

STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF BARRON (Utilities)

And

Case 22
No. 69371
Int/Arb- 11440
Dec. No. 33031-A

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 953

Appearances:

For the Union: James H. Dahlberg,
International Representative

For the Employer: Mindy K. Dale, Esq.
Weld, Riley, Prenn & Ricci

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on September 27, 2010 in Barron, Wisconsin. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file Briefs. The Arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the briefs of the parties in reaching his decision.

BACKGROUND

Barron is located in Northwest Wisconsin. There are two bargaining units in the City. One of the Bargaining Units consists of the Police. The other unit is comprised of the Electrical Utility employees. The employees in that Unit are represented by IBEW, Local 953. There are three employees in the Bargaining Unit. The Barron Utilities Commission is responsible for running the Utility. Its revenues are derived from utility charges to customers and not from the tax base of the City. The Mayor and a member of the Barron City Council sit on the Utility Commission Board.

The parties resolved most of the issues in their negotiations. The proposals of the Parties on the outstanding issues are:

Wages

Union	2.0 % increase	1/01/10
	2.0 % increase	1/01/11
Barron:	0.5% increase	1/01/10
	1.0% increase	1/01/11

Health Insurance

Union No Change

Barron Increase Employee Contribution in 2010 from 6% to 8% for those living in town and from 10% to 11% for those living out of town

Increase Employee Contribution in 2011 to 9% for those living in town and 12% for those living out of town

DISCUSSION

The Statute requires an interest arbitrator to consider several factors in rendering a decision. As is always the case, not every factor is relevant in any particular proceeding. The Arbitrator shall only address those issues that he

feels are relevant here or that need explanation given the arguments of the parties.

Greatest and Greater Weight

The Statute requires the Arbitrator to give the greatest weight to “any state law or directive lawfully issued by a state legislature or administrative officer, body or Agency which placed limitations on expenditures that may be made or revenues that be collected by a municipal employer.” Neither Party has argued that this factor applies here. The Statute requires the Arbitrator to give Greater Weight to economic conditions in the locality. The City does reference the economic conditions in general around the Country and in the County, but it does not contend and the Arbitrator does not find that the City’s situation differs from those that exist in other jurisdictions. It is not unique. For that reason, the Arbitrator finds that this statutory factor is not relevant in the present dispute.

External Comparable

This is the first interest arbitration between the Parties. There is no precedent for selecting the appropriate comparables to be used here. The City has proposed including Bloomer, Cadott, Cornell, Cumberland, Rice Lake and Spooner. The Union proposes that Arcadia, Bloomer and Spooner be used. Since they both agree that Bloomer and Spooner should be used those two locales shall be included. The City’s list includes cities or towns that are all within 59 miles or less from Barron. They all have approximately the same number of employees as does Barron. The City argues that these two facts

support its list. It cited a Decision by Arbitrator Vernon in City of Shawano¹ as support for its position. In that case Arbitrator Vernon noted that:

The Arbitrator believes that the number of employees employed by each utility, along with geographic proximity, is a reasonable indicator of comparability. However, there is a preference for closer rather than further employers.

After having said that, he noted that there were some unique characteristics that merited expanding the pool. He then observed:

Thus, it seems reasonable from the standpoint of utility and reliability to broaden the comparable group, recognizing that some are within the 50-mile radius and some are within the 50 to 100 mile sphere.

Cadott and Cornell both have less than 1000 customers. Their revenue is roughly \$1 million each. Barron had \$5 million in revenue in 2009 and just below 2000 customers. While, Cornell does have 3 employees and Cadott has 2, the difference in revenue and customer base makes their inclusion unwarranted. Geographic proximity is outweighed by the disparity in size.² Cumberland is non-union. While it is similar in size and is located within the same County, the fact that it is non-union weighs against its inclusion. Rice Lake is the largest of the proposed comparables. It has 5 employees and almost 5500 customers. Its revenue is almost \$11 million. It is located in Barron County and is only 13 miles from the City of Barron. This close proximity warrants its inclusion in the list. Despite its larger size, its location in the same County and close distance would indicate that there is a likelihood that workers from Rice Lake would go to Barron and visa-versa. That is a factor

¹ Dec. No. 28736-A (1997)

² Neither of these Utilities is directly adjacent to Barron. Cornell is 49 miles away and Cadott is 59 miles away.

often considered in determining the appropriate list of comparables. Given these facts, the Arbitrator will include Rice Lake in the list of comparables.

