Rhinelander). Also, the communities of Weston, Schofield, Rothschild, Mosinee and Rib Mountain, all in Marathon County, are really just an extension of Wausau and it is difficult to tell where one begins and the other ends. This is another change from 20 years ago. Moreover, in an interest arbitration award in Rhinelander neither party nor the Arbitrator compared themselves to Wausau.

The Union also looks to an award involving the City and the police and note that the Arbitrator utilized the Union's comparable group: Stevens Point, Marshfield, Wisconsin Rapids, Weston, Rothschild, Schofield, Marathon County, Wood County and Portage County. In addition to this group, the Union further argues that Mosinee, Marathon County (reference the highway dept. comparable) and Rib Mountain be included, as the comparable pool, as they also share a common labor market with Wausau. As for Rib Mountain's non-union status, they

note it provides this wastewater service to the Villages of Rothschild, Schofield and Weston and, therefore, it shares a commonality with these other communities and should be considered a comparable.

The Union anticipates that the City will rely on a so-called internal pattern with other City bargaining units and, in this regard, the Union offers a lengthy response. While some units settled, these groups were given a variety of incentives, by the City in an attempt to settle, that were not offered to Local 1287. This should discount the weight given to these distinguished settlements. For example, in a settlement, the city hall unit got a .06 percent per hour adjustment for two-thirds of the employees. Only one job classification in the DPW unit got this adjustment (and that was only 11 employees). The city hall unit also had favorable treatment under prior contracts.

There is a similar inconsistency with the fire fighters. Indeed, historically, there has been inconsistency internally relative to this unit. It is only the current contract term that the City has remained relatively consistent in its wage package to all internal units. This inconsistency extends to fringe benefits. For example, Local 1287 lags behind all other bargaining units in the City in their longevity benefit, retirement contributions, attendance incentives, sick leave caps, and paid holidays.

In this case, the Union argues the external comparables should be given controlling weight over the inconsistent internal settlements. The Union's comparable analysis shows that the City's final offer of 2% on January 1, 2005, and 2%/1% split in 2006 is woefully off the mark in relation to what other public employees doing similar work in other communities are receiving. As a result, it will be readily apparent that these employees will lag further behind their comparables, in certain positions in the future, if the final offer of the City is awarded. The external comparables should also be favored because the Union believes catch-up is called for. They did a classification by classification analysis of hourly rates, which showed that, in 2004, the position of heavy equipment operator was \$.67 below the average. There were approximately 17 employees in the position of heavy equipment operator. Even under the Union's 2005 offer, the position of heavy equipment operator would be \$.71 below the average hourly rate with the City's final offer. Furthermore, the position of mechanic is no longer on the average as in 2004 but will lag \$.06 with the Union's final offer and \$.24 with the City's. In 2006, heavy equipment operators will lag behind \$.99 with the Union final offer and \$1.18 with the City's final offer. In 2006, the mechanic position is \$.23 below the average hourly rate with the Union's offer and \$.42 with the City's offer. Similar lag appears in the water operator positions. In 2004, the Operator I

position lagged \$.16 below the average hourly rate. The Operator II position was above the comparable average. In 2005, the Union's final wage rate offer for the Operator I position lagged \$.26 below the average hourly rate. Under the City's final offer it lagged \$.45. Operator II position was still above average. In 2006, the position of Operator I was behind the comparables, under the Union's final offer, by \$.24 and \$.44 under the City's final offer.

The wastewater operator was slightly above average in 2004 but will start to slip in 2005 to \$.06 below average under the Union's offer and \$.13 under the City's offer. In 2006, the Union's offer brings the position to average, while under the City's offer, the negative differential increases to \$.20.

