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Arbitration *
of *
CITY OF MANITOWOC *
and *
MANITOWOC WASTE WATER TREATMENT *
PLANT EMPLOYEES, LOCAL 731, AFSCME*
re *
WERC Case XXXIII, No. 25403 *
MED/ARB - 548 *
* * * * *

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION
ARBITRATION AWARD

Arbitrator: James L. Stern

Decision No. 17643-A

INTRODUCTION

On December 3, 1979, Manitowoc Waste Water Treatment Plant Employees, Local 731, AFSCME, AFL-CIO, hereinafter identified as the Union, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting Mediation-Arbitration pursuant to Section 111.70(4) (cm)6 of the Municipal Employment Relations Act (MERA) in order to resolve the dispute between the Union and the City of Manitowoc, hereinafter identified as the City. The WERC, having found that an impasse existed, despite efforts to resolve the dispute during the January 29, 1980 investigation by WERC staff member Amadeo Greco, issued an order dated March 11, 1980 that mediation-arbitration be initiated for the purpose of issuing a final and binding award. In an order dated April 3, 1980, the WERC appointed the undersigned as mediator-arbitrator and informed him that he had been selected by the parties from a panel submitted to them by the WERC to mediate and if necessary to arbitrate the dispute in accordance with Section 111.70(4) (cm)6.b and 6.c through h of the MERA.

After correspondence about schedule, the parties agreed to attempt the mediation of the dispute on June 5, 1980 and to arbitrate the unresolved issues if mediation was not successful. Mediation failed and the arbitration hearing was held on June 6, 1980 -- proper notices having been posted. Post hearing correspondence and briefs were exchanged during the period ending December 9, 1980. The City was represented by Patrick L. Willis, City Attorney; the Union was represented by Michael J. Wilson, District Representative.

ISSUES

The three issues in dispute were wages, percent of family health insurance premium to be paid by the City, and contract duration. The final offers of the parties on these issues are stated below. Under the provisions of Section 111.70(4) (cm)6 the arbitrator is obligated to select the final offer as a whole of either the City or the Union.

CITY OFFER

UNION OFFER

9%*	WAGES	67¢/hr.
95%	CITY SHARE OF FAMILY HEALTH INSURANCE PREMIUM	100%
2 years with wage reopener at end of first year	DURATION	One year agreement

(*The 9% offer meant a wage increase averaging approximately 60¢ per hour in comparison to the Union offer of 67¢.)

In the following discussion, the arbitrator first considers each issue separately and then considers the offers as a whole.

WAGES

Six municipal waste treatment plants were selected as comparable to Manitowoc by both the City and the Union. In addition, the Union claimed that Green Bay, New Holstein and the Town of Menasha were comparable. The City claimed that those three communities were not comparable, primarily on size grounds, and instead claimed that Heart of the Valley and DePere were comparable. The Union rejected the use of Heart of the Valley on the grounds that this plant was still not fully operational and that employees were in a training situation. The Union stated in its brief (p. 10) that it did not object to the inclusion of DePere.

In addition to the disagreement about which communities were comparable, the parties also disagreed about the best way to compare wages. The Union claimed that the Operator II classification was the best benchmark job to use in comparisons and pointed out that 10 of the 18 employees in Manitowoc were so classified. The City claimed that a weighted average of all employees in the unit was a preferable way to compare wages because of differences in the way that the work was broken down in each city. The City also pointed out that although ten of the 14 Manitowoc operators were classified as Operator IIs, this was not true in Neenah-Menasha with only 4 out of 14 at the II level and similarly at Fond du Lac (2 out of 10), Appleton (4 out of 13) and Sheboygan (4 out of 16). The Union objected to the weighted average approach because it believed that the City wages for maintenance, clerical and technical jobs were not as greatly out of line as the wages for operator jobs.

The arbitrator did not find either party unreasonable. The positions of the parties are relatively close to each other and for the most part are backed up by substantial evidence. After studying the voluminous material submitted by the parties (the Union brief was 111 pages and it submitted 106 exhibits; the City brief was 33 pages and it submitted 48 exhibits) the arbitrator selected the method of comparison explained in the following paragraphs.

