

DEC 28 1982

BETWEEN

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

CITY OF NEW BERLIN,)	
)	
Employer)	
)	
and)	
)	Case XLIX No. 29606
TEAMSTERS "GENERAL" LOCAL)	
UNION NO. 200,)	MED/ARB 1628
)	
Union)	Decision No. 19820-A
)	

MEDIATOR/ARBITRATOR: Jay E. Grenig
 S56 W23674 Maplewood Terrace
 Waukesha, WI 53186

APPEARANCES:

For the Employer: Roger E. Walsh, Attorney
 Lindner, Honzik, Marsack, Hayman &
 Walsh
 700 North Water St.
 Milwaukee, WI 53202

For the Union: Scott D. Soldon, Attorney
 Goldberg, Previant, Uelmen, Gratz,
 Miller & Brueggeman
 PO Box 92099
 Milwaukee, WI 53202

I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.77(4)(cm)6 of the Wisconsin Municipal Employment Relations Act.

Teamsters "General" Local Union No. 200 (Union) is the exclusive collective bargaining representative of a bargaining unit consisting of full-time and regular part-time manual, operating and maintenance employees of the City of New Berlin (City) in the City's Highway, Sewer and Water Departments.

The collective bargaining agreement between the City and the Union expired on March 31, 1982. On March 31, 1982, the parties exchanged their initial proposals for the new agreement. The parties met several times in an effort to reach agreement on a new agreement. On April 16, 1982, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC) alleging an impasse existed between it and the City. The Union requested the WERC to initiate mediation-arbitration.

A member of the WERC staff conducted an investigation. The parties submitted their final offers to the investigator and the investigator then notified the parties that the investigation was closed and advised the WERC that the parties remained at impasse. On August 11, 1982, the WERC issued an order requiring mediation-arbitration.

On August 24, 1982, Jay E. Grenig was notified he had been selected as the Mediator-Arbitrator by the parties.

The Mediator-Arbitrator conducted a mediation session on September 27, 1982, which failed to resolve the impasse. An arbitration hearing was held on October 22, 1982. The Union was represented by Scott D. Soldon, Attorney at Law, Goldberg Previant, Uelmen, Gratz, Miller & Brueggeman; and Ken Friesner, Business Representative. The City was represented by Roger E. Walsh, Attorney at Law, Lindner, Honzik, Marsack, Hayman & Walsh. The parties were given full opportunity to present relevant evidence and arguments at the hearing. Upon receipt of the parties' briefs on November 16, 1982. On December 17, 1982, the Union submitted an arbitration award involving the City of Franklin to the Arbitrator for consideration. The Arbitrator gave the Employer an opportunity to respond and the Employer submitted its written comments on December 22.

II. FINAL OFFERS

A. THE UNION

The Union's final offer is as follows:

1. WAGES. Effective April 1, 1982, eight percent across the board increase. Effective April 1, 1983, eight percent across the board increase.
2. INSURANCE. City to pay full cost of insurance during the term of the Agreement.
3. TERM OF AGREEMENT. Two-year agreement (4/1/82 through 3/31/84).

B. THE EMPLOYER

The City proposes the continuation of the provisions of the 1980-1982 contract for a one year term, except as modified by the "Agreed Items as of April 7, 1982" and by the "Agreed Item as of July 20, 1982," and as listed below:

1. WAGES. Revise Article VI, A to read as stated in Exhibit A to reflect a five percent increase to all rates effective April 1, 1982.
2. TERM OF AGREEMENT. Change the dates of the contract in Article XXVI from "April 1, 1980" and "March 31, 1982" to "April 1, 1982" and "March 31, 1983".

III. STATUTORY CRITERIA

In determining whether to accept the Employer's offer or the Union's offer, the Mediator-Arbitrator must give weight to the following statutory (Wis. Stats. § 11.70(4)(cm)7) criteria:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.

- c. The interests and welfare of the public and 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and 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 employees, including direct wages, 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, factfinding, arbitration or otherwise between the parties in the public service.

IV. ISSUES

A. WAGES

The Union has proposed an eight percent across the board increase for each year of a proposed two-year contract effective April 1, 1982. The City has proposed a five percent increase for one year effective April 1, 1982.

1. POSITIONS OF THE PARTIES

a. THE UNION

The Union contends that the employer in this case presented absolutely no compelling evidence to indicate that the City is in any way incapable of paying the cost of the Union's offer. It characterizes the difference in cost between the two offers of \$22,000 as "a rather minimal amount." It argues that the City has not proved it is incapable of, or would be financially harmed by, payment of the Union's offer.