Concerning the position of lineman, the Union focuses on comparisons to Marshfield and Wisconsin Rapids since most comparables have electrical service provided by private utilities. The pay for this position has always been dramatically behind. In 2004, Wausau electrical linemen were already \$5.65 below the average hourly rate of their comparables. In 2005, under the Union's final offer, they were \$6.55 below the average hourly rate and \$6.74 with the City's final offer. In 2006, under the Union's final offer they are \$6.92 below the average hourly rate and \$7.11 with the City's final offer. The Union contends the City has not demonstrated a compelling need to change the status quo on health insurance.

Recently, the City saved \$470,000 on insurance and had only a modest premium increase after switching carriers.

Last, the Union addresses the cost of living criteria. The CPI-U, in December 2004, was 3.3% for all urban consumers, which is more appropriate for this hearing. This is greater than either offer. Thus, the Union's final offer more closely mirrors the CPI-U.

B. The City

It is the position of the City that, based on the national problem of rising health insurance costs, the strong internal settlement pattern, and the support of the external comparables, the Arbitrator must choose the City's final offer as most appropriate under the statutory criteria.

At the outset, the City addresses the comparables to be used. It is their belief that the Arbitrator should honor the external comparable pool established in the prior interest arbitration between the Parties. The use of this comparable group dates back to 1985 when the City and the Union proceeded to interest arbitration before Arbitrator Edward B. Krinsky. He established an external comparable pool consisting of Antigo, Marshfield, Merrill, Rhinelander, Stevens Point and Wisconsin Rapids. The City maintains further that arbitral precedent dictates that arbitrators should not veer from established external comparable pools unless the

evidence overwhelmingly shows that the established external comparable pool is no longer appropriate. As for the Union's attempts to disregard Antigo and Rhinelander, it is noted that the economic situations of Antigo and Rhinelander have not changed drastically since their inclusion in the established external comparable pool. The cities of Antigo and Rhinelander, while smaller than the City, are in the same geographic area as the City and are part of the same labor market. Their size is still relatively the same and it matters not that cities, other than Wausau, were utilized in arbitrations in Antigo and Rhinelander. Additionally, the new municipalities, introduced by the Union, are not, based on traditional criteria, comparables. More specifically, the City asserts that Mosinee, Rothschild, Schofield, and Weston are not comparable to the City on the basis of size and number of employees. In 2004, the City had a population of 38,912. For that same time period, Mosinee had a population of 4,162, Rothschild had a population of 5,071, Schofield had a population of 2,250, and Weston had a population of 13,003. The same is true regarding property values and numbers of employers. For instance, the City has 40 workers doing street work. In contrast, Mosinee has 5 employees, Rothschild has 5 employees, Schofield has 2 employees, and Weston has 11 employees performing street work. The same is, relatively, the case in other departments. The other specific factor that makes Rib Mountain not comparable is

its non-union status. The City also objects to the Union's intent to use the Marshfield Electric and Water Department and Wisconsin Rapids Waterworks and Lighting Commission as additional external comparables. These should not be external comparables as they are separate utilities. The Marshfield Electric and Water Department and Wisconsin Rapids Waterworks and Lighting Commission have separate governance boards as well as different structures and bargaining units from the cities of Marshfield and Wisconsin Rapids. These utilities are not controlled by the same entities that make the wage and fringe benefit decisions for the city bargaining units in Marshfield and Wisconsin Rapids. They also have the right, unlike the city, to set electric rates.

Lastly, in terms of external comparables, the Union provided no evidence in support of the use of Marathon County as an external comparable in this matter. The City takes the position that nothing has materially changed since 1985. Marathon County is still an extremely large county with a large number of employees doing only street-type work. However, employees in the Marathon County Highway Department do not perform water, sewer or electrical duties. This is just another example of the Union doing comparable shopping.

The City relies in part on the internal comparables arguing they strongly support the City's final offer. There are five other unionized bargaining units in

addition to the unrepresented employees. All of these groups have voluntarily set their wages and benefits for 2005 and 2006. All of the internal comparables have agreed to pay 9% toward health insurance premiums in 2006.

