

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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In the Matter of the Petition of	:
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PUBLIC EMPLOYEES UNION LOCAL NO. 61,	:
Affiliated with Laborers' International	:
Union of North America, AFL-CIO	:
	:
To Initiate Mediation-Arbitration	:
Between said Petitioner and	:
	:
CITY OF MILWAUKEE	:
-----	:

Case CXCI
No. 24256
MED/ARB-341
Decision No. 16915-A

Appearances for the Union:

- Padway & Padway, Attorneys at Law, by Mr. Milton S. Padway.
- Mr. Leonard Streich, Sr., President Local No. 61.
- Mr. Matthew Gentilli, Business Manager, Local No. 61.
- Mr. John Bivens, Vice President, Local No. 61.
- Mr. Leonard O. Streich, Treasurer, Local No. 61.
- Mr. Rick Leonard, Secretary, Local No. 61.
- Mr. Willie Slocum, Local No. 61.

Appearances for the Employer:

- Mr. James B. Brennan, City Attorney, by Mr. Nicholas M. Sigel, Principal Assistant City Attorney.
- Mr. James J. Mortier, Chief Negotiator, City of Milwaukee.

ARBITRATION AWARD:

On April 30, 1979, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to Section 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Public Employees Union Local No. 61, affiliated with Laborers' International Union of North America, AFL-CIO, referred to herein as the Union, and City of Milwaukee, referred to herein as the Employer. Pursuant to the statutory responsibilities, the undersigned on May 21, 1979, conducted a mediation meeting between the Union and the Employer which failed to resolve the matters in dispute between the parties. On May 23, 1979, pursuant to the provisions of the statutes at Section 111.70 (4)(cm) 6.c. the undersigned provided written notification to the parties of his intent to resolve the dispute by final and binding arbitration, and further established June 22, 1979, as the final date by which either party might notify the other party, the Mediator-Arbitrator, and the Commission of his withdrawal of his final offer and mutually agreed upon modifications thereof. Neither party withdrew their final offer, however, the Employer on June 4, 1979, proposed a modification to his final offer as certified to the Commission, and the Union consented on June 8, 1979, to the proposed modification of the Employer's final offer. Pursuant to notice, evidence was taken in arbitration hearing on July 12, 1979, July 13, 1979, July 16, 1979, July 17, 1979, and July 30, 1979, and at all times the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The arbitration proceedings were transcribed, and briefs were filed in the matter. All briefs received were exchanged by the Arbitrator on December 18, 1979.

THE ISSUES:

The final offers of the parties are as follows:

UNION FINAL OFFER:

A. Institute a cost of living adjustment as follows:

1. The City shall increase or decrease wages quarterly throughout the contract period with the first adjustment in March, 1979 and every three months thereafter on the following terms and conditions:
 - a. Wages shall be increased or decreased 1¢ (one cent) per hour for each 0.3 point change during the 3 months preceding the month in which the change shall apply.
 - b. That the index used in these calculations will be the official National Consumer Price Index for Urban Wage Earners and Clerical Workers, published by the Bureau of Labor Statistics, U.S. Department of Labor, (1967=100) herein referred to as Index.
 - c. In determining the three-month average of the Indexes for the specified period, the computed average shall be rounded to the nearest 0.1 Index Point.
 - d. Wage changes shall be calculated and paid provided that there is at least a 0.3 point change between the Average Index and the base.
 - e. If the necessary information is not available in time to make these calculations or if it is mechanically impossible to make the necessary payroll changes in time to place this increase into effect this increase shall be placed into effect as soon as administratively possible retroactive to the applicable pay period.
 - f. If the Index in its present form should be revised, the parties herein agree to request the Bureau to make available an Index in its present form for the appropriate dates and computed on the same basis as it is presently calculated.
 - g. The changes based on the Average Index shall be part of the base wage rates.