According to the Union, a study of comparable communities clearly indicates that its wage offer will leave it behind several comparable communities. It claims its offer will also leave it substantially behind the private sector comparables. It concludes that the appropriate comparison with other communities and employers indicates the Union's final offer is preferable.

With respect to the cost of living, the Union states that, while the increase in the cost of living may have slowed, in 1980-81 the union received an eight percent increase, which was substantially below the cost of living. Thus, the Union says it has ground to make up with regard to the cost of living increases.

Finally, it points to the agreed items and declares that the Employer has made substantial gains in items which could have a substantial monetary impact. The Union says this must be considered in assessing whether the Union's or the Employer's final offer is more reasonable.

b. THE EMPLOYER

Relating the increase in wage costs to the 1981 base (including wages, pensions and health insurance costs), the City says its final offer amounts to an overall package increase of 6.6 percent and the Union's final offer results in a 9.4 percent package increase. It argues that increases of 9.4 percent are unheard of in the present economic climate. According to the Employer, such increases are "unconscionable in face of the high unemployment, wage freezes and reductions and other similar conditions being experienced by taxpayers throughout the country, including those in New Berlin."

The Employer says that hourly earnings of production and nonsupervisory workers in private nonagricultural payrolls increased by only 4.9 percent between September 1981 and September 1982. The Employer contends that when the wage offers are compared to the Consumer Price Index increases, its five percent wage offer is much more in line than the Union's eight percent offer. When the total package increase, including wages and health insurance increases, is considered, the Employer asserts that its package increase is clearly preferable to the Union's package increase. It declares that the cost of the Union's offer would amount to double the increase in the cost of living.

According to the Employer, its wage offer is in line with current economic conditions. It recognizes the problems facing the taxpayers in New Berlin and attempts to strike a compromise between the needs of its employees and the needs of its taxpayers. The Employer claims the Union's offer ignores the plight of the taxpayers.

The Employer contends that the wage rates under its offer are very comparable to wages paid to public employees in nearby municipalities.

2. FINDINGS OF FACT

a. **LAWFUL AUTHORITY OF THE EMPLOYER.** There is no contention that the Employer lacks the lawful authority to implement either proposal.

b. **STIPULATIONS OF THE PARTIES.** While the parties were in agreement on a number of facts, there were no stipulations on this issue.

c. **INTERESTS AND WELFARE OF THE PUBLIC AND FINANCIAL ABILITY TO PAY.** The public has an interest in keeping the Employer in a competitive position to recruit new employees, to attract competent experienced employees, and to hold valuable employees now serving the Employer. The public is presumably interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

There is no evidence that the Employer is unable to pay either of the offers. Furthermore, there is no evidence that acceptance of the Union's offer would require a significant increase in taxes.

d. **COMPARISON OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT.** The Arbitrator is required to give weight to the

comparison of wages with other public and private employees in "comparable communities." Communities are considered to be comparable if they are substantially similar in geographic proximity, population, number of employees, full-value taxable property, and state aid.

The Union has proposed the following list of comparable communities: Brookfield, Germantown, Grafton, Greenfield, Hartford, Menomonee Falls, and Muskego. It also proposes a comparison with wages paid by the Wisconsin Road Builders Association and Southeastern Wisconsin Construction Materials Association.

The Employer has proposed the following list of comparable communities: Franklin, Greendale, Hales Corners, City of Waukesha, and County of Waukesha

At the hearing, neither of the parties objected to the other's list of comparables. In addition, neither party presented evidence in support of its respective position regarding comparables. In its brief, the Union argues that the County of Waukesha is not a proper comparable for a small municipality. However, the Union utilized the County of Waukesha in its own comparisons. While there are clearly differences between a county and a small municipality, the County of Waukesha will be utilized as a comparable since it is geographically proximate to the Employer and both parties utilized it as a comparable at the hearing. Grafton does not appear to be an appropriate comparable in that it is neither similar in population to the Employer nor located in either Waukesha or Milwaukee counties as are the other comparables. Likewise, comparisons with the Village of Waterford and the Town of Waterford are not appropriate here.

CHART NO. 1---PATROLMAN	
Brookfield	\$8.80
Franklin	8.60 (Avg.)
Greendale	8.72 (Avg.)
Greenfield	9.67
Hales Corners	8.77
Menomonee Falls	9.45
City of Waukesha	8.69
County of Waukesha	8.25

Average hourly wage: \$8.89

Median hourly wage: \$8.75

Union Proposal: \$8.88

Employer Proposal: \$8.63

The Union's proposal is 1¢ below the average hourly wage paid by the comparable employers. The Employer's offer is 26¢ below the average. The Union's proposal is 13¢ over the median hourly wage and the Employer's is 12¢ below it. The Union's proposal would place the Employer third from the top and the Employer's proposal would place it third from the bottom.