The arbitrator picked as the primary "comparables" the waste treatment plants of Appleton, Fond du Lac, Neenah/Menasha, Oshkosh and Sheboygan. All of these cities were listed by both the City and the Union as comparable. Others could have been included but it seemed to the arbitrator that use of these five as primary comparables was sufficient in this instance. The communities are of similar size ranging from a population of 33,000 (Manitowoc) to 58,000 (Appleton); the number of employees in the bargaining units range from 16 (Neenah/Menasha) to 36 (Oshkosh); and the gallons per day treated ranges from 7 million (Neenah/Menasha) to 18.7 (Sheboygan).

Although the benchmark approach recommended by the Union has the virtue of simplicity, the Operator II position seems to be of different importance in one unit than another. The arbitrator therefore developed a combined weighted average of the pay of individuals performing what he believed to be the functions of Operators I's, II's and III's in Manitowoc. The arbitrator relied in part on Union Exhibit 49 and in part on City Exhibits 6 through 13. The arbitrator believes that this combined average is free from the bias that the Union attributes to the weighted average for the unit as a whole because it excludes the maintenance classifications. Also, by using all levels of the operator classification, it meets the City objection to the use of one level of the operator classification because of the different occupational distribution across levels of the operator classification in the different cities.

The results of the comparisons adopted by the arbitrator are shown below in Table No. 1. Because neither party objected to the use of DePere or Two Rivers, these two cities are also included in Table #1. However, because they are considerably smaller than the other "comparable" cities, the arbitrator gives them little weight.

Table No. 1
Comparison of Weighted Waste Water Treatment Plan Operator Wages

Number of Employees	City	1979 Wage	1980 Wage		'79-'80 Weighted Increase			
			Employer Offer	Union Agreed	Employer Offer	Union Agreed	Union Offer	
14	Manitowoc	\$6.50	\$7.09		\$7.17	59¢		67¢
13	Appleton	6.55		7.09			55¢	
14	Fond du Lac	6.79		7.37 ^a			61	
14	Neenah/Menasha	6.70		7.32 ^a			62	
29	Oshkosh	6.37		6.87 ^a			50	
16	Sheboygan	6.43		7.00 ^a			57	
6	Two Rivers	6.38		6.97 ^a			59	
7	DePere	6.81		7.29			48	

^aThe agreed upon increase in these cities was given in two parts. The first became effective on January 1, 1980 and the second on July 1, 1980. Therefore, the arbitrator averaged the 1980 increases in those cities in order to make them comparable to Manitowoc for the purpose of determining the value of the 1980 increase. This method of calculation understates the wage at the end of 1980 in these cities, a factor that is discussed below.

Table No. 1 shows that in 1979 the weighted average wage of Manitowoc waste water treatment plant operators was above that of operators in Oshkosh and Sheboygan, and below the average of Appleton, Neenah/Menasha and Fond du Lac operators. It appears therefore that the 1979 placement of Manitowoc operators was about in the middle of the pack. The addition of Two Rivers and DePere to the sample would not affect this conclusion as it would only add one more city below and one more above. The operator notes also that Fond du Lac operators receive 5¢ per hour increases for each of the four licenses they achieve and therefore that the Fond du Lac wage which is already higher than the Manitowoc wage may be understated. Again, this doesn't materially affect the rough estimate placing Manitowoc roughly in the middle of the comparables selected by the arbitrator.

Turning now to the 1980 placement of Manitowoc relative to the comparables selected by the arbitrator, we find that under either the City or the Union offer, the relative ranking of Manitowoc is maintained if not improved slightly. Fond du Lac and Neenah/Menasha wages would continue to be higher and Oshkosh and Sheboygan wages would continue to be lower. Manitowoc would appear to gain relative to Appleton under either the City or the Union offer. If the City offer is chosen in this dispute, Manitowoc is even with Appleton; if the Union offer is chosen, Manitowoc moves ahead of Appleton. Also, DePere would continue to be higher than Manitowoc and Two Rivers lower. Therefore, under either the City offer increasing wages by 59¢/hour or the Union offer increasing wages by 67¢/hour, the middle ranking of Manitowoc operator wages would be maintained or slightly improved.