B. A 5.5% general wage increase retroactively effective Pay Period 1, 1979.

C. A 5.5% general wage increase effective Pay Period 1, 1980.

1. Employees occupying the classification of City Laborer (Seasonal) who achieve regular status as City Laborer (Regular), and employees who are currently occupying the classification of City Laborer (Regular) who formerly held the position of City Laborer (Seasonal), shall receive credit for up to one year of actual service performed as a City Laborer (Seasonal) for sick leave eligibility purposes.

The current waiting period of 6 months for Sick Leave eligibility and accrual shall be waived, and Sick Leave eligibility and accrual shall begin immediately.

EMPLOYER FINAL OFFER:

Rates of Pay

1. The wages paid to the employees covered by this Agreement shall be increased as follows in accordance with the salary ordinances as adopted by the Common

Council Ordinance File No. Ordinance No. and with
any other related ordinances, and any appropriate amendments.

- a. A 6.8% general wage increase, effective Pay Period 1, 1979 (December 24, 1978). This increase will be applied to the Pay Period 26, 1978 base salary.
- b. A 6.42% general wage increase, effective Pay Period 1, 1980 (December 23, 1979). This increase will be applied to the Pay Period 26, 1979 base salary.

Sections 2, 3, 4 and 5 found on page 27 lines 13-22 remain unchanged.

Gloves

In lieu of one pair of cotton gloves per month during the summer season and one mitt for use during the winter season, the Bureau of Sanitation shall institute an allowance to Sanitation Workers and other employes whose work is deemed to require gloves. The allowance shall be thirty-nine dollars (\$39.00) for the year 1979 and forty-eight dollars (\$48.00) for the year 1980 paid annually and prorated on a monthly basis to employes on the active payroll.

1. Employes occupying the classification of City Laborer (Seasonal) who achieve regular status as City Laborer (Regular), and employes who are currently occupying the classification of City Laborer (Regular) who formerly held the position of City Laborer (Seasonal), shall receive credit for up to one year of actual service performed as a City Laborer (Seasonal) for sick leave eligibility purposes.

The current waiting period of 6 months for Sick Leave eligibility and accrual shall be waived, and Sick Leave eligibility and accrual shall begin immediately.

The City offers to make the grievant whole in each of the following grievances:

232-77 (Bono)
257-77 (Hibbard)
42-78 (Schoebel)

With the proviso that this settlement will have no precedential value and without prejudice to either party and it being further agreed that the grievances be withdrawn from arbitration.

DISCUSSION:

From the final offers it can be seen that the principle issue in dispute between the parties is whether the Collective Bargaining Agreement for the years 1979-1980 should contain a cost of living provision. While the offers of the parties contain other items, i.e., the amount of general wage increase, sick leave eligibility credit (the final offer of the Union and the modified final offer of the Employer are identical with respect to this issue), increased glove allowance, and settlement of certain pending grievances; the record is clear to the satisfaction of the undersigned that cost of living is the issue upon which this decision will turn.

In considering the evidence and the arguments of the parties, the undersigned is directed by Wisconsin Statutes at 111.70 (4)(cm) 7 to give weight to certain factors as follows:

- 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 and with other employes generally in public employment in comparable communities and in private employment in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost-of-living.
- f. 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.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally or 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.

The undersigned, therefore, will review the evidence and the argument in light of the foregoing criteria.

COST OF LIVING ISSUE

In view of the statutory criteria cited supra, where at (h) the Mediator-Arbitrator is directed to give weight to such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment; and in view of the evidence of record, and the arguments of the Employer which are directed to the criteria found at (h); the undersigned concludes that he is required by criteria (h) to consider the prior bargaining history with respect to cost of living provision with this Union, and with other Unions dealing with the Employer, and the patterns of settlement that have been established with this Employer in negotiations with other Unions who represent other employes of this Employer.