The Union list includes Arcadia which is approximately 90 miles from Barron. The City argues that is too far. While the Utility in Arcadia is the farthest locale it is roughly the same size as Barron. It has approximately 1500 customers compared to Barron's 1842. Total revenue for Arcadia is \$5.9 million and for Barron is \$5.55 million. It is also within the 100 mile radius referenced by Arbitrator Vernon. The City does suggest that other Arbitrators have found this distance too far as there is not likely to be any residents from Arcadia going to Barron or residents of Barron going to Arcadia.³ The problem is that if the Arbitrator did not include Arcadia, the list of comparables would include only three other utilities. The City has argues that the Union list should be rejected since it only included three. The Arbitrator agrees that a pool of three is too small. In this case, the size similarity and lack of additional localities that are truly comparable makes the inclusion of Arcadia warranted despite its distance from Barron. In deciding to include Arcadia, it is only the fact that utilities are being compared whose revenues are derived from sources other than taxes that has led the Arbitrator to include it. Whether it would belong on the list when its general tax revenue and general government workers are compared with Barron is left for another day. For this unit, the Arbitrator shall use Bloomer, Spooner, Rice Lake and Arcadia as comparables.

³ Village of Gresham Dec. No. 26949 (Rice); City of Cuba City Dec. No 32346 (Honeman)

Wages

The Chart below shows the settlements received by the comparables for 2010 and 2011 where such settlements have been reached.

<u>Utility</u>	<u>2010 Settlement</u>	<u>2011 Settlement</u>
Arcadia	1.5%	2%/1% (7/1/11)
Bloomer	3.0% + \$.25	Not Settled
Rice Lake	1.5%/1.5% (7/1/10)	2%/1% (7/1/11)
Spooner	1.5%/1.5% (7/1/10)	Not Settled
Average	2.25% ⁴	2.5%
Barron (Union)	2.0%	2.0%
Barron (City)	.5%	1.0%

The Maximum wage in those Utilities is or will be:

Arcadia	\$28.69	\$29.26/\$29.55
Bloomer	\$24.76	
Rice Lake	\$30.65/\$31.11	\$31.73/\$32.05
Spooner	\$26.74/\$27.14	
Average	\$27.92	\$30.80
Barron (Union)	\$24.76	\$25.28
Barron (City)	\$24.39	\$24.63

Barron was ahead of Bloomer in maximum wage in 2009. The maximum wage in Bloomer was \$23.80. It was \$24.27 for journeyman lineman in Barron. Under the City's proposal wages would fall below Bloomer in 2010 and they would be identical to Bloomer under the Union proposal. The average maximum wage in the comparables in 2009 was \$27.15. Barron was \$2.88 below the average. In 2010 under the City proposal it would be \$3.53 below the average and \$3.16 below under the Union proposal.

The Employer points out that some arbitrators look at wage level rather than percentage wage increases when doing a comparison. It had argued that the rates paid in this City compares favorably with the others on its proposed

⁴ Where there is a split raise over the year, the Arbitrator has averaged it over a year. A 1.5 and 1.5% has been averaged to 2.25% over the course of the year.

list. This Arbitrator has rejected several of its proposed comparables. When using the list the Arbitrator has found appropriate, it makes no difference whether the Arbitrator compares wages or wage increases. Either method favors the Union proposal. The Arbitrator certainly recognizes the current state of the economy and no doubt this is a factor considered by the City when formulating its offer. However, the fact that the revenues here come from utility customers and not tax revenue lessens that argument. The evidence demonstrates that the utility revenue has not decreased even with the current economic situation. The Arbitrator finds on wages the external comparables favor the Union.

