DEC 7 1982

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Mediation/Arbitration of MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO and its affiliated LOCAL 2 and CITY OF FRANKLIN	CASE XXVII No. 29475 MED/ARB-1598 Decision No. 19569-A

APPEARANCES:

Anthony F. Molter, Staff Representative, and Phyllis Torda, Research Analyst, appearing on behalf of District Council 48, AFSCME, AFL-CIO and its affiliated Local 2.

David P. Moore, Moore Management Services, Inc., appearing on behalf of the City of Franklin.

ARBITRATION HEARING BACKGROUND:

On June 2, 1982, the undersigned was notified by the Wisconsin Employment Relations Commission of appointment as mediator/arbitrator, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act in the matter of impasse between District Council 48, AFSCME, AFL-CIO and its affiliated Local 2, hereinafter referred to as the Union, and the City of Franklin, hereinafter referred to as the Employer. Pursuant to the statutory requirements, mediation proceedings were conducted between the parties on July 27, 1981. Mediation failed to resolve the impasse and the matter proceeded to arbitration that same day. At that time the parties were given full opportunity to present relevant evidence and make oral arguments. The proceedings were transcribed and post hearing briefs were filed with the arbitrator. The briefs were exchanged through the arbitrator on September 20, 1982.

THE ISSUE:

The sole issue remaining at impasse between the parties is that of salaries. The final offers are as follows:

> The Union's Offer: "Union is submitting as their final offer for the 1982 rate, across the board increase of 8% of the December 31, 1981 base rate, effective January 1, 1982 and an additional 3% increase of the June 30, 1982 base rate effective July 1, 1982."

The Employer's Offer: "Please be advised that in regards to the above captioned matter, the City of Franklin tenders a final offer of 6% across-the-board salary increase for calendar year 1982."

STATUTORY CRITERIA:

Since no voluntary impasse procedure was agreed to between the parties regarding the above impasse, the undersigned, under the Municipal Employment Relations Act, is required to choose the entire final offer of one of the parties on the unresolved issue.

Section 111.70(4)(cm)7 requires the mediator/arbitrator to consider the following criteria in the decision process:

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 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 the same community and in comparable communities and in private employment in the same community and comparable communities.

E. The average consumer prices for goods and services, commonly known as cost-of-living.

F. The overall compensation presently received by 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.

POSITIONS OF THE PARTIES

The Employer: The Employer argues difficult ability to pay, cost of living figures, and private sector settlements from May, 1981 to May, 1982 support its position. Contending, specifically, difficult ability to pay is a major reason why the Employer's offer is more reasonable, the Employer cites decline in state and federal revenue sharing dollars, a 1982 tax rate increase of 29% and expenditure of its contingency funds as evidence for its position. Stating it only allocated a 6% increase in wages in the contângency fund and that additional monies allocated to contingency for emergencies and capital expenditures have already been spent, the Employer concludes these financial difficulties make it impossible to grant a wage increase beyond its 6% offer without large scale reduction in services and layoff of employees.

Stating the Milwaukee All Items Consumer Price Index, Urban and Clerical Wage Earners indicates the July, 1981 to July, 1982 cost of living increased by only 3.8%, the Employer declares a wage increase of more than 6% is not justified. It continues anything greater than a 6% increase in wages would be grossly unfair to taxpayers during this time of "freezes" and "take-backs" in the private sector.

Finally, the Employer contends private sector wage rate increases prove a wage increase of no more than 6% should be granted. It states the Bureau of Labor Statistics figures for hours and earnings in the private sector showed a May to May increase from 1981 to 1982 at 6.1%, an increase which closely coincides with the Employer's offer.

In addition, the Employer posits the Union has failed to carry the evidentiary burden of support for its proposal. It declares the comparables are inappropriate. It also argues the Union comparisons do not reflect a comparison of job content, a comparison which must be made since Franklin employees perform a number of maintenance tasks which differ from work normally performed under similar job classifications. Finally, the Employer contends that without a showing of the historical relationship of the wage structure between the City and the comparables selected by the Union, the Union cannot rely upon a "catch-up" argument to support its position.

