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STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Petition of  
CITY OF NEW BERLIN EMPLOYEES,  
LOCAL 2676, AFSCME, AFL-CIO  
To Initiate Arbitration Between  
Said Petitioner and  
CITY OF NEW BERLIN  
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Case 57  
No. 37963 ARB-4181  
Decision No. 24870-A

Appearances:

Mr. Richard W. Abelson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Lindner & Marsack, S. C., Attorneys at Law, by Mr. Roger E. Walsh, appearing on behalf of the City of New Berlin.

ARBITRATION AWARD:

On October 27, 1987, the Wisconsin Employment Relations Commission appointed the undersigned as the Arbitrator to issue a final and binding Award pursuant to Section 111.70 (4) (cm) 6. and 7. of the Municipal Employment Relations Act, to resolve an impasse existing between City of New Berlin Employees, Local 2676, AFSCME, AFL-CIO, referred to herein as the Union, and City of New Berlin, referred to herein as the City or the Employer, with respect to certain issues as specified below. Hearing was held at New Berlin, Wisconsin, on December 16, 1987, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs and reply briefs were filed in the matter. Final briefs were exchanged by the Arbitrator on March 8, 1988.

THE ISSUE:

The sole issue raised in the final offers of the parties is the wage increases to become effective January 1, 1987 and January 1, 1988. The Union final offer proposes the following:

WAGES 1/1/87 - 4.0% increase to all rates;  
1/1/88 - 4.0% increase to all rates.

The City final offer proposes:

WAGES 1/1/87 - 3.2% increase to all rates;  
1/1/88 - 3.0% increase to all rates.

The Union wage proposal would establish a starting rate at Range I of \$5.02 and a top rate in the unit at Range XIII after one year of employment of \$14.20 for 1987. Reflecting the same spots on the salary schedule for 1987, the City proposal would reflect a starting wage at Range I of \$4.98 and a top rate of \$14.07 at Range XIII.

For 1988, the Union proposal would establish a starting rate of \$5.22 per hour, and a top rate of \$14.77 per hour, compared to a City offer of \$5.13 starting wage and a top rate of \$14.49 per hour.

DISCUSSION:

The statute at 111.70 (4) (cm) 7. directs the Arbitrator to consider and give weight to certain factors in making his decision. Those factors are:

- 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 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.
- 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.

The Arbitrator, in making his decision will give consideration to all the statutory criteria to which the parties have directed evidence and made argument.

The City makes the following argument:

1. The City is in the midst of a tax revolt that demands moderation in collective bargaining.
2. The City's tax rate has increased more than comparable communities.
3. The City's public works employees have recognized the adverse economic situation in New Berlin and have voluntarily agreed to accept a similar offer.
4. The City's salary offer is consistent with increases in the cost of living.
5. The City's salary offer is consistent with increases granted to private sector employees.
6. The City's salary offer is consistent with increases granted to general government employees in comparable municipalities.

The Union makes the following argument:

1. The internal comparables favor the adoption of the Union offer.
2. The external comparables clearly support the Union's final offer.
3. The Union's offer of 4% for 1987-88 is clearly a superior offer and closer to the rise in the cost of living over the two year contractual period than is that of the City.
4. The evidence establishes that the City has the ability to pay the cost of the Union's final offer, and that the City only demonstrates an unwillingness rather than an inability to pay.

The Employer's case in this matter rests primarily on the "tax revolt", i.e., the public reaction to a 15.8% tax increase for 1987 over 1986. The Employer also relies equally on the internal comparables or patterns of settlement which it alleges is established by the Collective Bargaining Agreement which was entered into by the public works employees of the Employer who are represented by the Teamsters' Union. The Employer states that it extended the same wage increases to nonrepresented employees as those proposed in the final offer to this unit and those accepted by the public works unit, thereby establishing consistency throughout all of its employees. Furthermore, the Employer asserts that its final offer to the police employees contained the same economic proposals as the final offer of the Employer here. Given the foregoing, the Employer argues that its final offer should be adopted, since its final offer meets or exceeds the increase in cost of living and its final offer represents a percentage increase within the range of percentage increases which have been negotiated in comparable communities.

The undersigned will first consider the Employer argument dealing with the question of a tax revolt. The undersigned is satisfied that the record testimony and evidence establishes that the citizens in the City of New Berlin have reacted adversely to the 15.8% tax increase for 1987. The testimony of Kenneth Czyzewski, an alderman and member of the Personnel Committee, establishes that two incumbent aldermen were defeated in the elections because of the tax increases, and that one incumbent alderman refused to run. Furthermore, Employer Exhibit Nos. 7 through 15 are replete with newspaper accounts documenting the taxpayers' participation in meetings reacting to the tax increases and reaction to candidates who participated in candidate forums. From the foregoing, it is clear that the citizenry of New Berlin responded adversely to the tax increases which were generated in 1987. The undersigned further concludes that the evidence establishes that the citizen reaction sent a message to the leadership of the City that they were to hold the line on budgetary items, including wages, and creation of and/or elimination of positions. It follows from the foregoing conclusions that when considering the interest and welfare of the public criteria (criteria c) the interest and welfare of the public as expressed by the citizenry would militate for the adoption of the final offer of the Employer.

