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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between CITY OF KAUKAUNA (DEPARTMENT OF PUBLIC WORKS) And LOCAL UNION #130, KAUKAUNA CITY EMPLOYEES, AFSCME, AFL-CIO	WERC Case 39 No. 38085 ARB-4229 **Decision No. 24533-A**

Impartial Mediator-Arbitrator

William W. Petrie
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Hearing Held

September 14, 1987
Kaukauna, Wisconsin

Appearances

For the Employer

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For the Union

WISCONSIN COUNCIL 40, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO
By James W. Miller
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Madison, WI 53719

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Kaukauna (Department of Public Works) and Local Union #130 of the Kaukauna City Employees Union, AFSCME, AFL-CIO, with the matter in dispute the wages to be applicable during the two year period of the parties renewal labor agreement covering years 1987 and 1988.

Preliminary negotiations between the parties on the terms of a renewal agreement failed to result in a negotiated settlement, after which the Union on January 6, 1987, filed a petition with the Wisconsin Employment Relations Commission seeking an order directing arbitration of the matter pursuant to Section 111.70(4)(cm)(6) of the Wisconsin Statutes. After appropriate preliminary investigation and recommendations, the parties submitted their final offers and the Commission on June 1, 1987, issued certain findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration. The undersigned was thereafter selected by the parties to hear and decide the matter and was appointed by the Commission to do so in an order dated June 18, 1987.

Unsuccessful preliminary voluntary mediation took place in Kaukauna, Wisconsin on September 14, 1987, after which the parties moved directly into the interest arbitration process. All parties received a full opportunity at the hearing to present evidence and argument in support of their respective positions, and each closed with the submision of a post-hearing brief.

The Final Offers of the Parties

The only items in dispute between the parties are the wage rate to be effective during the two year duration of the 1987-1988 renewal agreement, and a proposed modification of call-in pay rates.

(1) The final wage offer of the Employer provides in material part as follows:

"3. Wage Increase:
A. Effective January 1, 1987 all rates set forth on Appendix A for 1-1-86 of the 1985-1986 Agreement shall be increased by 3%.
B. Effective January 1, 1988 all rates derived in (A) above for 1987 shall be increased by 3%."

(2) The final offer of the Union provides in material part as follows:

"1) Wages: 40 cents per hour effective 1-1-87
40 cents per hour effective 1-1-88

2) Call-in pay - Article VI - Para C
Increase call in pay from one (1) hour to two (2) hours."

The Arbitral Criteria

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to give weight to the following described arbitral criteria:

"a. The lawful authority of the municipal employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
e. 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 generally in public employment in the same community and in comparable communities.
f. 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 in private employment in the same community and in comparable communities.
g. The average consumer prices for goods and services, commonly known as the cost-of-living.
h. The overall compensation presently received by the municipal employees, 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.
i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
j. 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."

POSITION OF THE EMPLOYER

In support of its argument that the final offer of the City is the more reasonable of the two offers before the Arbitrator,

the Employer emphasized the following principal arguments.

(1) Preliminarily it emphasized that the Employer's final offer would provide wage increases of 67 cents per hour or 6% over the two year duration of the renewal agreement, while the Union's demand is for wage increases totalling 80 cents per hour or 7.1% over the two years.

It emphasized that the Union's demand was in excess of two voluntary settlements for two year renewal agreements, within other city units.

(2) It submitted that the bargaining history between the City of Kaukauna and various unions in 1987, supported the adoption of the final offer of the City.

(a) That fire negotiations with Local 1594 of the I.A.F.F. began on October 8, 1986, and were concluded with a one year renewal agreement, which provided for a 3% wage increase for 1987 as the only change.

(b) That police negotiations with WPPA-LEER began on October 8, 1986, and culminated in a mediated settlement on July 22, 1987, with the assistance of Arbitrator Neil Gunderman; that the renewal agreement was for two years, and provided wage increases totalling 3% for 1987 and 4% for 1988.

(c) That utility negotiations with Local 2150 of the IBEW began on November 10, 1986, and culminated in a mediated settlement on July 29, 1987, with the assistance of Arbitrator Robert Mueller; that the renewal agreement was for two years and provided wage increases totalling 3% for 1987 and 4% for 1988.