One other way of viewing the wage situation is to look at the amount of the 1980 increase. From the perspective of this standard, the City offer is more reasonable than that of the Union. The Union offer of 67¢ is 5¢ an hour greater than the highest increase of the other cities (62¢/hour in Neenah/Menasha) while the City offer of 59¢ is higher than the offers in Oshkosh (50¢), Sheboygan (57¢), and Appleton (55¢) and only slightly lower than the Fond du Lac (61¢) and Neenah/Menasha (62¢) increases. The DePere increase of 48¢ and the Two Rivers increase of 59¢ are not greater than the proposed City increase in Manitowoc.

The Union argues that the arbitrator should base his comparisons on the end of year rates rather than the value of the increases during the year. The arbitrator acknowledges that end of year rates are important; they supply the base from which the next year's increase is calculated. For cost purposes, however, the timing of the increases must be taken into account and the arbitrator therefore has used average rates.

In any event, the end of year rate comparisons do not improve the situation appreciably insofar as the Union's case is concerned. The arbitrator used the same comparables as those listed in Table No. 1 and compared end of year weighted operator average rates with those of Manitowoc and still found that rates in Oshkosh and Sheboygan were below the Manitowoc rates under either the City's offer or the Union's offer and that the end of year weighted average operator rates in Fond du Lac and Neenah/Menasha were above both the Union's and City's offer in Manitowoc. End of year rate comparisons for Appleton versus Manitowoc showed Appleton even with Manitowoc if the arbitrator selects the City offer in Manitowoc and shows Manitowoc ahead if the arbitrator selects the Union offer in Manitowoc.

It is recognized that neither the City offer nor the Union offer increase the rate by the same percent as the percent by which the Consumer Price Index has increased. In the year ending November 1980, the latest figure available to the arbitrator at this time, the national CPI-U increased by 12.6%. In neither the private nor the public sector are average wage increases keeping pace with increases in the CPI, however, and therefore, this factor alone, does not justify selecting the Union offer in this dispute.

The Union argues also that, in assessing the wage offers, the arbitrator should take into account total compensation because of the differences in fringes in comparable cities. The arbitrator agrees that it is proper to do so. At the hearing the City introduced Exhibit 22 listing 12 fringes and ranked Manitowoc against comparable cities on each of these fringes. According to that exhibit, Manitowoc fringes are as good as those of the comparable cities. The Union compiled detailed hourly compensation costs by classification for Manitowoc and the communities with which the Union believes Manitowoc should be compared (Exhibits 78 - 95). According to these exhibits, Manitowoc lags behind the comparables in total compensation. In Appendix A to its brief, the City adopted and expanded on the compensation format adopted by the Union to show that Manitowoc compensation did not lag behind the total compensation of comparable cities.

The arbitrator examined the evidence on total compensation carefully and concluded that the inclusion of fringes lowered Manitowoc slightly in relation to the other cities with which the arbitrator compared it in Table No. 1. For example, using the data in Appendix A of the City brief reflecting end of 1980 rates averaged for the unit, we see that total compensation of \$10.23/hr. in Manitowoc for a person with ten years' service under the City offer ranks below Appleton (\$11.00) and Neenah/Menasha (\$10.58), slightly below Sheboygan (\$10.30), and above Fond du Lac (\$9.72) and Oshkosh (\$9.48). According to the same exhibit, the total compensation in Manitowoc under the Union offer would be \$10.35, thereby ranking Manitowoc slightly above Sheboygan.

The arbitrator noted with interest that the ranking of the primary comparables changed considerably when total compensation was used instead of wages. For example, the inclusion of the Sunday pay premium in Appleton -- which appears to be the only one of the primary comparables that pays a Sunday premium -- increases the Appleton compensation by more than \$1.00 an hour according to the calculations of the parties. If this one fringe is not included in the calculation, Appleton ranks toward the bottom; with it, it ranks at the top.