The Employer points out that the Menomonee Falls wage rate for 1982 was part of a two-year agreement negotiated in the fall of 1980. It argues that this wage rate is irrelevant here because it was negotiated during a totally different economic climate. See Cudahy Schools, Dec. No. 19635 (Gundermann, 1982). If the Menomonee Falls' wage rate were

disregarded, the average hourly wage rate of the remaining comparables is \$8.79. The Union's offer is 9¢ higher than the average and the Employer's offer is 14¢ below the average. Without Menomonee Falls, the median hourly wage is \$8.72. The Union's offer is 16¢ higher than the median and the Employer's is 9¢ lower.

CHART NO. 2---EQUIPMENT OPERATORS	
Brookfield	\$8.90
Franklin	9.41 (Avg.)
Germantown	9.02
Greendale	9.17 (Avg.)
Hales Corners	8.77
Hartford	8.49
City of Waukesha	9.11
County of Waukesha	8.53

Average hourly wage: \$8.93

Median hourly wage: \$8.96

Employer Offer: \$9.04

Union Offer: \$9.30

The Union's offer is 37¢ higher than the average hourly wage and the Employer's is 11¢ higher. The Union's offer is 34¢ higher than the median and the Employer's is 8¢ higher.

Of the thirty-six employees in the bargaining unit, seventeen are in the patrolman classification and only four are in the equipment operator classification. Accordingly, more weight should be given to the comparisons of patrolman wage rates than equipment operator wage rates.

The record also shows that drivers (patrolmen) employed by members of the Wisconsin Road Builders Association are paid \$11.25 per hour and drivers (patrolmen) employed by the Southeastern Wisconsin Construction Materials Association are paid \$11.66 per hour. Because of differences in the continuity and stability of construction industry employment in comparison with public employment, the conditions of employment are too dissimilar to make meaningful comparisons possible.

Of the comparables, only one has agreed to an hourly wage rate for the patrolman classification for 1983. Waukesha County has agreed to a wage rate of \$8.83. This represents a seven percent increase. This is 5¢ less than the hourly wage rate the Union is seeking for patrolmen for the 1982-83 contract. The Union's proposal for 1983-84 is 75¢ higher than that of Waukesha County for 1983.

e. CONSUMER PRICE INDEX. Between March 1981 and March 1982 the Consumer Price Index for Urban Wage Earners in the Milwaukee Metropolitan Area increased by 6.5%. From September 1981 to September 1982 the national CPI increased by 4.9%. The Milwaukee Index increased by five percent during the same period. The most recent CPI for Urban Wage Earners shows a 5.3% increase from November 1981 to November 1982.

Because cost of living increases are generally "catch up" in effect, the increase in the CPI during the twelve months preceding the effective date of a contract is usually considered to be relevant rather than estimated future in-

creases when determining appropriate wage adjustments. See Hartford Sch. Dist., Dec. No. 18845-A (Zeidler, 1982); City of Franklin, Dec. No. 195969-A (Imes, 1982).

The Employer's 1982-83 proposal is 1.5% lower than the increase in the CPI from March 1981 to March 1982 while the Union's is 1.5% higher. During the last contract the employees represented by the Union received a pay increase of eight percent, an increase less than the increase in the CPI for the previous year. Thus, the employees have some ground to make up with regard to the cost of living.

Since March 1982, increases in the CPI have been declining. The Wisconsin Department of Industry, Labor & Human Relations predicts increases in the CPI of about six percent per year. Wisconsin Employment and Economic Indicators, pp. 9-10 (August 1982). The Union's proposal for the second year of the contract is 2.7% higher than the increase in the CPI from November 1981 to November 1982.

f. TOTAL COMPENSATION. If the Employer's offer were adopted, the total increase in wages, pension costs and increased health care costs for bargaining unit members would total \$51,089. The total increase, if the Union's offer were adopted, would be \$73,125. The difference in cost between the two offers is \$22,036. The Employer's offer would result in an overall compensation increase of 6.6% and Union's would result in a 9.4% increase.

g. CHANGES DURING THE PENDENCY OF THE ARBITRATION PROCEEDINGS. The Arbitrator is required to consider changes in the foregoing circumstances during the pendency of the arbitration proceedings.

As noted above, the Arbitrator has considered the increase in the CPI through November 1982. The parties had full opportunity to discuss the CPI and its significance at the hearing and in their briefs.