BARGAINING HISTORY AND PATTERNS OF SETTLEMENT

The evidence of record establishes that the issue of a cost of living provision in the Collective Bargaining Agreement between these parties is not novel. In fact, for some time up to and including the Collective Bargaining Agreement for the year 1973, there was a cost of living clause in the Collective Bargaining Agreement between the Union and the Employer which had previously existed for some years. Additionally, the evidence establishes that other Unions who bargain with this same Employer had enjoyed cost of living provisions in their Collective Bargaining Agreement prior to the year 1973. The record further discloses that the Employer successfully negotiated out the cost of living clause with all other Unions for the year 1973; and that with respect to this Union negotiations for a 1973-74 Collective Bargaining Agreement impasse, and fact finding proceedings were conducted after impasse under the provisions which existed in Section 111.70 of the Statutes at that time. The fact finding proceedings were conducted before Fact Finder Gerald G. Somers, who issued his recommendations with respect to the issues that were at impasse on October 30, 1973. In his recommendations, Fact Finder Somers recommended the continuance of a cost of living provision for the year 1974, with adjustments to be made in July and December of 1974, based on one cent for each four-tenths change in the CPI. The cost of living provision was maintained in the Collective Bargaining Agreement between these parties through 1974.

Collective bargaining for a 1975-76 contract between the Union and the Employer again impasse in the bargaining for a 1975-76 Agreement, and fact finding proceedings were again initiated before Fact Finder David B. Johnson. Among the issues in dispute between the parties for the 1975-76 Agreement was the continuation of the cost of living provision. Fact Finder Johnson issued his recommendations with respect to the issues at impasse between the parties on January 19, 1976. Included in his recommendations were an 8% increase for the year 1975, and a 9% increase for the year 1976. Fact Finder Johnson, however, did not recommend continuing the cost of living clause in the 1975-76 Agreement. Also included in Fact Finder Johnson's recommendations was a suggestion that the parties meet to explore the possibilities of establishing a system of Union-Management cooperation in improvement of productivity results on a systematic basis which proposed that a disputed 13¢ which had been generated by the previous COLA clause be used as an escrow account for payment of "productivity bonuses". The parties were unable to come to terms for a 1975-76 Collective Bargaining Agreement pursuant to Fact Finder Johnson's recommendations, and finally entered into an agreement on May 26, 1976, which became effective May 26, 1976, and ran through December 31, 1976. In the Agreement which became effective May 26, 1976, no wage increase was provided for retroactive to the expiration date of the predecessor Agreement, and in lieu thereof, a lump sum payment to certain members of the bargaining unit of \$1,525.00 was provided for on a pro rata basis. Certain other members of the unit were provided with lump sum payment in lieu of retroactive pay computed by paying an 8% and 9% adjustment on applicable dates. The cost of living clause which had been included in the predecessor Agreement at Schedule A of the Agreement in force between the parties from November 18, 1972 through December 31, 1973, was not included in the Agreement executed by the parties, which became effective May 26, 1976. With the execution of the Agreement between the parties on May 26, 1976, the last cost of living provision that had been in existence between this Employer and any Union with which it bargained was removed from all Collective Bargaining Agreements in existence with this Employer.

The parties successfully negotiated a successor Agreement, which became effective January 1, 1977, and continued in force through December 31, 1978. The 1977-78 Agreement provided for no cost of living provision. Additionally, no other Union bargaining with this Employer negotiated a cost of living provision in its agreement with this Employer for the years 1977-78.

During the round of bargaining for 1979-80 contracts the Employer met with this Union, as well as other Unions representing other employees of this Employer. The negotiations for a successor Agreement between the Employer and the Union impasse, primarily over the provision in the final offer of the Union providing for re-establishing the cost of living provision in the 1979-80 Agreements. Contemporaneous with the bargaining between the Employer and this Union, the Employer also engaged in bargaining for 1979-80 collective bargaining agreements with other Unions representing other employees of this Employer. The Employer successfully negotiated voluntary settlements with employees represented as follows:

1. District Council 48, AFSCME, and the settlement provided for a two year Agreement, with a 6.6% general increase the first year and 6.4% increase the second year. No cost of living provision was included. Approximately 3023 employees covered by this Agreement.

2. Association of Scientific Personnel, and the settlement provided for 6.6% increase the first year and 6.4% increase the second year, and no cost of living provision was provided for. Approximately 24 employees in the unit.