The Union: The Union posits comparability is the most important criteria in determining which of the final offers is more reasonable. Asserting communities in the southern half of the Milwaukee area are the most appropriate comparables, and that Oak Creek, among these communities, is most similar to Franklin, the Union declares a comparison of wages paid in these communities supports its offer. The Union contends its job classification tasks are more comprehensive than similar classifications in other communities. yet, wage rates paid its

bargaining unit members have been consistently lower than those paid in the comparable communities. Further, it argues that, given this fact, a review of settlements among the comparable communities supports the percentage increase it seeks since the increase is very similar to those granted in the other communities.

In regard to the cost of living data presented by the Employer, the Union declares May, 1981 to May, 1982 data is inappropriate data to use in determining which final offer is more reasonable. Stating the contract and, thus, the final offers are for calendar year 1982, the Union posits data which does not reflect the cost of living increases for calendar year 1982 is not appropriate.

Finally, the Union declares the Employer's difficult ability to pay argument is too vague to be convincing. It contends that without submitting the budget, without showing revenue sharing cutbacks produced an unexpected shortfall that was different from experiences of other communities and without costing and showing the effects of an increase in wages as proposed by the Union, the Employer has failed to show there is a difficult ability to pay.

DISCUSSION:

The parties differ in the statutory criteria relied upon to defend their respective positions. The Employer concentrates on the interest and welfare of the public, financial ability of the governmental unit to meet the costs of a proposed settlement, wage comparison in the private sector and cost of living. The Union contends comparison of wages, hours and working conditions of employees performing similar work in comparable communities is the most important criterion. After analyzing the data presented by the Employer, the undersigned rejects the City's arguments pertaining to private sector comparisons and cost of living. The evidence submitted by the Employer relative to private sector comparisons is inadequate as a tool of analysis in the instant matter. U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings data consists of hours and earnings figures based on payroll reports from a sample of establishments throughout the nation. Further, the reports include wages and salaries earned by both full and part-time workers in a variety of fields which, as the explanation of the computations states, results in weekly earnings averages "significantly lower than the corresponding numbers for full-time jobs." Finally, the report encompasses earnings for a number of different types of occupations and professions. As a result, the data does not meet the criteria of comparison of employees performing similar services in private employment in the same community or in comparable

communities.

The cost of living data submitted by the City is more appropriate for contract negotiations, settlements and arbitration decisions pertinent to the 1983 calendar year rather than the 1982 calendar year. The final offers submitted by the parties are for the 1982 calendar year, thus the more appropriate cost of living figure would be the January to January increase from 1981 to 1982 which is 8.6% for Urban Wage Earners and Clerical Workers in the Milwaukee area and 9.4% for all Urban Consumers in the Milwaukee area.[1] If these figures are used as a basis of comparison for the final offers, the Union's offer at 9.5% is more reasonable than the Employer's offer of 6%. If an arbitrator were to select a final offer on the basis of cost of living adjustments and used figures known six or more months after a collective bargaining agreement has expired, the selection would only foster a delay in the labor negotiations process as one side or the other felt figures down the road would be more to their advantage. This is not the intent of the law and therefore should not be used in this manner.

Arbitrators, including the undersigned, have not always relied upon the Consumer Price Index as the sole measurement of cost of living. In addition to the CPI, it is not uncommon to use area wage settlements as an additional factor in determining the actual cost of living for the area. Accordingly, the undersigned considered the wage settlements of the comparables cited by the Union as they are somewhat similarly affected by the influence of the City of Milwaukee. This was done, although the record is far from complete in establishing the Union's set of comparables as appropriate, since the Employer failed to present any alternatives to the Union's position. A review of the area settlements finds the Employer's offer on the low side with five of the seven known settlements reflecting an increase of close to 9% or better and the remainder of the settlements at or about 7%.[2] Thus, when the CPI and the area settlements are used as indices of the cost of living increases in 1982, the Union's offer more closely approximates the increase in the cost of living.