In addition, the Arbitrator has reviewed arbitration awards rendered before and during the pendency of the arbitration proceedings. While the determination of each case is based upon the independent thinking and analysis of the arbitrators, the reasoning used and principles enunciated by other arbitrators may aid in reaching a decision. See Elkouri & Elkouri, How Arbitration Works (3d ed. 1977), pp. 365-68. Where one party has cited arbitral precedents, the arbitrator may allow the other party time to consider and answer them. However, nothing prevents an arbitrator from searching out relevant awards on his or her own. Id. at 370, n. 21.

h. OTHER FACTORS. This criterion recognizes that collective bargaining is not isolated from those factors which comprise the economic environment in which bargaining occurs. Cudahy Schools, Dec. No. 19635 (Gundermann, 1982); Madison Schools, Dec. No. 19133 (Fleischli, 1982). Unemployment has risen in Waukesha County from a low of 7.6% in January 1982 to 9.9% in August 1982. According to exhibits introduced at the hearing, improvement in economic conditions may not be noticed until later in 1983.

There is, however, no evidence that the Employer has had to or will have to reduce or eliminate any services, that it will have to engage in long term borrowing, or that it will have to raise taxes significantly. There is nothing to show that the Employer cannot continue to provide its employees with wages and increases competitive with comparable employers.

While the Union made some concessions as indicated in the agreed upon items, an examination of the relevant comparables and changes in the CPI provides a more helpful method for assessing the reasonableness of the parties' offers. There are countless differences among collective bargaining agreements. It would be virtually impossible to compare the collective bargaining agreements of the comparables item by item.

3. ANALYSIS

a. 1982-83 WAGE INCREASE. The parties did not present any evidence of the history of the Employer's relative wage position ranking or of the percentage increases among the comparables. Thus, in order to determine which offer is more reasonable, the Arbitrator must consider the relationship of the parties' respective offers to the average and median wages of the comparables.

The comparison of patrolman wages is the more persuasive here because there are seventeen employees in the patrolman classification and only four in the equipment operator classification. The Union's proposal is 1¢ below the average hourly wage paid by the comparable employers while the Employer's offer is 26¢ below. The Union's proposal is 13¢ over the median hourly wage and the Employer's is 12¢ below.

If the Menomonee Falls' wage rate (the second year of a two-year contract) is disregarded, the Union's offer is 9¢ higher than the average and the Employer's offer is 14¢ below the average. The Union's offer is 16¢ higher than the median and the Employer's is 9¢ below.

Based on these comparisons, both offers appear to be reasonable. The Union's proposal is more reasonable when compared with the average wage and the Employer's is slightly more reasonable when compared with the median wages.

With respect to changes in the CPI, the Employer's offer is 1.5% lower than the March 1981 to March 1982 CPI increase and the Union's is 1.5% higher. Since the CPI also includes costs of health care and both proposals provide that the Employer pay the full cost of health insurance premiums, it is also appropriate to consider the percentage increase in overall compensation. The Employer's proposed increase in overall compensation would be one percent higher than the CPI and the Union's proposed increase would result in an overall increase 2.9% more than the increase in the CPI. However, a portion of the overall increase is attributable to items not included in the computation of the CPI. The previous year's wage increase of less than the prior year's increase in the CPI must also be considered. Taking this all into account, it appears that both parties' offers are reasonable when compared to changes in the CPI.

Absent any showing that implementation of the Union's offer would result in the Employer reducing or eliminating services, engaging in long term borrowing, or raising taxes, it cannot be concluded that the interest and welfare of the public would be adversely served by accepting the Union's offer.

Both parties' offers for the period from April 1982 to April 1983 are reasonable when considered in light of the statutory criteria. Because the Union's offer is closer to the average salary paid patrolmen by the comparable employers and makes up for increases in the cost of living not covered by the previous wage increase, it is determined that the Union's salary offer for the period from April 1982 to April 1983 is slightly more reasonable.

b. 1983-84 WAGE INCREASE. Only two items in the record relate to the Union's offer for an eight percent increase for the proposed second year of the contract: the CPI and comparison with other wage settlements.

With respect to the 1983-84 wage increase, the most appropriate period for measuring the change in the CPI is the preceeding twelve months. The most recent CPI for Urban Wage Earners shows a 5.3% increase from November 1981 to November 1982. The Union's offer exceeds this by 2.7%.

Only one of the comparables has agreed to an hourly wage rate for patrolmen for 1983--Waukesha County. The County's 1983 wage rate is 5¢ less than the hourly wage rate the Union proposes for the 1982-83 contract and 75¢ less than the Union's 1983-84 proposal.