3. Bridge Operators represented by Local 195, IBEW, and the settlement provided for a 6.6% increase the first year and 6.4% increase the second year, and no cost of living provision was included. Approximately 60 employees in the unit.

4. Firefighters represented by Milwaukee Professional Fire Fighters Association, and the settlement provided for a 7% increase the first year and

7% increase the second year, certain pay steps frozen at the 1978 rate which resulted in a settlement approximating the cost of the settlement reached with District Council 48. No cost of living provision was provided for. Approximately 1075 employes in the unit.

5. Employes classified as Fireboat Pilots and Marine Engineers, represented by Local 1037, Uniformed Pilots and Marine Engineers Association, and the settlement provided for 7% increase the first year and 7% increase the second year, with pay steps frozen at the 1978 rate. The cost of settlement because of the step freeze approximated the settlement with District Council 48. No cost of living provision was provided for. Approximately 10 employes in the unit.

6. Employes of the Fire Department Repair Shop represented by the International Association of Machinists and Aerospace Workers, District No. 10, and the settlement provided for a 6.6% increase the first year and 6.4% increase the second year. No cost of living provision was provided for. Approximately 20 employes in the unit.

7. Certain nursing employes employed in the Health Department of the Employer represented by the Staff Nurses Council, and the settlement provided for a 6.6% increase the first year and 6.4% increase the second year. No cost of living provision was provided for. Approximately 126 employes in the unit.

8. Certain attorneys in the employ of the Employer represented by the Association of Municipal Attorneys, and the settlement provided for a 6.6% increase the first year and 6.4% increase the second year. No cost of living provision was provided for. Approximately 19 employes are represented.

In addition to the Agreements enumerated in the preceding paragraph, which were reached by voluntary negotiations with other Unions, this Employer also engaged in bargaining with other Unions in the current round of bargaining. At the time hearing was closed certain other units, such as plumbing inspectors, blacksmiths, machinists and machinists helpers in the Machine Shop in the Field and Shop Operations Division of the Bureau of Traffic Engineering and Electrical Services, and engineering technicians, were pending arbitration decision in mediation-arbitration proceedings. Additionally, the collective bargaining between this Employer and the police officers of the Employer impasse over the 1979-80 Agreement, and at the time hearing was closed a decision was pending from an arbitrator with respect to that Agreement. Subsequent to the close of hearing in this matter the arbitrator issued his binding award resolving the impasse which existed between the sworn police officers of the City of Milwaukee. The Union has furnished the Arbitrator a copy of the award involving the police, post hearing, and the Arbitrator takes notice of the award issued in the unit comprised of Milwaukee police. The Milwaukee police arbitration award was issued pursuant to Wis. Stats. 111.70 (3)(c)9(d)5(jm), wherein the arbitrator's jurisdiction is not limited to the final offers of the parties, but rather the arbitrator has complete discretion to resolve the issues at impasse. Pursuant to his jurisdiction the Arbitrator in the police dispute, with respect to wages, included a 10% increase the first year and a 10% increase the second year. No cost of living provision was included by the Arbitrator in the police dispute. There are approximately 1800 employes in this unit.

The foregoing recitation of the bargaining history with respect to the cost of living provision, combined with the patterns of settlement which are firmly established by voluntary settlements entered into between this Employer and other Unions with whom this Employer bargains, as it pertains to the issue of whether a cost of living provision should be included in the Agreement, leads the undersigned to conclude that based on criteria (h) of the statute, a final offer which includes a cost of living proposal should not be included in the instant dispute. The record is clear that at one time all Unions negotiating with this Employer had negotiated cost of living provisions in their Collective Bargaining Agreements. The record is equally clear that through the process of voluntary collective bargaining, the Employer successfully negotiated out all cost of living provisions that had prior to the year 1973 existed in

