

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In The Matter Of The Petition Of

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 139**

To Initiate Interest Arbitration
Between Said Petitioner and

TOWN OF WHITE RIVER

Case 3, No. 64844
INT/ARB-10469
Decision No. 31534-A

APPEARANCES:

Mr. Dan Westlund, Jr. and Mr. Chuck Waner, 1003 South Hillcrest Parkway, Altoona, Wisconsin 54720, on behalf of the International Union of Operating Engineers, Local 139.

Mr. Tom Richardson, 63341 Tom's Road, Ashland, Wisconsin, on behalf of the Town of White River.

The International Union of Operating Engineers, Local 139, hereinafter referred to as the Union, filed a petition with the Wisconsin Employment Relations Commission to initiate interest arbitration pursuant to Section 111.70(4)(cm) of the Municipal Employment Relations Act with respect to an impasse between it and the Town of White River, hereinafter generally referred to as the Town. The undersigned was appointed as arbitrator to hear and decide the dispute, as specified by order of the Wisconsin Employment Relations

Commission, dated January 12, 2006. Hearing was held on April 20, 2006, without the services of a court reporter. Post-hearing briefs were exchanged by May 9, 2006, marking the close of the record.

PARTIES' FINAL OFFERS

A. FINAL OFFER OF THE UNION

ARTICLE 22 – INSURANCE (WAS ARTICLE 23)

Town employee will be covered by his wife's insurance plan. The Town will pay up to \$725.00 per month, \$2,175.00 per quarter or \$8,700.00 per year for any medical expenses that his wife's insurance plan does not cover. The Town will also pay the cost of his acquired expenses to his wife's plan.

B. FINAL OFFER OF THE TOWN

ARTICLE 22 - INSURANCE

Town employee will be covered by his wife's health insurance plan. The Town will pay \$119.55 per 2-week pay period for a total of \$3,108.30 annually to cover the cost of the contributions to her plan. This would be paid to Town employee as the Town cannot contribute into his wife's plan. Thus, this amount would be subject to normal withholding taxes.

SUMMARY OF TENTATIVE AGREEMENTS

Key provisions of the parties' tentative agreements include: (1) overtime changes; (2) a 2% increase in the wage rate on January 1, 2005 and a 2% increase in the wage rate on January 1, 2006; (3) vacation; and subcontracting.

PERTINENT PROVISION OF 2001 – 2003 COLLECTIVE BARGAINING AGREEMENT

ARTICLE 23 - INSURANCE

The Township shall provide to bargaining unit members and their dependents health insurance coverage from the Union Health Benefit Plan. At a cost of \$590 per month per employee as of 01/01/01, the cost after 01/01/02 will be \$670 per month per employee, after 01/01/03 will be \$725 per month per employee. No changes shall be made unless they notify the Union and discuss such changes. No change can be made unless coverage is equal or superior to current plan.

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), 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 performing similar services.
- e. Comparison of the wages, hours and conditions of employment 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 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 proceedings.
- 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 UNION

The Union argues that towns of comparable or lesser equalized value have two employees at a much higher wage package, resulting in a 250% greater cost to those towns.

Eighteen of thirty-six townships represented by Local 139 pay 100% of the employees' healthcare premium. In the others, the employee pays from one to ten percent of the premium.

The cash and investment reserve for the Town of White River grew over \$110,000 in two years for a total of over \$262,000.

Insurance is the only article in the contract not agreed upon. The Union's offer would have the Town paying approximately half of what the other comparable towns pay.

POSITION OF THE TOWN

The Town contends that it bargained in good faith with the Union and believes that its only option is to arbitrate the dispute. The Town contends it is offering a fair wage in comparison with surrounding townships. In addition, the Town is offering \$3,108.00 annually to cover the cost for the employee to be insured on his wife's insurance plan. The Town is not an insurance company and cannot assume the liability of co-pays or any expenses that insurance does not cover. The employee is being offered the same coverage as the Union's Offer but at a lower cost to taxpayers.

The Town is a non-profit entity, so any money collected by the Town was levied for a specific budgeted expense. If the Town were to have collected an excess of tax revenue, it would be the property of the taxpayers of the Town and should not necessarily be given out as raises for the Town employees.

