RECEIVED

SEP 30 1983

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of an Arbitration
between

THE CITY OF SUPERIOR

and

SUPERIOR CITY EMPLOYEES UNION
LOCAL #244, AFSCME, AFL-CIO

Case LXIII No. 30974
MED/ARB 2116
Decision No. 20422-A

Appearances:

Mr. William R. Sample, Industrial Relations Council; for the City.

Mr. James A. Ellingson, Wisconsin Council 40, AFSCME, AFL-CIO, for the Union.

Mr. Neil M. Gundermann, Mediator-Arbitrator.

ARBITRATION AWARD

The City of Superior, Wisconsin, hereinafter referred to as the City, and Superior City Employees Union Local #244, AFSCME, AFL-CIO, hereinafter referred to as the Union, were unable to reach an agreement on the terms of a reopened contract. Pursuant to Sec. 111.70(4)(cm)6.b. of the Municipal Employment Relations Act, the undersigned was appointed mediator-arbitrator. On July 1, 1983 mediation was conducted in an attempt to resolve the matter, and when the parties remained at impasse an arbitration hearing was held on the same date in Superior, Wisconsin. The parties filed post-hearing briefs.

FINAL OFFERS

Union:

1. Wages: 3% effective 1/1/83
   4% effective 7/1/83
2. Insurance: Employer to pay 95% of family premium
   100% of single premium
3. Sweeper classification to be reallocated to the 7-H rate.

City:

1. Wages $30 per month across-the-board effective 1/1/83
2. Insurance: Employer to pay
   $159.25 per month toward family premium
   $ 69.00 per month toward single premium

UNION'S POSITION:

When the Wisconsin Legislature enacted the mediation-arbitration statute it was clearly the legislative intent to foster voluntary labor settlements. The only public employer units that have not settled in northwestern Wisconsin for January, 1983 include Douglas County and the City. The Union argues that since a clear pattern of settlements has been established, it would be contrary to the legislative intent if the arbitrator ordered the adoption of a settlement that was either higher or lower than the broad pattern of settlements in the area, as it would encourage either party to proceed through mediation-arbitration rather than through voluntary settlements.

According to the Union, the concept of looking to comparables has been well settled in arbitral authority. In the City of Green Bay, both Arbitrator Zel Rice and Arbitrator Joseph Kerkman relied upon settlements in the geographic area.

The pattern of settlements in northwestern Wisconsin closely approximates the Union's final offer in the area of wages. The Union's proposed increase represents a total increase slightly in excess of 7%, including the cost of insurance and the upgrading of the Sweeper classification.

It is noted by the Union that both parties seek to change the status quo in regard to health insurance. Under the 1982 agreement, the City paid 100% of the single health insurance premium and 93% of the family health insurance premium. In its final offer the Union has sought to maintain the $10 monthly City payment on the family health insurance premium and has, therefore, put in a final offer of 95% payment by the City. Although the City would continue to pay 100% of the single premium, its contribution would be reduced from 93% to 86%. The Union submits that its final offer is less disruptive of the status quo than the Employer's final offer.

It is emphasized by the Union that the City has permitted the firefighters and police to have separate insurance programs. Thus, the insurance programs of the City are fragmented and the Union submits it has no knowledge of any other municipality where such fragmentation of health insurance coverage exists. Since the carrier is a permissive subject of bargaining under Wisconsin law, the City could have one health insurance plan providing higher coverage at a lesser cost through a larger group.

The Union contends that parity exists in northwestern Wisconsin between blue collar workers. Since most other blue collar units in the public sector have settled for 1983 with split increases, it is only logical that members of this bargaining unit equally deserve a split increase to maintain their area status.

Historically, there are two reasons for split increases. One reason is to catch up for low paid units. The other reason is to make a low settlement for the employer attractive to the union. According to the Union, the settlements in northwestern Wisconsin fall into the second category. The Union has consistently offered a 6% wage increase effective January 1, or a 3% increase effective January 1 and a 4% increase effective July 1. Most of the employers have accepted the split. In the instant dispute the split is what the Union is seeking and this is the pattern established in northwestern Wisconsin.

The City has objected to a split increase and the conversion of health insurance coverage to a percentage from a dollar amount. The Union notes it would have been willing to settle for less in a voluntary settlement; however, the Union's package of slightly over 7% is well within the range of area settlements in contrast to the City's offer of slightly in excess of 3%, which is far below the range of area settlements.