Health Insurance

The Chart below shows the percentage of premiums paid by the comparable communities and under the Party’s proposals:

Utility	Employer Percentage Paid
Arcadia	80%
Bloomer	90%
Rice Lake	90%
Spooner	90%
Average	87.5%
Barron (Union) -In Town	93%
Barron (City) -In-Town	92%-2010 91%-2011
Barron (Union)-Out of Town	90%
-Out of Town	89%-2010 88%-2011

This City appears to be the only City that draws a dichotomy between those living in town and those living out of town. The percentage this City pays for insurance for those living in-town is higher than the average of the comparables for both 2010 and 2011 even under the City proposal. Its percentage is also higher than the average for those living out of town under its proposal. The Union proposal is to maintain the same rates for the two years.

The percentage paid currently by the City is above the average for both those living in-town and those living out of town.

Given the increase in premiums in 2010 for the City and the higher percentage paid by it the Employer proposal for insurance is favored. Thus, the Union wage proposal is favored under this factor and the Employer's insurance proposal is favored for this same factor.

Internal Comparables

There is only one other bargaining unit. That is the Police Unit. The wage and insurance offer made by the City to this unit is identical to what the Police Unit agreed to for the two years in question. That is also the same wage increase given to the non-represented employees for 2010. Non-represented employees in 2010 also pay the same percentage of premiums that is in the City's offer here. The City maintains that for the sake of internal consistency this Arbitrator should adopt its offer. To support that position it has cited several Awards from other Arbitrators. For example, Arbitrator Krinsky noted in City of New Berlin⁵:

The fact that other bargaining units have agreed to a pattern does not require that this bargaining unit accept it, too. However, arbitrators normally accord such patterns great weight, since granting a final offer greater than the pattern creates instability in the municipality's bargaining processes and discourages voluntary settlements. If arbitrators break patterns, why then should bargaining units voluntarily agree to terms if they have reason to think that by holding out until after other bargains have been reached, they will obtain more favorable settlements from an arbitrator?

⁵Dec. No. 27293 (1993)

Similarly, Arbitrator Yaeger noted in City of Tomah:⁶

... an employer's ability to negotiate to a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such an agreement(s) that diminishes it (sic) persuasive value. In this case, the City did just that. It achieved a voluntary settlement with its police officer bargaining unit on the same terms for wages and health insurance that are contained in its final offer. The Union argues the undersigned should discount this settlement because police officers are paid more than employees in this bargaining unit, work more overtime hours, and because there are more employees in this bargaining unit so to grant that settlement significant weight would be like the 'tail wagging the dog'. As I discussed above, I do not find those arguments persuasive. There are only two groups of represented employees in the City of Tomah – this unit and the police unit. And, it is not as though the police officers bargaining unit should be dismissed and the agreement the City reached with it treated as though it were achieved with a 'company union'. While there may be fewer members in the police bargaining unit they are represented by a statewide labor organization representing police officers throughout Wisconsin and is no less formidable as a bargaining entity. And, as I stated in Marshfield, unless there is some basis for distinguishing the factors that drove the police bargaining unit voluntary settlement from those present in this bargain, such that internal comparability is not the paramount consideration, the outcomes should be the same. There has been no such evidence presented in this case. Therefore, in the undersigned's opinion the settlement reached between the City and the police bargaining unit is very significant and entitled to substantial weight in the deliberative process of deciding which offer to select and will be accorded such.

Wages

In many of the cases cited by the City the employees in question were all employees whose salaries were funded from the general budget and not from utility charges as is the case here. The City did cite a few cases where one of

⁶ Dec. No. 31083 (2005)

the units was a utility and the other was funded by general tax revenue. Arbitrator Malumud in City of New Glarus and City of Kaukauna⁷ compared the internal settlements of units even though one of the units was a utility. In Kaukauna he noted that the Mayor and a City Council Member sat on the Utility Commission, and that: “The interlocking of decision makers, if not decisions, justify the treatment of Utilities as an internal comparison.” That is also true here. Nevertheless, the weight given this factor regarding wages will not be as great as it would be where there were a substantial number of units all agreeing to the same terms and all funded from the same sources. As was stated by Arbitrator Malumud in City of New Glarus:

It is not given the great and substantial weight that ordinarily would be accorded the comparability factor in the classic case of multiple settlements and one hold out with no support from the external comparables for the hold out position.

