

BEFORE THE ARBITRATOR

In the Matter of the Petition of
TEAMSTERS LOCAL UNION NO. 43

Case 234 No. 68994
INT/ARB-11369
Dec. No. 32931-A

To Initiate Arbitration Between Said
Petitioner and

Hearing: 5/11/10
Record Closed: 6/11/10
Award Issued: 8/9/10

RACINE COUNTY - PUBLIC WORKS

Sherwood Malamud, Arbitrator

APPEARANCES:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S. C. by
 Nathan D. Eisenberg, 1555 North RiverCenter Drive, Suite 202,
P. O. Box 12993, Milwaukee, Wisconsin 53212, appearing on
behalf of the Union.

 William R. Halsey, Long & Halsey Associates, Inc., 829 South Green Bay
Road, Suite 106, Racine, Wisconsin 53406, appearing on behalf of
the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On February 10, 2010, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding Award pursuant to Sec. 111.70(4)(cm), 6.c. and 7., Wis. Stats., to determine a dispute between these parties over the wage rate to be paid to employees in the Public Works bargaining unit for calendar years 2009 and 2010. Hearing in the matter was held on May 11, 2010, in the conference room of the Department of Public Works in Racine, Wisconsin. The Arbitrator received the parties' briefs by June 11, 2010, at which time the record in the matter was closed. Upon reviewing the evidence, testimony and arguments presented by the parties and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7., 7.g., 7.r., a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

FINAL OFFERS

The Union Final Offer

Increase all wage rates across the board by 1% effective 1/1/2009.
Increase all wage rates by an additional 2% effective 1/1/2010.

The County Offer

For calendar year 2009, "0" – no increase in wage rates. For calendar year 2010, increase wage rates by 1.5%.

STATUTORY CRITERIA

Sec. 111.70(4)(cm)6.d. provides that:

The arbitrator shall adopt without further modification
the final offer of one of the parties on all disputed issues
. . .

The Arbitrator applies the following criteria found in Sec. 111.70(4)(cm)7 to the issues in dispute. The criteria are:

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:

- 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- 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 and 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.

Introduction

The parties resolved their dispute over the 2005-2006 agreement through an interest award issued by Arbitrator Amedeo Greco on January 12, 2007, in Decision No. 31681. These same parties resolved the dispute over the successor 2007-2008 agreement through the interest award issued by Arbitrator Andrew M. Roberts on October 11, 2008. For the third contract in a row, the parties rely on an interest award to resolve their 2009-2010 agreement.

In the Greco Award, the Arbitrator adopted the County's offer which included the deletion of the availability of retiree health insurance for employees with between 10 and 14 years of seniority. In the Roberts Award, the County continued to press its concerns over retiree health insurance. Since the County had prevailed in the prior award on retiree health insurance, the Arbitrator found no compelling need to make further adjustments to that benefit and awarded in favor of the Union's wage and benefit proposal for the 2007-2008 calendar year.

In this case, the parties included in their stipulation all modifications to retiree health insurance. Their dispute in this case focuses on the wage rates to be paid to the 52 Public Works employees in this unit.

THE APPLICATION OF THE STATUTORY CRITERIA TO THE PARTIES' FINAL OFFERS

The factor *greatest weight* is inapplicable in this case. The County does not argue that the Union offer would cause the County to exceed a mandated spending limit. There is no evidence to suggest that the County has taxed to the maximum statutory limit, nor is there evidence of any other basis for the application of the greatest weight criterion to the issue in dispute, here.

The greater weight criterion does not serve to distinguish between the offers of the parties. Economic conditions in Racine County are not good. However, there is no evidence to suggest that the terrible economic climate in this county differs from the economic climate extant in comparable counties, particularly Rock, Kenosha or the other counties that both the Union and the Employer accept as comparables as established by Arbitrator Greco in his award.

The evidence and arguments of the parties suggest that the following statutory criteria do not serve to distinguish between their final offers: *lawful authority of the employer; stipulations of the parties.*

The interest and welfare of the public, comparability criteria, the cost of living, overall compensation, changes in the foregoing, and such other factors are applied and considered by the Arbitrator in determining which final offer should be selected for inclusion in the 2009-2010 Agreement.

The Employer argues that the Arbitrator should consider the cost of retiree health insurance in the total package and in comparing wage rates of the comparables to the rates paid by Racine to its Public Works employees. Retiree health insurance was an issue in the last two arbitration cases. Retiree health insurance appears in the parties' stipulation of agreed upon items. It is not an issue, in this case.

The Interest and Welfare of the Public

Although the economic data for Racine does not substantially differ from the economic data for comparable counties, it does suggest that Racine County's ability to support wage increases that are at variance with the increase in the cost of living is more limited. Increasing foreclosure rates suggest increasing tax delinquencies, at least in the short term. Although the County had reduced employment from 1043 in 2002 to 836 employees in 2010, a reduction of approximately 20%, shared revenues from the State of Wisconsin have decreased by approximately 25% over the same period.