The Union emphasized that the City is in extraordinarily strong financial position. Indeed, the City has not raised an ability-to-pay issue. Despite the City's strong fiscal situation, it unilaterally decided during the budgeting process that it would give a $50 per month increase to each member of the four City unions. The City has not changed its initial position even though a clear pattern of settlements, including a 3% and 4% split, emerged in 1983.

The Union objects to the erratic choice of comparables used by the City. According to the Union, in some of the exhibits the comparables consist of Superior, Douglas County and Price County, and other exhibits do not use Douglas or Price County but use the City of Spooner, Portage County or Wisconsin Rapids. In no case has the City addressed the issue of the raises for 1983 for these units. Additionally, the City has failed to include other comparable cities as well as comparable counties in its comparables. This suggests that the City has chosen the comparables which best support its position.

During the negotiations the Union presented its comparables for the Sweeper classification. The City never responded with any comparables of its own. The Union argues the comparables support its position, and further, the cost factor involved in raising the Sweeper classification is negligible as there are only three Sweepers involved.

For the above reasons the Union respectfully requests that the arbitrator award its final offer.

CITY'S POSITION:

The City notes that Section 111.70(4) states the following:

> "In making any decision under the arbitration procedures authorized by this subsection, the mediator/arbitrator shall give weight to the following factors: . . ."

The use of the operative word "shall" in the above quoted language requires that the arbitrator consider each of the eight factors. In its presentation, the Union considered (e) inappropriate. That provision states: "The average consumer prices for goods and services, commonly known as the cost of living." The cost of living has been dealt with historically by both parties in reaching agreement on successor collective bargaining agreements. The fact that the CPI for the year 1982 is considerably lower than it has been in the past is not reason to now ignore this factor. Because the CPI is lower, employes have enjoyed a year when prices for food, housing, etc. have not risen as rapidly as they have in the past. This has resulted in more moderate wage increase proposals from both parties; however, the Union's proposal is 193% of the cost of living for the year 1982.

The thrust of the Union's presentation was mainly upon settlements and percentage increases granted to employers in surrounding cities and counties. There was no evidence introduced by the Union comparing wages, hours and working conditions, as was presented by the Employer.

The City emphasized that fully one-third of the comparables relied upon by the Union were increases granted in the second year of two-year agreements. The Employer submits that increases granted in 1982, taking into consideration increases in the CPI for that period and the previous year, are misleading when applied to 1983. This is especially true given the drastically changed economic conditions the country and this area, specifically, are currently experiencing.

It is noted by the Employer that the majority of the Union's own comparisons show that the City of Superior employes enjoy wages superior to those paid by neighboring city and county employers.

The Employer contends that (h) is particularly significant and provides:

> "Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in a 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."

This provision requires the arbitrator consider the economic condition of the City and the County as well as the levels of employment and unemployment in the City and Douglas County.

It is noted by the City that none of the counties used as comparison by the Union have cities which are on the list of the twenty-six highest tax-paying cities. It is emphasized by the City that there are a number of large cities which are taxed at considerably lower rates than the City.

The City further notes that it has an unemployment level which is up substantially and a labor force that has declined since 1980. The unemployment in other counties, as determined by dividing the number of unemployed workers by the civilian labor force, may be nearly as high as that in Douglas County; and Sawyer County and Washburn County are somewhat higher than Douglas County. This is mitigated by the fact that a comparison of the percentage levels of unemployment in 1980, 1981 and 1982 show that Douglas County has a marked increase in unemployment, while other areas have merely shown a growth in unemployment. The only exception is Sawyer County which has shown a growth of unemployment in 1982. However, Sawyer County is a county without major industries such as those found in Douglas County, and its largest city is Hayward with a population of 1,698 or less than 6% of the population of Superior. The evidence suggests that other counties in northern Wisconsin had a history of high unemployment levels, while Douglas County has seen a drastic rise in unemployment over the past two years.

Through its comparison of wages, hours and working conditions, the City has established that five of the City's classifications have wages over the average compensation paid to employes doing similar work in surrounding cities and counties.

This evidence establishes that the City of Superior pays wages far in excess of the alleged comparable communities.