While the Union points to surrounding towns as comparables, they are not fair comparisons. The Town of White River has 56.1 miles of town road to maintain, solely with federal revenue sharing and transportation aids. Some of the other townships receive federal money for forest lands which allow them to afford more employee expenditures. The only way the Town would be able to accommodate the Union's Final Offer would be to levy the taxpayers for the additional burden.

DISCUSSION

A. APPROPRIATE EXTERNAL COMPARABLES

The parties have not stipulated to an appropriate group of external comparables. The Union proposes the following external comparables: Barksdale (two employees), Bennett (two employees), Kimball (two employees), Tripp (one employee), and Washburn (two employees). That group of five comparables have represented employees. The Union also proposes the following two towns which have non-represented employees: Marengo (one employee) and Ashland (one employee).

The Town did not propose alternative comparables. The Town of White River responds that it has 56.1 miles of road to maintain solely with federal revenue sharing and transportation aids, while some of the other townships receive federal money for forest lands, allowing them to afford more employee expenditures.

The Municipal Employment Relations Act requires that the parties and the arbitrator consider external comparables in bargaining and in the interest arbitration proceeding. The purpose is to compare similarly situated employees in other municipalities with respect to their wages, hours, and working conditions, in order to provide some guidance in negotiations and arbitration.

The record reflects that the group of towns with represented employees proposed by the Union have a similar number of employees and similar equalized real estate values as the Town of White River:

EXTERNAL COMPARABLES – REPRESENTED EMPLOYEES

TOWN	EMPLOYEES.	2004 EQUALIZED VALUE	TAX BASE/EMPLOYEE
Barksdale	2	\$56.21 million	\$28.1 million
Tripp	1	\$16.97 million	\$16.9 million
Washburn	2	\$38.76 million	\$19.38 million
Kimball	2	\$35.02 million	\$17.51 million
Bennett	2	\$46.72 million	\$23.36 million
Average	1.6	\$38.73 million	\$21.05 million
White River	1	\$37.7 million	\$37.7 million

The towns with non-represented employees proposed by the Union can be summarized as:

EXTERNAL COMPARABLES – NON-REPRESENTED EMPLOYEES

TOWN	EMPLOYEES	2004 EQUALIZED VALUE	TAX BASE/EMPLOYEE
Marengo	1	\$19.13 million	\$19.13 million
Ashland	1	\$29.06 million	\$19.06 million

While external comparables will never perfectly mirror each other, the undersigned finds that the Union's proposed group of seven towns are sufficiently similar to be designated as the external comparable group.

B. ANALYSIS

The parties have entered into several tentative agreements, leaving health insurance as the sole outstanding issue. At the present time, there is only one employee in the bargaining unit. The 2001-2003 collective bargaining agreement provided that the Town would pay the family health insurance of \$725 per month (\$8,700 per year) for the final year of the labor agreement.

The wife of the sole employee in the bargaining unit has health insurance through her employer. The Union proposes in its Final Offer that, instead of the Town providing health insurance, the Town would pay up to \$8,700 per year (the equivalent amount for the annual health insurance premium under the old labor agreement) toward medical expenses not covered by the spouse's health insurance plan and the acquired expenses to the spouse's plan. However, the Town may pay less than \$8,700, should the employee incur less than that amount in uncovered medical expenses. The Town, on the other hand, proposes paying a total of \$3,108.30 annually to cover the cost of the contributions to her plan and would subject that amount to normal withholding taxes.

A reasonable interpretation of either party's Final Offer reflects a decrease in the health insurance benefit from the previous labor agreement, since the prior agreement required the Town to provide health insurance, paying \$8,700 annually toward the premium.