(d) That the negotiations with Local 130 of AFSCME, which gave rise to these arbitration proceedings, began on October 14, 1986, and ended with the arbitration proceedings of September 14, 1987. That the parties failed to reach a settlement in preliminary mediation due to the Union's refusal to accept a voluntary settlement offer consistent with the City's other two year settlements.

(e) That the bargaining chronology for the renewal agreements shows that all units asked for 3% for 1987 except Local 130, which is asking for 3.6% or 40 cents per hour for 1986. That the

City certified its final offer with Local 130 at the same level it did so with other units for the 1987-1988 contract renewals. That Local 130 is the last unit to be open for the 1987-1988 contract renewal, and is attempting to get more than the voluntary settlement pattern attained with other City units.

(3) That the City of Kaukauna has operated in good faith in this matter and that for the Arbitrator to grant the increase requested by the Union would be harmful to the voluntary settlement process, in that it would encourage all unions to wait until the others have settled; that this practice could put the City in an impossible position from which to bargain. That the last union could always attempt to stretch for just a little bit more than the others, thus ending the chance for voluntary settlements.

(4) That CPI movement of only 1.1% in 1986 supports the selection of the final offer of the Employer rather than that of the Union.

On the basis of consumer price index movement in 1986, the reasonableness of the City's 6% increase offer, the bargaining history considerations referenced above, and the need to adopt a settlement which will encourage voluntary settlements in the future, the City urges arbitral adoption of its final offer.

POSITION OF THE UNION

In support of its contention that the final offer of the Union was the more appropriate of the two before the Arbitrator, the Union emphasized the following principal arguments.

(1) Preliminarily it emphasized certain stipulations entered into by the parties at the hearing, and certain other underlying facts.

(a) That the Police Department Unit in the City had settled with a two year agreement, with a 3% increase for 1987 and a 4% increase for 1988.

(b) That the Fire Department Unit in the City had settled for a one year renewal agreement, with a 3% increase for 1987.

(c) That the Water Utility Unit in the City had settled for a two year agreement for 3% for 1987 and 4% for 1988.

(d) Historically, that increases within the DPW unit

have been an equivalent percentage from a cost standpoint, but the DPW employees have always taken the increases on a cents per hour, across the board basis; for example, a 3% increase as a percentage of the average hourly rate, would be added to all classifications.

(e) That the average hourly rate within the bargaining unit is currently $10.86 per hour.

(2) That there is no question but that the pattern for settlement within the City of Kaukauna consists of 3% increases for 1987 and 4% increases for 1988.

(a) The City has not, however, offered this settlement to those in the unit, rather offering 3% for each year in the proposed two year settlement.

(b) Further, that the City's offer would add 3% to the existing wage rates, rather than applying the percentage increase against the average hourly wage rate, and then adding this amount to all classifications.

(c) That the City has failed to justify a 6% increase for those in the bargaining unit, versus its 7% settlement in other units within the City.

(3) That the Union's offer, which was made in April of 1987. was almost the same as the final settlement reached between the City and its other bargaining units.

(a) That the Union proposes a total of 7.23% in increases over a two year period; on a yearly basis the proposal of the Union totals 40 cents per hour for each of the two years. That Union proposed increases total 3.68% in 1987 and 3.55% in 1988.

(b) That the Union offer, at 7.23% for the two years, is very close to the other settlements in the City; additionally, that the Union proposed method of implementing the increases is more consistent with the parties' bargaining history.

(4) That the Employer proposed change in the method of adding wage increases to the structure is a departure from the parties' practice in the past.

(a) That the burden of proof justifying a change from the status quo falls upon the one proposing the change.

(b) That no persuasive reasons have been advanced to justify the change proposed by the Employer.

(5) That consideration of any of the remaining statutory criteria supports selection of the final offer of the Union.

(a) That the level of other settlements for 1987-1988, is much more persuasive than bare cost-of-living figures.

(b) That there is no cost-of-living basis for urging a 6% settlement in the DPW unit and a 7% settlement over two years in the other units within the City.

(c) That internal comparisons favor the Union, since its final offer is much closer to the pattern of 3% and 4% settlements in the other units for 1987 and 1988, than is the Employer proposed 3% and 3% final offer. Further, that the Union's final offer maintains the previous status quo with respect to implementation of the final wage offer.