Similarly, the City's final offer, regarding wages, is supported by the internal comparables. Three of the four internal bargaining units and the non-represented employees have agreed to the same general wage increases, as they did in 2003-2004, and for 2005-2006. The transit bargaining unit received different wage increases for 2005-2006 but that was largely dependent on the fact that the transit union had been on a different bargaining cycle than the other City bargaining units, and its last contract was an 18-month contract to bring it into line with all of the other internal bargaining units. Similarly, where needed, as it did with the DPW unit, the City made extra classification adjustments.

Externally, the City contends its final offer is more reasonable. In terms of insurance, in 2006, virtually every comparable in the established external comparable pool pays more toward health insurance premiums than what is proposed under the City's final offer. Ten percent contributions are common, even in the Union's comparables. Regarding wages, there is overall support in the external comparables and regardless of how the general wage increases measure up against the other external comparables, the City still is well above average, in

regard to wages, for individual positions. The Union, the City says, is simply overreaching and unjustified in their proposal. With no evidence that employees are losing ground under the City's wage proposal, the Arbitrator must choose the City's final offer. In 2005, only two settled external comparables received wage increases in the 2% range. While the City's proposed wage increase of 2% in 2005 may not be one of the leaders, it is not completely out of line with the external comparables. In 2006, the City has proposed a 2% increase on January 1, 2006, and a 1% wage increase on July 1, 2006. This proposed wage increase is completely justified by the external comparables. In 2006, three of the settled external comparables have settled for 2.5% or less. Another external comparable settled for the exact same wage proposal as is being offered by the City. Only one external comparable settled for a 3% wage increase. The Union's proposal for 3% wage increases each year is simply not supported by the external comparables. An additional factor, that supports the City's wage proposal, is the fact that employees, in this bargaining unit, are consistently above average in wages paid for individual positions.

Returning to its proposal to increase the premium contribution of the employees from 8% to 9% in 2006, the City contends they have met the tests necessary to change the status quo. There is a problem (the rising cost of health

insurance). It is addressed, reasonably, and it has extensive support in the internal and external comparables. The City has also offered other offsetting provisions concerning call-in pay and uniform allowance that were not in the Union's original final offer. There are also a number of agreed upon changes including sick leave accumulation, sick leave conversion, catastrophic sick leave, night differential, parking costs, and an extra 1% in wages in July of 2006.

The City also addresses other statutory criteria. They contend: (1) private sector comparables support the City's final offer regarding health insurance contributions; (2) the local economic conditions support selection of the City's final offer, and; (3) the interests and welfare of the public are best served by adoption of the City's final offer. In this last respect, they stress the damage breaking the internal pattern will have. Rewarding these employees for "holding out" will have an adverse effect on other City employees and will chill future voluntary settlements. Moreover, there is no evidence that the City's final offer will cause any problems with recruitment or retention of employees.

IV. OPINION AND DISCUSSION

In spite of the Union's arguments to the contrary, there is an internal settlement pattern that needs to be considered. Indeed, there are some minor variances among the settlements with other units. However, these differences are

not fundamentally significant. The variances are reasonably related to the natural diversity of those bargaining units. Indeed, it is reasonable to expect an employer in voluntary bargaining to make reasonable but minor adjustments, in settlements, in meeting the individual needs of different employee groups as opposed to absolutely inflexible lock step bargaining. In this case, there are some slight differences, in total package costs, due to a number of factors including the recognition that certain individual and isolated wage/position classifications need special adjustments. There could be any number of reasons for these adjustments including, perhaps, job content and responsibility changes, external comparative wage erosion, internal equity and the like. The Parties best decide why. Such variances should be encouraged and not be penalized if they are reasonable and don't change the basic character of the settlement. In this case, it is the judgment of the Arbitrator that there is a definitive commonality among the other internal settlements and the City's offer. In fact, costed on a total package basis, over both years of the contract, the City's offer to this unit slightly exceeds the value of the City Hall settlement and the firefighter settlement (5.72%, 5.52% and 5.6% respectively).