The Union has proposed changing the Sweeper Operator classification from rate 7 to rate 7-H. This represents an 11.6% increase in this classification and generates a wage of $9.57 with a total compensation of $12.70 per hour--16% over the 1983 average comparables. Given the comparables as presented by the City wherein five of the eight comparables show the City of Superior Sweeper Operators are paid over their contemporaries, it would seem that the arbitrator must rule in favor of the City on this factor.

The City has shown that its proposal of 3.2% is much closer to the CPI increase of 3.7% in 1982. The Union's proposal with the 7.2% lift was 193% of the CPI in 1982. The City emphasized that the parties to this proceeding have traditionally looked at the CPI in attempting to reach an agreement during previous negotiations.

The City notes that if the four bargaining units accept the City's proposal, almost half the City's reserves will be spent on increased wages and benefits. If the Union's proposal is accepted, over 38% of the estimated $340,493 surplus will be utilized to pay increased wages and fringe benefits for this unit alone. When the $38,220 additional cost of Local 235's arbitrated settlement is added to the $130,686 cost of this settlement, the result is the elimination of 49.6% of the City's estimated surplus. If the costs of retirement and state/federally mandated fringes are added, these two settlements will use up over 56% of the City's estimated surplus.

It is appropriate to note that if a pattern is established within the City granting a 3%, 4% split wage increase and a percentage increase in health insurance, the residents of the City will be required to pay for such pattern by either borrowing to cover salaries, or accepting reduced services because there will be less employes or programs will be eliminated.

In concluding its arguments, the City emphasizes that the legislature intended the arbitrator in rendering a decision to consider all eight factors contained in Section 111.70(4). The City has demonstrated that the interest and welfare of the public and financial ability of the unit of government to meet the costs must be decided in favor of the City. As the City has shown, there is a small reserve, and establishment of a pattern within the City would cause increased costs and may very well result in reduced services to the City residents. Factor (d), comparison of wages, hours and conditions of employment, has also been shown to weigh against the Union's presentation using both the Union's and City's comparisons. Factor (e), the average consumer price for goods and services, has been shown to weigh against the Union's final offer which was 193% of the cost of living for 1982. Factor (f), overall compensation received by municipal employes, must be found to weigh in favor of the City as the Union did not attempt to present data to refute such conclusion. The City did show that the overall compensation, excluding legislatively mandated costs such as unemployment and worker's compensation, weigh greatly in favor of the City.

Section (h), which is other factors not confined to the foregoing which are normally and traditionally taken into consideration, also weighs in favor of the City. Economic

conditions and unemployment levels in the area show that there are problems in the City which differentiate this area from other areas. Therefore, it can be said that five of the eight factors to be considered weigh heavily in favor of the City's position. The City, therefore, respectfully requests that the arbitrator render a decision stating that the City's final offer is more reasonable and ordering that the parties implement the City's final offer.

DISCUSSION:

There is general agreement between the parties as to both the costs of their respective proposals as well as the percentage increase of the proposals. The City calculates its proposal as costing $60,416 and representing a total package of 3.15%. It calculates the Union's proposal as costing $130,686 and representing a total package of 6.81%. It is noted by the City that the lift for the entire year, as a result of the split increase, will increase its costs by $167,107 or 8.7%.

Although the City did not raise an ability-to-pay argument, the City noted that it had a surplus as of May 1, 1983 of $340,493. Out of that money, the City has traditionally spent $250,000 annually for normal line items and overtime transfers which significantly reduces the surplus. Thus, the City argues it does not have available the funds asserted by the Union. Additionally, the available fund balance occurs only once; thus if it is used to finance wages and fringes, in ensuing years either additional taxes or a reduced level of service will be necessary. A review of the City's finances leads to the conclusion the City could fund the Union's final offer, a conclusion not disputed by the City.

A review of the evidence establishes that the City is among the highest paying public employers in the northwestern part of the State. The City exhibits covering the classification Tandem Truck Driver, Single Truck Driver, Grader Operator, Roller Operator and Sweeper Operator support the conclusion the City is highly competitive among public employers. Indeed, the exhibits submitted by the Union covering such public employers as Ashland County, Sawyer County, Burnett County, Washburn County and Bayfield County support the conclusion the City is among the highest paying public employers.

It is argued by the City that because it is a leader it should not be compelled to grant an increase comparable to that paid by other public employers. In support of its position the City points to factor (d) which directs the arbitrator to consider the wages and benefits of employes in comparable communities performing similar services.