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[1] Government Employee Relations Report, Bureau of National Affairs, Inc., Washington, D.C. 20037, Consumer Price Index, pp.71:3031, 71:3033.

[2] See wage rate table, page 6 of this discussion.

While the undersigned rejected the Employer's private sector comparison argument, a wage rate comparison of the public sector employees has been made. While the undersigned did compare wage rates in all the communities submitted as comparables by the Union, there is merit in the Employer's argument that not all of the comparables are sufficiently similar to Franklin to be primary comparables. Accordingly, the undersigned placed considerable weight upon the comparison of wage rates between Franklin and Oak Creek, since both parties seemed to agree that among the comparables cited by the Union, Oak Creek was most similar demographically to Franklin.

When evaluating wage rate proposals, it is appropriate to compare dollar and cent increases, as well as relative wage positions among the comparables. However, to compare relative wage positions, a comparison of the wage rates among the comparables over a period of time must be shown. In the instant matter, this was not done, therefore it is impossible to determine whether or not Franklin employees' wages rate position has changed from that which has existed in the past. An analysis of the wage rates paid in Franklin does indicate, however, that Franklin employees are paid at low rates among the comparables and the parties' offers would continue the wage relationship with the comparables.

CITY	POPULATION	1982 PERCENTAGE INCREASE	WAGE RATES[a]			
			Truck Driver	Heavy Equipment Operator	Mechanic	Building Custodian
Cudahy	19,524	9/2	8.97	9.39	10.49	8.97
Greendale	13,642	7/2[b]	9.10	-	9.37	-
Hales Corners	7,112	7[b]	8.77	8.77	9.72	7.01
Oak Creek	16,896	10[b]	9.16	9.46	9.94	6.05/8.43
St. Francis	9,965	8/2	9.60	9.75	10.65	8.46
West Allis	63,678	9	9.16	10.03	10.98	9.12
West Milwaukee	3,529	8/1.7	8.92	9.07	-	8.92
South Milwaukee	21,096	n/a	9.43	9.85	10.15	9.50
Greenfield	31,075	n/a	8.86	9.12	9.26	6.08
Union	16,750	8/3	8.72	9.55	10.00	8.46
Employer		6	8.31	9.09	9.53	8.07

[a]The rate for the sewer water operator was not considered since there is question as to whether or not the position has been reclassified.

[b]Percentage increase reflects a July to July year rather than a calendar year with new contracts to be negotiated in July, 1982.

The truck driver rate, the rate for the majority of the unit members, under both offers, would remain the lowest among the comparables. The ranking of the other wage rates would change significantly, however, dependent upon which offer is accepted. In order to determine which offer more closely maintains the status quo relative to wage position among the comparables since no historical relationship has been shown, the undersigned relied upon the percentage increases in wage rates in each community to determine the effect of the offers of both parties. Thus, having concluded earlier that the Union's percentage increase in wages more nearly approximates the percentage increase received by employees doing similar work in similar communities and that under either offer the wage rates for a majority of the unit remains low, the undersigned has concluded that the offer of the Union more nearly maintains the status quo in rank among the comparables.

The above conclusions are not altered by the Employer's contention that acceptance of the Union's offer would go against the interest and welfare of the community and would also adversely affect the City's ability to provide services and maintain staff. In presenting its difficult ability to pay argument, the Employer posited the shortfall in State and Federal revenue sharing dollars, previous expenditures of money placed in the contingency fund, and the possibility of a lawsuit involving an employee of the City were all reasons why the Union's offer should not be accepted. However, the Employer did not present any evidence to substantiate its argument. Absent any showing that these factors, together with implementation of the Union's offer, would result in the City making harmful adjustments in the budget or the services offered by it or a showing that acceptance of the offer would result in deficit spending or placing an onerous tax burden on the public, it cannot be concluded the City has a difficult ability to pay or that the interest and welfare of the public is adversely served.