The fact that the balance sheet for the Utility shows an increase from 2008 to 2009 despite the economic downturn is further reason to diminish the significance of this factor when it comes to wages. Both the operating revenue and the net assets of the Utility increased from 2008 to 2009. This fact highlights the distinction to be drawn in funding sources. Perhaps, that same distinction is why utilities gave wage increases, while the general government often did not.

One final reason the Arbitrator does not accord the internal wage settlement significant weight is the lack of a history of uniformity between the two units. The exhibits show that in 2009 the two units did not receive the same wage

⁷ Dec. No. 31160 (2005) and Dec. No. 32939 (2010); See also City of Beaver Dam Dec. No. 31706 (Hempe, 2007)

increase. The police as well as the non-represented employees got a 2% increase on January 1 and another 1% on July 1. This unit got a 3.25% increase on January 1. That is the only year this Arbitrator has for comparison and it shows there has not been a consist pattern in the wage settlements.

Health Insurance

The same conclusion is not reached when addressing benefits where Arbitrators have often given greater weight to internal comparability than may have been true for wages. The City has cited numerous cases where Arbitrators reached that conclusion. This Arbitrator has similarly held that to be so in prior cases.⁸ Gradually, the percentage paid by the City has decreased over the years. It was at 95% for the police, the non-represented employees and this unit in 2005. It was 90% for those living out of town for this Unit and the non-represented. The police unit made no distinction as to where someone lived in that year. The percentage paid stayed at the same rate in 2006. It went down to 94% for everyone but the Utility workers in 2007. They stayed the same. In 2008 it went down again to 93% for everyone, but the Utility workers. They went from 95% to 94%. There was no change in the out of town rate. In 2009, the rate for the non-represented went down to 92%. The Utility workers rate decreased to 93%, the same rate as the Police. The Police for the first time in 2010 drew a distinction between the rate paid by those living in town and those living out of town. It agreed to the same 92%/89% that is in the City offer. The non-represented are at that same rate. The Police Unit also accepted the City offer for 2011. The non-represented have yet to have their rate set for 2011,

⁸ The Utility employees are covered by the same insurance plans as all the employees of the City.

although the City indicated it is likely they too will be lowered to the same rate as the Police.

This history shows that while there were differences in the past as to the percentage rate paid by the City and the employees in the different departments, the City has slowly tried to bring everyone into line. For the Arbitrator to disregard that progress would be to disregard the weight generally accorded internal comparables when it comes to benefits. The Arbitrator finds that the City insurance proposal is favored under this criterion.

Arbitrator Yeager in City of Tomah addressed an issue that has also been raised by the Union in this case. In both cases, the Union argued that in order for the Employer to gain the change in premium contribution sought it must offer a quid pro quo. Arbitrator Yeager rejected that notion for several reasons. Internal consistency was one of the reasons he gave. He then concluded:

And, in light of the totality of circumstances present in this case it does not seem unreasonable, as argued by the City, that a quid pro quo is not required. This conclusion is reinforced by the fact that the other City bargaining unit voluntarily agreed to the terms of the City's offer to this bargaining unit and there was no quid pro quo present there either.

There have been many cases involving insurance contributions and the need for a quid pro quo in light of ever increasing insurance premiums. This Arbitrator has had to address this issue in the past. Generally, it is concluded that when it can be shown that costs have spiraled that the need for a quid pro quo is eviscerated. This is particularly so where the other units have accepted the same level of contribution that has been offered to the employees in the unit involved. Thus, this Arbitrator finds that no quid pro quo is required here.

COLA

The Union exhibits show that the Consumer Price Index rose 1.4% over the twelve month period from September 2009 to September 2010. The Employer exhibits show an anticipated 3% increase for the year 2010 based on figures through August of this year. Under either set of figures, the offer of the Union is more in line with the increase than the City's offer. This factor favors the Union proposal.