While not disputing the fact that the City is among the leaders in wages and fringes, the Union argues that factor (h), which refers to other settlements, should be the controlling factor. The other settlements in the area more closely approximate the Union's final offer. This is not disputed by the City.

There is a certain amount of appeal and logic to each argument. By its final offer of 3% and 4%, the Union is essentially increasing the salaries of the bargaining unit employes, in absolute terms, by more than that received in other units where the increases were the same percentage. This is due to the percentage being applied to higher rates in the City. Conversely, the City is not seeking to maintain its position, in absolute terms; it is offering an increase of $30 per month, or 17¢ per hour, which is substantially below the increases granted

by other public employers. An increase of $30 per month or 17¢ per hour equals approximately a 2% increase based on the average hourly wage rate of $8.33. It is well below the pattern of settlements in terms of percentages as well as cents per hour.

More significantly, the City has been unable to point to any settlement which even approximates its final offer. Although the City argues that a third of the settlements relied upon by the Union were settlements negotiated in 1981 or 1982 as part of two-year agreements, this leaves two-thirds of the settlements negotiated in 1983 on terms similar to those being sought by the Union.

These settlements negotiated by other public employers in 1983 were negotiated under the same economic conditions as are confronting the City, including the same increase in the cost of living. This clearly suggests that where voluntary agreements have been reached, while the cost of living may have been a factor, it was not the controlling factor. Certainly as the cost of living has fallen so too has the pattern of settlements. However, the pattern of settlements has not been the increase in the cost of living.

In this case the Union's final offer more closely approximates the settlements in the area. The City's final offer is substantially below the pattern of settlements, not only in terms of percentages but also in absolute terms, cents-per-hour. The City has the ability to pay and given the pattern of settlements it is the opinion of the undersigned that the Union's final offer is the more reasonable.

Although the City argues that the unemployment in the City must be given weight in the arbitrator's deliberations, Arbitrator Haferbecker rejected such argument noting that the other public employers who reached voluntary settlements had unemployment equal to or greater than the City. The undersigned shares Arbitrator Haferbecker's conclusion.

There is both an economic and philosophical difference in the parties' final offers relating to insurance. The City is seeking to maintain its insurance contribution expressed in dollars per month. The Union is seeking to replace the flat dollar contribution with a percentage: 100% of the single premium paid by the City and 95% of the family premium paid by the City. Based on the evidence it appears that more of the comparable employers express their contribution in dollars than percentages even though some that are expressed in dollars are actually paying 100% of the premium.

With the degree of sophistication brought to the bargaining table by both parties, it is clearly recognized that as insurance costs increase these costs are paid out of monies available to employes for wages or insurance. Thus, whether the premium is expressed in terms of dollars or percentages isn't as significant as it once may have been. Additionally, the Union is not requesting 100% payment of the family premium, but is leaving the employe with 5% to pay. In terms of actual dollars the parties are apart approximately $15,000 according to the City's computation. Within the context of the total settlement neither party's final offer is unreasonable.

The remaining issue involves the reallocation of the Sweeper Operator from Labor Grade 7 to Labor Grade 7-H. As a

general rule reallocations of this nature are better negotiated than arbitrated. The parties, through negotiations, establish relationships between classifications. These bargained relationships become distorted when they are disturbed through arbitration. Additionally, seldom is there adequate evidence introduced as to the relative comparability of jobs within the bargaining unit.

Based on the City's exhibit relating to the Sweeper Operator classification, it appears the classification is slightly low. However, if the classification is placed in Labor Grade 7-H, as requested by the Union, the classification will be significantly over-paid. Clearly the City's position is the more reasonable in this regard.

CONCLUSIONS

Under the provisions of Chapter 111.70, the undersigned must award the final offer of one of the parties. In the instant dispute the major issue is that of wages, and it is that issue which must be considered as controlling.

The evidence clearly establishes that the final offer of the Union most closely approximates the settlements in the area. The City's final offer both in terms of percentage and cents per hour is substantially below the pattern of settlements. The City has the ability to pay and does not argue to the contrary.

Based on the above facts and discussion thereon, and after having given due consideration to all of the statutory criteria, the undersigned renders the following

AWARD

That the Union's final offer be awarded and made a part of the 1983 collective bargaining agreement.

Neil M. Gundermann

Neil M. Gundermann, Arbitrator

Dated this 24 day of
September, 1983 at
Madison, Wisconsin.