Furthermore, the unemployment rate in Racine County at 10.8% is second only to Rock County's unemployment rate of 13.7%. This data supports the selection of the County offer.

Comparability

The parties agree on the group of counties to which the wage rate, wage increases and benefits paid to these Public Works employees are to be compared. Arbitrator Greco identified this comparability pool to comprise: Brown, Dane, Kenosha, Outagamie, Rock, Walworth, Waukesha, and Winnebago counties. In their arguments, neither party presented a classification by classification comparison of wage rates. The Union and the Employer agree that the wage rates of Public Works employees fall within the middle of the pack among these comparables. Kenosha County pays the highest rate among these comparables. Under the County's offer, the wage rates in 2010 in Racine would range from \$19.81 to \$24.26 and under the Union's offer, it would range from \$20.31 to \$24.87.

The Union argues that the percentage wage increases paid by comparable employers in calendar years 2009 and 2010 to their public works employees should be determinative. The Union cites Monona Grove School District, Dec. No. 25034-A (Petrie, 1988) and City of Sturgeon Bay (Utilities), Dec. No. 25549-D (Vernon, 1989), that articulate the longstanding and well accepted arbitral principle that pay rates and pay increases paid by comparable employers to similarly situated and classified employees is the best evidence of the wage rates and, what is pertinent in this case, the wage increases that should be paid to the Public Works employees of Racine County.

The Union emphasizes that no comparable provided a zero percent wage increase to its public Works employees in 2009. Wage increases range from a half of percent for all of 2009 in Walworth County to split increases paid by five of the eight comparables ranging from 2.5% and 1.5% bump to a 2% and 1% mid-year bump. Of the four comparables that settled for calendar year 2010 at the time of the submission of briefs by the parties: Dane, Kenosha Outagamie and Waukesha

counties, of these four, three provided increases that exceed the Union's offer in this case. Although Dane County settlement for 2010 includes a 3% wage cut, the union in that case accepted the wage cut for job security and received time off of approximately 72 hours. Kenosha County, with the highest rates of pay for its public works employees among these comparables, agreed to a 2.5% increase. Outagamie County settled at a 3% increase, and Waukesha 2.5%. The Union proposes a 2% increase, a percentage increase lower than the settled comparables except for Dane County.

The County argues that retiree health insurance should be included in considering these wage comparisons. As noted above, retiree health insurance is not an issue in this case and does not serve to distinguish between the offers of the parties.

The Arbitrator agrees with the Union that the comparability criteria strongly supports selection of the Union final offer for inclusion in the 2009-2010 Agreement.

Such Other Factors

This Arbitrator analyzes internal comparability under the *such other factors* statutory criterion. In this case, the Employer argues that it has achieved an internal pattern of settlement. It argues that five of the other six bargaining units of represented employees settled for calendar year 2009 at a zero percent increase. The County, in its reply brief, cites Arbitrator Yaeger's Award in Racine County Deputies, Dec. No. 31752-A, who concluded that internal comparability should be accorded controlling weight. The other units settled calendar year 2010 at a wage increase of 1.5%. For some of the units, 2010 represented the first year of an agreement that covered 2011, as well. The duration of the agreement is not at issue in this case. It is for calendar years 2009 and 2010.

The Union argues that the claimed internal pattern of settlement is inapplicable to the Union's offer, because this bargaining unit suffered a layoff of 16 of the 52 unit employees (10 employees for 13 weeks and 6 employees for 9

weeks) between April 6 and July 6, 2009. No other bargaining unit suffered a layoff. The savings generated by the layoff, the Union emphasizes, amounts to \$99,562 by the County's own calculation. The total dollar difference between the parties for both years of the contract at issue in this arbitration totals \$64,169 or 0.83%. The Union asserts that win or lose this arbitration, the County will have saved as a result of the layoff in excess of \$35,000 out of this unit. It represents a savings that the County achieved in no other bargaining unit.

The County responds by noting that it offered to the Union the same layoff guarantee with zero percent increase in 2009 and 1.5% wage increase in 2010 that it offered the other bargaining units.

Arbitrators accord substantial weight bordering on dispositive weight to patterns of internal settlement for a number of reasons. First, an internal pattern of settlement is very difficult to achieve. Second, an award that upsets a pattern of settlement not only impacts the bargaining relationship between the employer and the unit in arbitration, but it may adversely impact the bargaining relationships of that employer and its other bargaining units. There must be some justification for an award that breaks pattern that is unique to that particular unit.

In this case, the Union argues that the layoff it endured in calendar year 2009 differentiates its situation from the other bargaining units. NO layoffs occurred in the other six in calendar year 2009. For some units, they received assurances for 2010 that if there were layoffs it would be limited in some respect. For example, in the County home, the non-professional unit of employees in Rdgewood, the County agreed that it would not sell or lease the Home during the term of the agreement.