Given the internal pattern this case--with a twist--is the classic tug-a-war between external comparables and related considerations on one side and internal

comparables and related considerations on the other. The twist is, not only does the Union argue there is a need to break the internal pattern because of settlements in the external comparables, they argue there has been wage erosion justifying the need for “catch-up”. And, in an added plot thickener, they seek to justify these points based on a new set of external comparables.

Justifying a new set of comparables presents its own challenges. However, trying to make a case for external wage erosion and catch-up based on relative wage relationships over which the parties have never considered or used as guidance in bargaining or arbitration is particularly tricky. The task is even more tenuous when this contention is made in the face of an internal pattern on wages and fringes.

This isn't to say that the traditional comparables are perfect or that if the question was before the Arbitrator for the first time he would name the traditional group as the best comparable group, particularly to the exclusion of Marathon County, for certain benchmark positions. It is to say that if a catch-up argument is to be convincing, it should have its analysis firmly rooted in some relevant historical wage rate analysis particularly if the internal pattern is to be broken. Traditional comparables are more relevant in this regard. It is also to say that a comparable group once established is valued, even if some relative comparable criteria have changed overtime, for its predictability. It may be an imperfect

yardstick, but it is one that produces some consistency in bargaining in that it gives both parties the same tools of guidance as to what is a reasonable wage level change and what reasonable wage levels are in reasonably and similarly situated municipalities in light of all the relevant statutory criteria. If arbitrators were quick to disregard or modify comparable groups, there would be little stability and focus at the table. As stated by Arbitrator McAlpin in New Richmond School District (Custodians), Dec. No. 30549-A (11/8/03):

Such deviation (from the established external comparable pool—status quo) is not taken lightly since the purpose of having consistent external comparables is to provide some continuity in the collective bargaining process. Collective bargaining in the public sector is difficult enough as it exists now. If the Parties would not be able to count on a list of comparables from negotiation to negotiation, this would make a difficult process even more problematic. There is nothing in the record of this case that would allow this Arbitrator to approve a deviation from the status quo. Any proponent of such change must fully justify its position and provide strong reasons and a proven need. This showing has not been made and, therefore, the comparables remain as determined by Arbitrator Petrie resulting from his 1990 decision. (Dec. No. 30549-A at 10).

The sum of the Arbitrator's judgment, to this point, is there is an internal pattern and, if the Union can justify departing from it in favor of the reasonableness of their offer relative to the employers, it must be done on the basis of the traditional comparable group. The Union also faces the issue of internal equity on two fronts: wages and health insurance. The latter is an important consideration since it involves a sacrifice (additional premium contribution) voluntarily made by other bargaining groups.

The Union's wage rate increase for 2005 is clearly closer to that which was typical in the traditional external comparables. However, by the same token and roughly to the same extent, the Union is high in its wage increase proposal for the second year. This makes the Union's case for breaking the internal pattern less compelling. Also, operating in favor of the Employer's offer is the fact that even though it is lower on a percentage basis for 2005 and even though it results in some wage level slippage to below average wage rates relative to the external comparables in some position benchmarks in 2005, by the end of 2006 the wage rates in every benchmark are above average except one (laborer) where, as of July 1, 2006, it will equal the average for that position in the external comparables.

Accordingly, the Arbitrator cannot find that adherence to the internal pattern will cause any unreasonable disadvantage relative to the external comparables. It is easy to imagine, however, as the City has proposed for equipment operator, in this bargain, that certain positions may require special attention in the next bargain. If one of the factors militating in favor of individual rate adjustments above and beyond the adjustment given the unit as a whole is external wage erosion, then catch-up is best fashioned on a position-by-position basis rather than wholesale above average increases for all positions.

AWARD

The offer of the City is most
consistent with the statutory criteria and,
therefore, is selected.



Gil Vernon, Arbitrator

Dated this 10th day of October, 2006.