(6) That neither party regards the additional call time for a second call-out to be of significant importance in this dispute; accordingly, that this item should not bear significantly upon the final offer selection process.

The Union urges that the adoption of its final offer is particularly favored by consideration of the parties' negotiations history, by the wage settlement patterns with other units within the City of Kaukauna, and consideration of the various remaining statutory criteria.

FINDINGS AND CONCLUSIONS

While there are various arbitral criteria spelled out in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it must be noted that the parties have emphasized the importance of comparisons with other bargaining units in the City, to the exclusion of many other of the statutory criteria. While the legislature has not seen fit to establish a priority of importance for the various criteria in the statute, there is no doubt that comparison considerations are the most persuasive of the various factors. This is not only true in public sector interest disputes in Wisconsin, but it is generally true in the

arbitration of public and private sector interest disputes in general. Merely articulating this principle, however, does not provide guidance to an interest neutral with respect to which comparisons should be used, and how their relative importance should be determined.

The proper role of an interest arbitrator is not to indicate to the parties what he or she subjectively feels they should have agreed to in the negotiations process, but rather to operate as an extension of the negotiations process itself! The proper goal of an interest neutral is to utilize the statutory criteria in an attempt to place the parties in the same position that they would have occupied had they been able to reach a voluntary agreement across the bargaining table, and in so doing, the parties' bargaining history can be quite helpful. Where the parties themselves have closely followed other settlements in arriving at their past agreements, arbitrators will normally look to these same agreements to provide insights as to where they might or should have ended up had they been able to reach a voluntary settlement. Both parties agree that the various past settlements within the City of Kaukauna have closely followed one another in their terms, and no other settlements were emphasized or even cited by either of the parties. Accordingly, it is clear to the undersigned that the other internal settlements within the City of Kaukauna furnish the most persuasive comparisons for use in these proceedings, and the most persuasive overall criterion to use in the resolution of the dispute.

The two year settlements reached within the police unit and the utility unit resulted in 3% wage increases for 1987 and 4% increases for 1988, and the parties are in agreement that the average hourly wage rate for those in the bargaining unit is currently $10.86 per hour. Projecting the final offers of each party and the settlement in the other two bargaining units against this average hourly rate, results in the following comparisons.

(1) If the final offer of the Employer were implemented, the average for those in the bargaining unit would increase to $11.1858 per hour for 1987 and to $11.5213 per hour for 1988.

(2) If the final offer of the Union were implemented, the average for those in the bargaining unit would increase to $11.26 for 1987 and to $11.66 per hour for 1988.

(3) If the settlement pattern in the other City of Kaukauna units with two year renewal agreements in 1987 were applied to the dispute at hand, the average wage for those in the bargaining unit would increase to $11.1858 per hour for 1987 and to $11.6332 per hour for 1988.

(4) The two year settlement offer of the Employer would

result in increases aggregating 67 cents per hour over the two year term, the two year offer of the Union would aggregate increases of 80 cents per hour over the same two year term, and implementation of the 3% and 4% increases provided for in the Police and the Utility unit settlements would have provided approximately 77.32 cents per hour over the term of the agreement.

Adoption of the final offer of the Employer would entitle the employees in the bargaining unit to the same average wage increase which they would have received in either the Fire, the Police or the Utility units for 1987; in 1988, however, those in the unit would lose an average of approximately 11.19 cents per hour versus the other two year settlements. Adoption of the final offer of the Union would entitle the employees in the bargaining unit to an average wage increase of 7.92 cents per hour above that received in the Fire, the Police and/or the Utility unit in 1987. In 1988, however, the Union's final offer would bring average wages to 2.68 cents per hour above the level which would have resulted from the parties' adoption of the same agreements reached in the other two year settlements in the City.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the most persuasive comparisons are internal to the City of Kaukauna, and consist of comparing with settlements within the Fire, the Police, the Utility, and the DPW bargaining units. Since only the Police, the Utility and the DPW units are utilizing two year labor agreements covering 1987 and 1988, the two settlements already reached, strongly and persuasively indicate where the parties should have ended up in their voluntary negotiations. Accordingly, the Police and the Utility settlements are the most persuasive indications in the record as to which of the final offers should be selected by the Impartial Arbitrator. While the final offer of the Union is somewhat above the settlement reached in the other two units, it is much closer to their final settlements than is the final offer of the Employer. Accordingly, consideration of the comparison criterion strongly and persuasively favors the adoption of the final offer of the Union.