The Arbitrator finds the Union argument concerning the layoffs that occurred in this unit in 2009 as a distinguishing factor that would serve to differentiate Public Works from the other units in considering the pattern of settlement in calendar year 2009. If calendar year 2009 were the only year at issue, the Arbitrator would find the Union's argument persuasive.

The Union proposes that the percentage wage increase for 2010 exceed the pattern of settlement by 0.5%. The Union proposes a 2% rather than a 1.5% increase in 2010. It provides no justification for this deviation from the pattern of settlement. There is no evidence that in this bargain the wage rates paid to the classifications of Public Works' employees in Racine differs from the average rates paid by the comparables at the applicable classifications of public works' employees.

When viewed in isolation, the statutory criterion *such other factors - internal comparability* strongly supports the selection of the Employer's final offer for inclusion in the 2009-2010 Agreement.

Cost of Living

_____The County offer tracks the increase in the cost-of-living increase for 2009 at 1.4%. It justifies a wage offer of 1.5% in 2010. This criterion provides some support to the adoption of the County offer.

Overall Compensation

As noted above, the Employer argues that the cost of retiree health insurance, when added to the parties' offers supports selection of the County offer. This benefit is the most generous among the comparables. Two of the comparables, Winnebago and Outagamie, provide no retiree health insurance benefit. Four of the comparables, Brown, Dane, Waukesha and Rock permit retirees to participate at their own cost. Walworth permits employees to convert 60% of their sick leave bank at retirement to cover health insurance costs, provided retirees have 15 years of service at retirement.

There is little context to fully consider the impact of this criterion. The costing in this case does not appear in sufficient detail such that the cost of retiree health insurance may be considered in the context of the total cost of all benefits. The Arbitrator concludes that this criterion does not serve to distinguish between the offers of the parties for inclusion in a successor agreement.

SELECTION OF THE FINAL OFFER

The external comparability criteria strongly support the selection of the Union's final offer for inclusion in the 2009-2010 Agreement. The Union's proposal for 2010 is less than three of the four settled comparables. None of the comparables settled at a zero percent increase for calendar year 2009. Whether one considers each year individually or the totality of the two years, the Union's final offer is supported by the pattern of settlement among comparable employers with their public works employees.

The internal pattern of settlement achieved by this Employer with its represented employees supports the selection of the County final offer for inclusion in the 2009-2010 Agreement. The Union points to the layoffs it endured in calendar year 2009 as a unique characteristic of the bargain between Local 43 and Racine County not found in the bargains achieved between Racine County and its other bargaining units.

The Union had before it settlements achieved for calendar year 2009, when these final offers were certified to arbitration in October 2009. The County made the same offer it made to the other bargaining units that it made to this Local that zero percent wage increase and no layoffs in 2009. When the Union rejected that proposal, the County instituted the layoffs described above. There is no evidence in the record as to how the Employer was able to meet budget without instituting layoffs in the other bargaining units and why, absent a zero percent wage increase, it had to lay off 16 employees (10 for 13 weeks and 6 for 9 weeks). However, a layoff guarantee is not part of the final offers of the parties. It is not before the Arbitrator to select one offer or the other based on the presence of a layoff guarantee.

The issue before the Arbitrator is the wage rate increase to be accorded Public Works employees for calendar years 2009 and 2010 that will be reflected in the base rates for future bargaining between these parties. In that regard, the Employer has demonstrated a pattern of settlement of zero percent for calendar year 2009 and 1.5% for 2010. The 2% proposal the Union makes to increase 2010

wage rates taken together with the 1% in 2009 would result in a lift in wage rates of 3% when other bargaining units settled at a lift in their rates at 1.5%.

If the parties had been left to their own devices, they may well have reflected the layoff in the settlement. In that regard, the parties introduced into evidence a County offer to pay those employees laid off \$500 as a bonus as an offset against the layoffs they endured in 2009. That offer was rejected. The Arbitrator must follow and apply the statutory criteria. The *such other factors - internal comparability* criterion supports the selection of the County final offer. There is no evidence in this record to suggest that the wage rates paid to the Public Works employees is below the norm such that a wage increase that differs from the pattern of settlement should be selected. The Arbitrator considers the 2009 layoffs in this unit as an offset to the 1% increase that the Union proposes for 2009 and that continues in effect in 2010. However, the proposed increase of 2% in 2010 breaks the pattern of settlement for 2010, without any justification. If Racine had not achieved a pattern of settlement in 2010 at 1.5%, then the Union offer would not be viewed as a pattern busting proposal. On balance, the Arbitrator concludes that the Union offer endangers the bargaining stability between Racine and its other units. The Arbitrator selects the County offer for inclusion in the 2009-2010 Agreement.

AWARD

Based on the above discussion and upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7., 7.g., and 7.r., a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties, and for the reasons discussed above, the Arbitrator selects the final offer of Racine County - Public Works for inclusion in the 2009-2010 Agreement between the Employer and the Union.

Dated at Madison, Wisconsin, this 9th day of August, 2010.

Sherwood Malamud, Arbitrator 