Thus, the Union's proposal for 1983-84 is not justified by the most recent increase in the CPI or by an examination of the comparables. Furthermore, evidence presented at the hearing shows a downward trend in increases in the CPI and shows continued high unemployment. The uncertainty of the current economic climate is reflected in the contract between the Wisconsin Road Builders Ass'n and Teamsters Council No. 39, where the parties agreed to a wage rate for the first year of the contract but provided that subsequent wage rates were subject to a reopener.

The record does not establish that the Union's wage offer for 1983-84 is reasonable under the present circumstances. The magnitude of the increase sought by the Union for 1983-84 would most probably not be voluntarily agreed to under existing conditions. See West Bend Schools, Dec. 19442 (Fleischli, 1982). Because subsequent events may establish what is a reasonable increase, it would be more appropriate for the parties to negotiate the wage rate for 1983-84 than it would be for the Arbitrator to require the Employer to implement the Union's offer of a fixed increase at this time. See Marion Sch. Dist., Dec. No. 19418 (Vernon, 1982); Kewas-kum Sch. Dist., Dec. No. 18991 (Rothstein, 1982).

4. CONCLUSION

Although the Union's wage offer for 1982-83 is slightly more reasonable than the Employer's, the 1982-83 wage offers of both parties are reasonable. However, the Union's wage offer for 1983-84 is not reasonable. Implementation of the Employer's offer would result in a wage rate during the 1982-83 contract that is as close to the median wage rate of the comparables and the increase in the cost of living as the Union's offer. More importantly, implementation of the Employer's offer would give the parties the flexibility to negotiate a wage rate for 1983-84 that is consistent with the conditions existing at that time. Accordingly, it is concluded that the Employer's wage offer is the more reasonable.

B. TERM OF AGREEMENT

The Union proposes a two-year agreement from April 1, 1982, through March 31, 1984. The Employer proposes a one year agreement from April 1, 1982, through March 31, 1983.

1. POSITIONS OF THE PARTIES

a. THE UNION

The Union points out that the last agreement between the parties was a two-year contract. In light of the extent of the proceedings made necessary by the mediation/arbitration law and the effect of promoting industrial stability by a

two-year agreement, the Union contends it has made the preferable offer.

b. THE EMPLOYER

Recognizing that the previous contract was a two-year agreement, the Employer argues that the situation in 1982 differs substantially for that which existed in 1980. It says the present state of the economy and the predictions for a slow recovery do not present a persuasive argument in support of a multi-year collective bargaining agreement containing fixed wage increases "far in excess" of present and anticipated increases in the CPI.

2. CONCLUSION

There is considerable merit to the Union's position that a multi-year agreement promotes industrial stability. Since the main impact of a two-year agreement is on wages, for the reasons set forth in the discussion of the parties' wage proposals, it is concluded that the Employer's offer of a one-year agreement is more reasonable.

C. INSURANCE

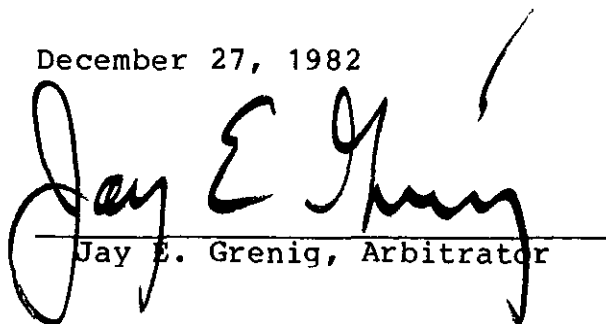
The Union proposes that the Employer pay the full cost of employee insurance during the term of the agreement. The Employer has already agreed to pay the full cost of insurance from April 1, 1982, through March 31, 1983. Thus, the only matter in contention here is whether the Employer must pay the full cost of insurance during the Union's proposed second year of the agreement. Because it has already been concluded that the Employer's offer of a one-year contract is more reasonable, there is no need to determine whether Union's proposal is more reasonable.

V. AWARD

Based upon the foregoing discussion of the individual issues in dispute, it is concluded that the Employer's offer is the more reasonable of the two. Of the issues before the Arbitrator, the most critical issue to the parties is clearly wages.

Having considered all the evidence and arguments submitted in this matter in accordance with the statutory criteria, it is the decision of the Arbitrator that the Employer's final offer is to be incorporated into the parties' collective bargaining agreement.

December 27, 1982


Jay E. Grenig, Arbitrator