Interests and Welfare of the Public

The City argues that this factor favors its proposal. To support that position, it references the economic downturn and its impact on the City and County of Barron. It notes the substantial loss of jobs that has resulted from the recession. Its offer it says: "reflects sensitivity to the effect of the recession on Barron taxpayers, particularly its senior population and the unemployed." It notes the police recognized the situation and accepted its proposal in light of these facts. It sees no basis for this unit to be treated differently. This Arbitrator has observed throughout the course of this discussion the distinction between a unit funded by an outside source and a unit funded by an ever-decreasing tax base. As noted, despite the economic downturn, the revenues and assets of the Utility increased in 2009, the worst year of the recession. However, these employees do not live in a vacuum. They live in this same community where many of their neighbors are without work and have been in that situation for many months. To gain an increase, even only a 2% increase does give rise to a negative perception by the community as a whole in light of the current economic climate. To that extent, the offer of the City does

better reflect the interests and welfare of the community. Of course, the communities of Arcadia and Rice Lake faced these exact same circumstances, yet they concluded that this was not sufficient justification for denying a wage increase.⁹

The morale of the employees is also a factor when looking at the interests of the public. The Arbitrator has calculated the net effect of the respective offers on the overall wage of the employees in the Unit. The insurance premium rose from 2009 to 2010. For two of the plans, the insurance premium rate rose by 14% and 16.5%. Two employees are under the plans affected by the increase. The cost to the Employer thereby increased by over \$200 per month in 2010 for two of three employees in the bargaining unit. There is no increase scheduled for 2011. These same two employees would pay \$46.87 more per month or \$562 more per year under the Employer proposal and \$25.88 under the Union's for 2010. In 2011, they would pay \$21 more per month under the City offer and \$.01 more under the Union's. This is compared with the salary increase that would be received by the employees under each Party's proposal. The actual increase in dollars to the employees would be offset by the extra dollars being paid by the employees under each Party's proposal. The net result in 2010 would be a decrease in net income to at least two of the employees under the City's proposal. For example the highest paid employee in the unit in 2010 made \$54,808. A .05% salary increase would raise the salary in 2010 to \$55082 or by \$274. This same employee would be paying \$562 more for

⁹ Arcadia's contract was signed in 2010. The date the Rice Lake contract was signed cannot be determined, but the agreement covers the years 2010-2012 so it can be assumed that it was signed either in late 2009 or early 2010. The Bloomer and Spooner agreements were signed in early 2008, which is before the recession and thus are of less relevance on this issue.

insurance. While it is true, that the City is also paying more, the net result for the employee is negative. The increase in wages under the Union proposal would be \$1088 or a net gain of \$777. If the Union wage proposal were coupled with the City health insurance proposal, something that cannot happen under the Statute, the net gain would be \$526. The increase in insurance in 2011 was far less and the wage proposal of the City is higher so that in 2011 the employee wage increase would be \$550 offset an increase in insurance cost of \$245. The cumulative result is the Employee's net wage after two years would be behind what it was in 2009. Obviously, the lower increase in insurance costs in 2011 together with the Union's 2% proposal would result in a net increase that is even more than the increase in 2010.

The net loss of wages that would result from adoption of the City proposal certainly impacts morale. This impact must be weighed against the possible negative impact that a 2% increase could have on a population that has seen jobs lost and income drop. Weighing all of this together the Arbitrator finds this factor favors neither side. Put succinctly, it is a wash.

Conclusion

This Arbitrator has insinuated throughout this discussion that if he had the option, he would adopt the Union's wage proposal and the City's health insurance proposal. The 2% salary increase could be explained to the citizens of Barron when shown the increased share of premiums now being absorbed by the employees. Unfortunately, doing this is not an option. The Arbitrator must select one proposal in its entirety.

Complicating the matter further is the fact that the wage proposal of the Union is favored when compared with the external comparables, but the City insurance proposal is favored using this same group of comparables. The City argues that the internal comparables must, therefore, tilt the balance for both issues towards its proposal. As was noted earlier, the wage increase given to each group was not the same last year. That fact weakens the City's argument and gives more force to the external comparable factor.

Putting all this together the Arbitrator finds that the scale tips ever so slightly in favor of the Union proposal. The concern of the City that the Police will in the future be reluctant to settle first is not a sufficient reason to rule in its favor given the disparity in the settlements on both issues over the years. If this impact has not occurred in the years gone by there is no reason to conclude that this contract will now cause that to happen.

AWARD

The Union proposal is adopted and shall be incorporated together with all of the tentative settlements as the Parties 2010-2012 Agreement.

Dated: December 16, 2010



Fredric R. Dichter,
Arbitrator