In general, it appears to the arbitrator that insofar as total compensation at the end of 1980 is concerned, the Union offer appears slightly more equitable than that of the City. The arbitrator is hesitant about giving this fact much weight, however, because, as both parties recognize, the conversion of fringe benefits to a cents per hour value is fraught with difficulties and may be misleading. In any event, the arbitrator wishes to emphasize that he didn't make detailed calculations of his own about the cost of various fringes and is only commenting on the total compensation data introduced by the parties.

Another type of wage comparison which is usually given great weight by arbitrators is the comparison of the wage increase offered to employees in one bargaining unit of a city with wage increases offered to employees in other units of the city and to non-represented employees. City Exhibit 23 shows that five other bargaining units will receive 9% increases -- the same amount proposed by the City in its final offer in this dispute. The non-represented employees also received a 9% increase. The one deviation from this pattern listed in Exhibit 23 is the City settlement with the sister AFSCME City Hall, Cemetery & Park Unit which received 6% plus 18¢ per hour.

If the 6% plus 18¢ per hour formula was applied to the \$6.50 weighted average waste water treatment plant operator rate shown in Table No. 1 of this award, it would generate an increase of 57¢ or 8.8%. This means that the City proposal to the Union in this dispute generates a higher increase for the average person in the waste water treatment unit than for a person making the same wage in the other unit. The reason for this is that the Union has distributed the increase in the other unit in a manner which gives greater percent increases to the lower paid workers. The arbitrator is not criticizing the City Hall, Cemetery and Park settlement; he understands the motivation generating the distribution and applauds the effort of the Union and the City to protect the lower paid workers against inflation. The arbitrator is only pointing out that the settlement in that instance, like the settlements of the City with the other Manitowoc units, supports the position of the City in this dispute rather than the position of the Union.

This arbitrator agrees with the statement of Arbitrator Kerkman cited in the City brief to the effect that patterns of settlement in the City are persuasive evidence absent a strong showing that the rates of the employees concerned are not out of line with the rates paid to similar workers in other comparable communities. The arbitrator in this dispute believes that the evidence as a whole supports a finding that the final offer of the City on wages is more reasonable than the final offer of the Union. The City offer is in line with the increase received by employees in other units, and the wages received by the employees in the waste water treatment plant seem to be generally in line with the wages and increases received by waste water treatment plant operators in comparable communities.

CITY PAYMENT OF 95% OR 100% OF FAMILY HEALTH INSURANCE PREMIUM

The Union argues that the employers pay 100% of the family premium for health insurance in eight of the ten cities with which it compared Manitowoc. The Union also argues that if the City were to pay 100% of the family premium in Manitowoc, the dollar amount of the payment would be less than 95% of the 1978-1979 premium because the premium has been reduced. The City argues that it pays only 95% of the family premium for all Manitowoc employees except those in the Teamster represented street department unit where that union made a special concession in return for which the City agreed to pay 100% of the family premium. The City also argues that four of the eight cities with which it compares Manitowoc pay 90% to 95% of the family premium and four pay 100%. The City notes also that the County of Manitowoc only pays 91.7% of the family premium.

The arbitrator notes that four of the five cities picked by him as primary comparables in Table No. 1 for the purpose of wage comparisons pay 100% of the family premium. This is offset, however, by the fact that the prevailing pattern with one exception insofar as other units of the City of Manitowoc are concerned is 95% payment of the family premium. The fact that the premium has decreased and that the pattern in comparable cities is 100% seems slightly less important to this arbitrator than the pattern prevailing within the City of Manitowoc. The reason for this opinion is that small units within a municipality are frequently combined into one group for health insurance costing purposes, as seems to be the case in this instance, and on equity grounds the employer usually makes the same payment on behalf of all employees in a particular class, i.e., family coverage. Therefore, the arbitrator favors the City offer slightly over the Union offer insofar as the question of what is the appropriate percent of the family premium for the City to pay.