In testimony, the Employer stated implementation of the Union's offer would result in an approximate $60,000 increase in cost for all City employees, yet, it did not show how this figure was calculated.[3] While neither party presented evidence as to the dollar amount difference which existed between the the offers, it is clear the percentage difference between the two offers costed out over a bargaining unit of 12 or 13 members at the maximum rates paid in each classification does not begin to approximate a dollar cost difference of $60,000. Thus, the testimony bears little weight in determining whether

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[3] Transcript, page 33.

or not implementation of the Union offer would result in a cost which the City could not meet.

While the possibility of litigation is a factor which should be considered in determining whether or not the City has an ability to meet the costs of final offers proposed by the parties, the Employer was vague about whether or not it would actually be involved in litigation beyond the initial filing of responses and was uncertain or unclear about the expected maximum costs such litigation might incur. Thus, it is difficult to conclude that the possibility of litigation is reason sufficient to reject the Union's offer.

The Employer also argued the revenue sharing dollar shortfall for 1982 was added reason why it has difficulty in meeting the costs of an offer which exceeds its final offer. However, while the City did experience a revenue shortfall, it did not demonstrate the shortfall was any different than that experienced in other communities, that the shortfall actually affected its ability to provide services, or that the shortfall was unique for the City. Further, from the evidence submitted, it is clear the cutbacks were known about and considered prior to adoption of the 1982 budget, the budget which will fund the cost of salary increases in 1982. Thus, without a showing that the revenue shortfall seriously impacted upon the 1982 budget, it is not of primary importance in determining whether or not the Employer has a difficult ability to pay any increase beyond its final offer.

The undersigned assigns little weight to the Employer's argument that it will have difficulty paying any salary increase beyond its final offer because it has already spent any money which might have been available in contingency except for that amount allocated for its final offers. Unless the Employer is willing to show that the contingency money was spent for emergencies and not as part of ordinary planned expenditures, this argument is not persuasive. If this type of argument were to be accepted as a major factor in deciding whether or not an employer has a difficult ability to pay, the result would be that every employer would expend its sums prior to the implementation of mediation/arbitration in order to claim a difficult ability to pay. Merely stating the money has already been spent is not sufficient reason to conclude the Employer has a difficult ability to pay wage increases.

Finally, the Employer contends it cannot afford any increase in wages beyond its final offer since the tax rate increased by 29% in 1982. It states the tax rate when from $7.00/$1,000 to $9.04/$1,000 during 1982. While this tax rate increase is significant, the importance of the percentage increase is tempered by the fact there was no tax increase in 1981 and no showing of an anticipated tax increase in 1983. Further, the Employer did not prove implementation of the Union's offer for

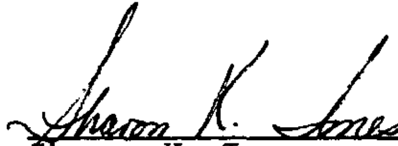
1982 would result in the City incurring unanticipated debt in 1982 which would subsequently result in an additional rate increase in 1983. Without such a showing, it cannot be concluded implementation of the Union's offer would be contrary to the interest and welfare of the public.

In conclusion, then, having determined the wage proposal of the Union does not adversely impact upon the Employer's ability to pay nor upon the interest and welfare of the public, and having previously determined the Union's offer is more reasonable when compared with the cost of living increases for 1982 and the wage rate increases among comparable communities, the undersigned finds, having reviewed the evidence and arguments and applied the statutory criteria, the following:

AWARD

The final offer of the Union, along with the stipulations of the parties which reflect prior agreements in bargaining are to be incorporated into the collective bargaining agreement as required by statute.

Dated this 18th day of November, 1982, at La Crosse, Wisconsin.



Sharon K. Imes
Mediator/Arbitrator

SKI/mls