In the matter of the Interest Arbitration Between

FOND DU LAC COUNTY

And

FOND DU LAC COUNTY HIGHWAY EMPLOYEES UNION LOCAL 1366B, AFSCME, COUNCIL 40, AFL-CIO, UNION

Vs.

FOND DU LAC COUNTY, EMPLOYER

Case 179

No. 66604/INT/ARB-10865

Decision No. 32174-A

Arbitrator's Decision and Award, Milo G. Flaten, Arbitrator

Scope and Background

This case arises out of a dispute between all of the full-time and regular part-time employees of the Fond du Lac County Highway Department who belong to Local 1366-B of Council 40, AFL-CIO, and a municipal corporation, Fond du Lac County, Wisconsin. (Hereafter, Local 1366-B will be referred to as "the Union" and Fond du Lac County as "the Employer".)

On October 10, 2006 those parties met and commenced bargaining negotiations for a new collective bargaining contract which was to become effective January 1, 2007.

The terms of the new contract were not completely settled after two more meetings so the Employer sought help from the Wisconsin Employment Relations Commission. The latter sent a representative who successfully mediated an agreement between the parties. The agreed-to contract, however, had to be ratified by the Employer's County Board. As a step toward ratification, the document was first reviewed by the Personnel, Finance and Taxation Committee of the County Board who refused to even forward it to the Board as a whole for consideration and/or ratification. In the meantime, the Union's membership did approve the contract after a lengthy review.

By this time four months had gone by and in May of 2007 the WERC declared the parties to be at impasse, requested them to submit final offers and ordered them to proceed to arbitration. The WERC also appointed an arbitrator to hear the case.

After telephoning and corresponding about a date, the parties and the state-appointed arbitrator held a hearing in the City of Fond du Lac on December 6, 2007. Appearing for the Union was Thomas Wishman, Wisconsin Council 40 Staff Representative and for the Employer was Michael J. Marx , Human Resources Director.

Final Offers

Under Wisconsin law, public sector disputes require an arbitrator to choose between the "last best offer" of the parties. Before the dispute goes to an independent arbitrator, however, settlement conferences are held wherein an Employment Relations Commission Representative is often present as a mediator. In this case, the parties met several times before an Employment Relations Commission mediator got the parties to an agreement on March 27, 2007.

It is important to note that members of Employer's Personnel, Finance and Taxation Committee were not present to observe or take part in the give-and-take negotiation that occurred in the five months prior to tentative agreement.

The salient feature of the Wisconsin "last offer" statute is the independent arbitrator must select which of the two "final offers" is the more reasonable. He or she cannot piece together and choose fractions of each side's version. It's all or nothing. This forces each side to analyze its position before the hearing and adopt the most reasonable stance it can before presenting the matter to the arbitrator. Thus, in this case the two sides have smoothed out their differences on everything to be included in the upcoming contract but three provisions: (1) an additional payment of 5 cents per hour to all Union employees over and above the 3% increase already granted; (2) the award of a paid floating holiday in addition to the floating holidays already provided in the contract; (3) the deletion of language in the contract, which authorizes the Employer to shut down operations for two weeks and forces the Union members to take a paid furlough from work during that period.

Discussion

The Wisconsin statute concerning the "final offer" law provides 10 factors to be taken into consideration in arriving at a decision on the selection of a final offer. It even provides the factors to which an arbitrator must give the greatest weight in arriving at the decision.

Those factors, if applicable and appropriate, have all been applied by this observer in considering the evidence presented at the hearing.

The Employer states that payment of an additional 5 cents per hour breaks the pattern that was set when it settled on the pay of the other labor unions employed by the County. That is, the other seven unions were granted a 3% wage increase. So the Employer asserts that the Highway Employees Union getting 5 cents more per hour would break the internal pattern of the County pay schedule.

Additionally, the Employer points out, Fond du Lac County as a whole ranks low in its overall economic condition when compared to the six other counties the parties have agreed are comparable to it. In other words, the Employer makes the rather unique argument that because Fond du Lac County has the lowest wages and economic conditions of the seven surrounding counties, it must pay its employees comparably less.

But the Union argues that even with the payment of the requested additional 5 cents per hour, Highway Employees are underpaid anywhere from 44 to 54 cents per hour less than the comparable pool of the other counties highway employees. The Union's proposal, they claim, would not fully address that deficiency, but it's a modest start to fix the disparity. As stated, the Employer doesn't really disagree. But that wouldn't jibe with the contracts already settled with the other unions in Fond du Lac County.

In the matter of floating holidays, the same observation is made. A comparison with the other comparable counties shows the Union's employees have less of a benefit.

With regard to the authorization given to the Employer to declare a 2-week shutdown or paid furlough, both sides agree that that provision of the contract has never been used since it was inserted into the agreement. It is therefore clear that this contractual language is no longer functional and can be abandoned .

To this observer, the matter of most consideration should be the fact that the mediated tentative contract settlement reached in March 2007 was rejected by the Employer's Personnel, Finance, and Taxation Committee. This committee rejected out of hand that which the designated bargaining committee worked on long and hard over five months. The settled contract was not even allowed to be put to a vote by the full county board as it was by the union as a whole.

To echo the arbitrator in the Green County case, (Johnson, Dec. No. 17937-B), *If the tentative settlement had been rejected "because they believed it was outrageous or because their representatives had somehow betrayed their public trust by agreeing with the Union" or "if the County offer, measured against the factors in the statute was clearly more reasonable than the Union offer, then I would be inclined to decide for the county"*.

In this observer's mind, the original settlement reached by the parties in this case cannot be viewed as unreasonable either.

Decision

Even though the Union's demand for 5 cents per hour more than that of the other seven Unions broke a pattern that could be viewed askance, it clearly was not unreasonable in view of the disparity when compared with wages in the counties selected by the parties for similarity; and because the Union employees were entitled to an additional floating holiday by again viewing this provision against the agreed-to comparables, and importantly, because the mediated contract settlement reached by the committee entrusted by the Employer to perform that job was not even considered for possible approval,

It is the Decision of the Arbitrator that the Union's Final Offer is the more reasonable and that its provisions should be included in the 2007-2008 Collective Bargaining Agreement.

Dated: March 17, 2008.

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Milo G. Flaten, Arbitrator