At this point the Arbitrator will note that he fully agrees with the argument of the City that it would have been best if all City settlements had been consistent with one another. If the two final offers before the undersigned had consisted of one which was fully consistent with the other negotiated settlements and one which differed from the other settlements, the comparison criterion would have strongly supported the selection of the comparable offer. In Wisconsin interest arbitration, however, the Arbitrator is normally limited to the selection of the final offer of either of the parties without change; on this basis, the neutral will normally select the final offer which is closest to where the various statutory criteria indicate that they should have settled. I will merely add at this point that the very close range between the final offers of the parties, and the

settlements elsewhere within the City, strongly suggest that the dispute should have been settled in mediation. Each party, however, was strongly wedded to its final offer, neither of which corresponded with the prior two year settlements within the City.

Cost-of-living considerations and movement in the consumer price index were not stressed by either party at the hearing, but it is appropriate for the Arbitrator to note the low rate of 1986 increase cited in the briefs. This figure, of course, covered the last year of the parties' expired agreement, and it is unclear what degree of movement in the index was anticipated by the parties during their last renewal of the agreement in 1985. While the 1986 rate of increase in the index is below the final offers of either party, and below the 3% and the 4% general wage increases for the two year duration of the other agreements in the City, cost-of-living considerations for 1986 simply cannot be assigned significant weight in these proceedings concerning 1987 and 1988. If it was apparent that the parties had significantly over or underestimated CPI movement in their last negotiations, perhaps the increase in 1986 would be more important in the final offer selection process in these proceedings, but no such information is available.

What of the Employer's argument that a decision and award favoring the Union might or could encourage dilatory tactics on the part of the various unions in the future, with each attempting to delay the process to gain a little more than the pattern elsewhere in the City? While the Arbitrator agrees with the underlying thrust of the Employer's argument that nothing should be done to inhibit or discourage voluntary settlements, I disagree that the selection of the final offer of the Union would produce the negative results referenced by the City.

(1) With the certification of final offers typically taking place considerably before the mediation or arbitration processes, it is unlikely that either of the parties would be able to predict with accuracy the size of the settlements which will take place thereafter.

(2) Either of the parties could provide in their final offers, on a contingent basis, for the possibility of a pattern settlement within the City either above or below that otherwise provided for in the offer. Whether this would be an advisable practice or not would, of course, depend upon the preferences of the parties.

Summary of Preliminary Conclusions

As referenced in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

(1) Comparison considerations are normally the most important of the statutory criteria, and this factor was principally stressed by both parties to this proceeding.

(2) The proper role of an interest arbitrator is to attempt to put the parties into the same position they would have occupied but for their inability to agree across the bargaining table. On the basis of the parties bargaining history, the most important of the comparisons is with the settlements reached within the Fire, the Police, and the Utility bargaining units. In light of the fact that only the Police and the Utility employees have agreed upon two year agreements covering 1987 and 1988, these settlements offer the most important comparisons in these proceedings.

(3) The final offer of the Union is much closer to the final settlement reached in the Police and the Utility bargaining units, and this fact strongly and persuasively favors the adoption of the final offer of the Union.

(4) While it would be best for the parties and would more closely reflect their bargaining history, if all three two year settlements within the City were identical, the Arbitrator is limited to the selection of the final offer of either of the parties without change.

(5) Cost-of-living considerations cannot be assigned significant weight in the final offer selection process in these proceedings.

(6) The Employer's arguments about an award favoring the Union encouraging dilatory tactics in future negotiations cannot be assigned significant weight in these proceedings.

Selection of the Final Offer

After a careful consideration of the entire record before me, and following a careful consideration of all of the statutory criteria, the Arbitrator has determined that the final offer of the Union is the more appropriate of the two final offers. This selection is rather clearly indicated by arbitral consideration of the internal comparison criterion described in Section 111.70(4)(cm)(7)(e) of the statutes.

AWARD

Based upon a careful consideration of all of the evidence and argument, and all of the arbitral criteria provided in Section 111.70 (4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Union is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the Union's final offer, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

December 16, 1987