collective bargaining agreements between all Unions and this Employer. Furthermore, no other Union has successfully negotiated a cost of living provision in successor collective bargaining agreements after the Employer successfully negotiated those provisions out, nor has a cost of living provision been awarded by arbitrators in either med/arb proceedings or in the police arbitration through the instant round of bargaining. The record establishes that the Union in these proceedings represents somewhere in the neighborhood of 500 employes. The record further discloses that the voluntary settlements entered into in this round of bargaining, as well as the arbitrated award in the police matter, apply to approximately 6157 employes represented by nine separate Unions. Furthermore, there is no evidence in this record to show why employes represented by this Union are entitled to the protection of a cost of living provision which no other represented employee of this Employer enjoys. Given the clear history of bargaining which establishes that voluntary bargaining previously eliminated the cost of living provision from all collective bargaining agreements; and given the fact that the record clearly establishes that cost of living provisions in collective bargaining agreements when they are previously included in collective bargaining agreements uniformly applied to all represented employes of this Employer; and given the history of bargaining and the current patterns of settlement which established that no cost of living provisions are included in agreements with any other Unions who bargain with this Employer; the undersigned can only conclude that the bargaining history and the patterns of settlement require a finding for the Employer's final offer under criteria (h) of the statute, when considering solely the cost of living provision.

COST OF LIVING ISSUE WEIGHED AGAINST CRITERIA a THROUGH f

The undersigned has weighed all of the evidence with respect to the cost of living issue, and considered the arguments of the Union in support of its proposal with respect to cost of living, against the backdrop of criteria a through f as mandated by the statute. No evidence or argument was submitted with respect to criteria a, b or c, consequently the undersigned has no basis to formulate an opinion with respect to said criteria.

The undersigned concludes that the evidence of record fails to establish that the cost of living proposal should be included in the Collective Bargaining Agreement based on criteria d, which directs the arbitrator to consider a comparison of wages, hours and conditions of employment of the instant employes with other employes in the same and comparable communities. The evidence establishes that cost of living provisions are extremely rare in collective bargaining agreements among comparable employers, thus it cannot be said that the comparables would favor inclusion of cost of living in the collective bargaining agreements between these parties.

While criteria e directs the arbitrator to consider the consumer prices for services, commonly known as the cost of living, said criteria is not a statutory mandate that a cost of living provision be included in a collective bargaining agreement, but rather is a directive to consider whether the wage increases proposed by the parties properly take into account cost of living increases. Given the conclusions of the undersigned when considering criteria h; and given the finding that the comparables under criteria d do not favor the inclusion of a cost of living provision in the instant Agreement; the undersigned now concludes that the cost of living should not be awarded based on criteria e.

A review of the record satisfies the undersigned that there is insufficient evidence and argument with respect to Criteria f to warrant any further discussion of said criteria. Lastly, with respect to criteria g the sole consideration that has come to the attention of this arbitrator with respect to changes in any of the foregoing circumstances during the pendency of these proceedings is the issuance of the award in the unit comprised of Milwaukee police officers. The undersigned has taken notice of said Award, and concludes that there is nothing in the police Award that would be persuasive for the inclusion of cost of living provision in the Agreement between these parties, because no cost of living provision was included in that matter.

From the foregoing considerations it necessarily follows that the Union has failed to establish that a cost of living provision should be included in the Collective Bargaining Agreement when considering the statutory criteria.