Reviewing the wages and benefits of the external comparables may help shed light on whether there was a need for the reduction in the benefit. The external comparable group with represented employees reflects the following:

EXTERNAL COMPARABLES – REPRESENTED EMPLOYEES (2006)

TOWN	HOURLY WAGE	PENSION	INSURANCE
Barksdale	\$14.50	\$.84/hr	\$16,920/year 100% of Local 139
Tripp	\$15.00	\$1.44/hr	\$16,920/year 100% of Local 139
Washburn	\$15.15	\$.91/hr	\$16,920/year 100% of Local 139
Kimball	\$16.98	\$2.39/hr	\$16,920/year 100% of Local 139
Bennett	\$15.51	\$1.70/hr	\$16,920/year 100% of Local 139
Average	\$15.43	\$18/6hr	\$16,920/year 100% of Local 139
White River (Union's Final Offer)	\$13.50	\$.84/hr	\$8,700.00 toward uncovered costs of spouse's Insurance
White River (Town's Final Offer)	\$13.50	\$.84/hr	\$3,108.30 toward contribution of spouse's plan

For each of those external comparables, the towns pay nearly twice what the Union's Final Offer would require toward health insurance (assuming the maximum \$8,700 would be incurred) and nearly five times that of the Town's Final Offer.

In addition, the 2006 hourly wage rate for each of those comparables is at least a dollar more than the Town of White River's. Furthermore, the contribution toward the pension for those external comparables (but for Barksdale) is higher

than for the Town of White River pension contribution. Thus, those comparables are substantially closer to the Union's Final Offer.

On the other hand, the external comparables where there are non-represented employees more closely matches the Town's Final Offer:

EXTERNAL COMPARABLES –NON-REPRESENTED EMPLOYEES

TOWN	HOURLY WAGE	PENSION	INSURANCE
Marengo	\$13.80	\$1.44/hr	None
Ashland	\$13.59	\$1.41/hr	Employee Pays 15% of premium

The foregoing thus reflects that five of the seven external comparables strongly support the Town's Final Offer.

Although the Town argues that its tax levy did not budget for the Union's proposal, such an argument would negate the negotiation process and the Municipal Employment Relations Act. Under that approach, a municipality would need only budget for its Final Offer and ignore the union's proposals. Furthermore, the Town appears to be in sound financial order, as reflected in the following chronology of the Town's financial balances from 1998 to 2005:

TOWN OF WHITE RIVER FINANCIAL BALANCE

1998 - \$60,551.24
 1999 - \$89,940.92
 2000 - \$118,040.34
 2001 - \$141,455.12
 2002 - \$121,292.08
 2003 - \$151,741.10

2004 - \$233,010.91

2005 - \$262,611.75

While nearly everyone recognizes that health insurance and medical expenses pose serious concerns throughout the country, the Union's Final Offer may result in a savings to the Town when compared to the health insurance premium payments required under the prior contract. On the other hand, the Town's Offer is a substantial diminution in the benefit, without any compelling justification for doing so and without offering a quid pro quo.

In fact, when full economic packages are compared, the Union's Final Offer is further supported by five of the seven external comparables:

2006 TOTAL PACKAGE COST

TOWN	WAGES	HEALTH INSURANCE	PENSION	TOTAL PCKGE
Barksdale	\$31,200.00	\$16,920.00	\$1,747.00	\$49,867.00
Tripp	\$33,716.00	\$16,920.00	\$3,536.00	\$54,172.00
Washburn	\$37,689.00	\$16,920.00	\$4,971.00	\$59,580.00
Kimball	\$31,200.00	\$16,920.00	\$2,995.00	\$51,115.00
Bennett	\$31,512.00	\$18,144.00	\$1,892.00	\$51,548.00
White River (Union's Offer)	\$29,203	\$8,700.00	\$1,747.00	\$39,650.00
White River (Town's Offer)	\$29,203	\$3,108.30	\$1,747.00	\$34,058.30

The total economic package is substantially less under either Final Offer than any of those external comparables.

C. CONCLUSION

Given that: (1) the Town did not offer any compelling reason for its substantial diminution in the health insurance and did not offer a quid pro quo; (2) the Union's Final Offer more closely parallels the external comparables' health insurance, wages, pension contributions, and total economic packages; (3) the Union's Final Offer is closer to the status quo from the prior labor agreement; and (4) both Final Offers result in substantially lesser total economic packages than five of the seven external comparables, the undersigned finds the Union's Final Offer is more reasonable and shall be incorporated into the 2004 – 2006 collective bargaining agreement, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agreed were to remain unchanged.

The undersigned therefore makes and issues the following:

AWARD

The Union's final offer shall be incorporated into the 2004-2006 three-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 which they agreed were to remain unchanged.

Dated in Madison, Wisconsin, on May 24, 2006, by

Andrew M. Roberts, Arbitrator