DURATION -- TWO YEAR CONTRACT WITH WAGE REOPENER VERSUS ONE YEAR CONTRACT

No evidence was introduced about the desire of the Union to negotiate changes in what are usually referred to as non-economic items in the Agreement such as seniority and representation. Essentially, the Union argues that it should be able to negotiate for improvements in fringes as well as for increased wages and that it is wrong to limit the negotiations to a wage reopener. In support of its position, the Union notes that most of the cities cited by the City of Manitowoc as comparable for wage comparisons will be negotiating both wages and fringes in 1981. The Union argues also that although some other units within the City of Manitowoc have agreed to wage reopeners only in 1980, the two large units in this category (Firefighters and Street Department workers) are already ahead of the waste treatment plant unit (see Union brief p. 29) insofar as some fringes are concerned. For example, the firefighter unit has dental insurance and other benefits and the Teamster unit has 100% employer payment of the health premium (already discussed) as well as dental insurance.

The City argues that most of the cities with which it compares Manitowoc have a pattern of two year contracts. Six of the eight other cities listed on City Exhibit 37 completed two or three year contracts in 1980. The City argues further that four other Manitowoc units negotiated two year contracts with reopeners in 1981 and that a fifth has a two year contract expiring at the end of 1980. The only exception, according to City Exhibit 23, is the AFSCME represented City Hall, Cemetery & Park Unit which negotiated a one year contract covering 1980. The City points out that the unit negotiating the one year contract has slightly fewer holidays than the other units and that the unit with the one year contract preferred that situation to a two year contract which would have provided an additional half holiday.

The arbitrator notes that four of the five cities which he selected as primary comparables will be negotiating both wages and fringes for 1980. The arbitrator notes also that there is some variation in fringes among the units of the City and that two major units which will negotiate wages only for 1980 already have negotiated dental insurance. Furthermore, the arbitrator believes that negotiations limited to wages only restrict the tradeoffs that facilitate successful negotiations compared to the situation when the parties are negotiating fringes as well as wages.

Therefore, the arbitrator believes that on the grounds of equity and efficiency -- that is, to facilitate tradeoffs and permit discussion of dental care and the share of the family health insurance to be paid by the City -- the Union offer on this issue is superior to the City offer. The arbitrator recognizes that multi-year contracts are common and that there are advantages to not having to negotiate each year. But if the City and the Union are going to have to negotiate about wages anyway, it seems that the added problems of having to negotiate about fringes are less than the added advantages of being able to do so.

FINAL OFFERS AS A WHOLE

After reviewing the conclusions reached on each issue and considering the arguments of the parties and the criteria in the statute, the arbitrator selected the final offer of the City. The primary argument that persuaded the arbitrator to select the City offer was the fact that its offer extended to the Union the same general package already agreed to by the other units with which the City bargains. If an arbitrator making an award that resolves the last outstanding dispute in a city adopts a position that overturns the pattern already set, he creates problems for the following year in the other negotiations. Furthermore, when an arbitrator does this, it discourages prompt voluntary settlements by the parties and encourages bargainers to be the last to settle on the chance that they can get a little bit more through arbitration than those that settled previously.

In this dispute, selection of the Union offer would have breached the 9% pattern established in other settlements by other units that bargain with the City. If the comparison of the rates paid or the increases granted to waste water treatment plant operators in comparable cities indicated that the Manitowoc wages and increases for waste water treatment plant employees were clearly out of line with those in comparable cities, this would have justified an exception to the pattern. But, in this dispute, the arbitrator found that the 59¢ average increase for waste water treatment plant operators under the City offer and the 1979 wage level of these operators were not out of line. Therefore, internal comparisons dictated the selection of the City offer.

AWARD

After thorough analysis of the exhibits, testimony and arguments of the City and the Union, and with full consideration given to the criteria listed in Section 111.70(4)(cm)7 of the Wisconsin Statutes, the arbitrator selects the City offer for the reasons explained above and hereby orders that the 1979 Agreement of the City and the Union be amended to reflect the City offer and the stipulations agreed to by the parties.

1/27/81

January 27, 1981

James L. Stern

James L. Stern
Mediator/Arbitrator