ADDITIONAL CONSIDERATIONS WITH RESPECT
TO THE COST OF LIVING ISSUE

The Union has made several additional arguments in support of its proposal to include a cost of living provision in the Collective Bargaining Agreement between the parties. Among those arguments are: the erosion of real wages over the projected term of the new Agreement; the productivity increases enjoyed by the Employer as it pertains to employees of this unit; the distinction between the positions represented by the Union in this dispute compared to the positions represented by other Unions in other bargaining units who bargain with the Employer; and the independence of this bargaining unit and its right to bargain terms for themselves without regard to what others may have bargained. The undersigned finds the foregoing argument advanced by the Union to be unpersuasive as it applies to the cost of living issue. All of the foregoing arguments, with the exception of the Union contention that the Union is entitled to bargain its own terms irrespective of settlements with other units, have more bearing on the issue of the general wage increase, or on reclassifications if they had been proposed, than they do on whether a cost of living provision should be included in the Agreement. With respect to the Union's right to bargain its own terms, there can be no question that they do indeed have that right. Given the history of bargaining, and more significantly the patterns of settlement which are regularly considered when evaluating matters of these types, the undersigned concludes that the patterns which have been established in other settlements and awards which do not include a cost of living provision must be given great weight. Thus, while the Union has the right to bargain for separate and distinct provisions with respect to the cost of living with this Employer, the evidence and statutory criteria simply do not support that cost of living should be included in the instant matter. From all of the foregoing, then, it follows that the Collective Bargaining Agreement should not include a cost of living provision.

THE GENERAL WAGE INCREASE

The Employer offer in the instant matter with respect to a general wage increase squares precisely with the settlements that have been entered into on a voluntary basis with other bargaining units with which the Employer negotiates. While the 6.8% increase proposed in the first year in the instant matter exceeds the 6.6% settlements with other Unions other than the Firefighters, the evidence clearly shows that the additional 0.2% offered to the Union in the instant dispute is the value of the reallocations that were extended in the District Council 48 settlement. Thus, the undersigned concludes that the Employer proposal in the instant matter dovetails exactly with those settlements. Furthermore, the undersigned is satisfied that the 7% increases negotiated with the firefighters are offset by the freezing of certain step increases during the term of their Agreement, and as a result the total settlement with the firefighters approximates the same percentage offered for total settlement here. Thus, the consistency of voluntary settlements with other units has established a pattern for the years 1979-80 which creates a presumption in favor of the Employer offer.

Since the hearings in these matters were closed, and during the pendency of time in which the parties filed briefs, the police arbitration came down with a 10% award on wages for police officers for both the first and second year of their Agreement, and it could well be said that the police arbitration Award has broken the pattern which was established through voluntary settlements, and the undersigned would be inclined to conclude so if the Union offer had approximated the percentage of increase awarded in the police arbitration. That, however, is not the case here. The significant and principal difference is the cost of living provision proposed by the Union in this matter. There is no cost of living provision awarded the police. If the Union offer here contained no cost of living provision, and if the Union final offer had proposed a wage increase of 10% without cost of living, the Police Award would be

persuasive that a Union offer of 10% should be adopted. With the consistency of voluntary settlements at the 6.6% range without cost of living; and since the Police Award provides for no cost of living for that unit; the undersigned concludes that the wage offer of the Employer should be adopted.

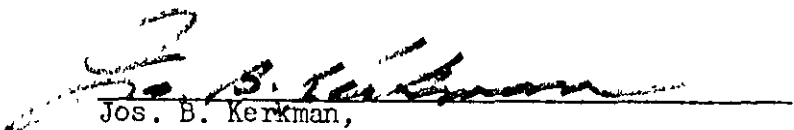
SUMMARY AND CONCLUSIONS:

While a wage increase in excess of that offered by the Employer might well be justified in this dispute, in view of all of the evidence adduced at hearing, and particularly because of the inclusion of the cost of living proposal by the Union; and when considering the patterns of voluntary settlements, the undersigned concludes that the final offer of the Employer is to be adopted, and makes the following:

AWARD

Based on the statutory criteria, the record as a whole, the argument of the parties, and the discussion set forth above, the Arbitrator determines that the final offer of the Employer, as amended on June 4, 1979, and consented to by the Union on June 8, 1979, and those prior Agreements entered into in bargaining as contained in the stipulations as filed with the Wisconsin Employment Relations Commission, as well as those provisions of the predecessor Collective Bargaining Agreement which remained unchanged through the course of bargaining, are to be incorporated into the parties' Collective Bargaining Agreement for the years 1979-80.

Dated at Fond du Lac, Wisconsin, this 31st day of January, 1980.



Jos. B. Kerkman,
Mediator-Arbitrator

JBK:rr