The undersigned has reviewed all of the documentary evidence with respect to the 15.8% tax increase, compared to the increases and actual tax rates among comparable communities. Employer Exhibit No. 16-A sets forth 25 communities surrounding the City of Milwaukee and establishes that the 15.8% increase experienced by the City of New Berlin was the fifth highest percentage increase for 1987 among those 25 communities. The percentage increase was exceeded only by the cities of Oak Creek, Franklin, Hales Corners and Butler. City Exhibit No. 16-B establishes that the percentage increase of 1987 tax rate over 1985 tax rate is 21.5%, the third highest increase among those same 25 communities. Thus, the concern over the percentage increase expressed by the taxpayers when they voted out the incumbent aldermen is supported by the record of the percentage increases experienced by the City of New Berlin. That, however, is not the entire picture. The actual net full

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1/ The Union has argued that the Employer has the ability to meet the financial cost of the proposed settlement of the Union which is also part of criteria c. The Employer makes no argument here that it is not able to meet the cost of the Union proposal, and, consequently, ability to pay is not a factor favoring the Employer offer.

value tax rate is \$28.37. This places the City of New Berlin 18th among the 25 communities listed in Employer Exhibit Nos. 16-A and B. While the percentage increase in the City of New Berlin is extraordinary and prompted the taxpayer response described supra, it can hardly be said that the net full value tax rate is exorbitant when compared with the 25 communities espoused by the Employer in Exhibit Nos. 16-A and B, because there are 17 communities with higher rates than that of the City of New Berlin. Furthermore, even with the 15.8% increase in 1987, the relative ranking of the City of New Berlin changed only two places, going from the rank of 20 in 1986 to the rank of 18 in 1987. While the City's relative tax rank among the 25 communities in the area is toward the lower end of the scale, the fact still remains that the percentage of tax increase caused a clear public expression of public interest opposing the size of the increase. Furthermore, the increase caused the ranking of the City to increase two notches among the comparables, and that is significant. The conclusion that the interest and welfare of the public criteria favors the adoption of the City offer is reaffirmed even though the relative tax rank of the City among the 25 communities is at the lower end of the scale.

The undersigned now looks to the patterns of settlement. Those patterns are mixed by reason of the fact that the Teamsters Local 200 representing approximately 40 people in the public works unit settled for an offer equivalent to the offer of the Employer in this dispute. Balancing that, however, is the fact that there was an arbitration in the police unit, wherein the parties presented final offers identical to the final offers here to Arbitrator Michelstetter. On January 29, 1988, Arbitrator Michelstetter issued an Award finding for the final offer of the Association in the Police arbitration, i.e., 4% January 1, 1987 and 4% January 1, 1988. The question, then, is presented, should the voluntary settlement of the Teamsters' Union carry more weight than the arbitrated award involving the New Berlin Professional Police Association. The undersigned will first examine the conclusions reached by Arbitrator Michelstetter to determine if the circumstances are the same there. Michelstetter determined that the internal comparisons favored the adoption of the Employer offer (an offer of the same economic value as the Employer offer here, i.e., 3.2% in 1987 and 3% in 1988). Michelstetter further determined that the welfare of the public slightly favored the Employer position. Michelstetter in his summary, then, held that:

Unit employees are paid substantially less than comparable employees of similar employers. The offer of the Association in this case is an appropriate general increase. The Employer has presented circumstances in which its taxpayers are forced to make very difficult choices as a result of lost funding as to the level of services to be maintained and being forced to make up the loss by heavily increased property taxes. In this context, it made an offer which is uniform among its various groups of employees (footnote omitted), but is substantially less than would be appropriate as to this unit. There is nothing in the record to suggest that unit employees ever received more than comparable police employees at any time in the past. Further, there is nothing in the Employer's offer or the evidence to suggest that employees would ever recover the difference if they accepted the Employer's position. Based upon the foregoing, I conclude that the position of the Association is closest to appropriate.

From the foregoing excerpt of the Michelstetter Award, it is clear that he arrived at the same conclusions as the instant Arbitrator with respect to the internal comparisons and the welfare of the public, that is, they both favor the adoption of the Employer offer. Michelstetter goes on to find that unit employees are paid substantially less than comparable employees of similar employers. The record evidence in Union Exhibit Nos. 16 through 24 establish that the same is true in the instant unit, that is, the wage rate comparison among classifications within the unit are substantially lower than the comparables proposed by the Union. The undersigned notes the objection of these comparisons made by the Union based on the Employer's assertion that there is no evidence indicating that the job titles represent the same duties among the comparables as they do in this City. The undersigned recognizes some validity to the Employer objection; however, the data for police dispatchers which the City admits is a comparable position among the comparables found in Union Exhibit No. 19 bears out the fact that that position is paid at the low range among the comparables espoused by the Union. The undersigned is satisfied

that a wage rate comparison establishes lower wage rates paid in this unit than in comparable units of Brookfield, Franklin, Waukesha, Menomonee Falls, Hales Corners, Greenfield and Muskego. While the undersigned agrees that the fact situation with respect to wage rate comparisons in this unit are the same as those found to exist by Arbitrator Michelstetter in the police unit, there is evidence here which is not discussed in Arbitrator Michelstetter's Award. Here, Employer Exhibit No. 20 establishes the relationship of public works unit employees in the employ of this City compared with comparable cities. The evidence establishes that in the City of New Berlin truck drivers in the Teamsters represented public works unit are paid \$10.80 compared to a range of \$10.81 to \$12.11 among the comparable communities of Elm Grove, Franklin, Greendale, Greenfield, Oak Creek, St. Francis, South Milwaukee, Waukesha, West Allis, and Muskego. Thus, in comparing truck driver rates among the foregoing ten comparable communities, the City of New Berlin pays the lowest truck driver wage rate among all of those comparables. When comparing equipment operator rates, the City of New Berlin rate for 1987 is \$11.33 per hour compared to a range among the same comparables listed in the preceding sentence of \$11.23 to \$12.47. Thus, when comparing equipment operators represented by the Teamsters in the public works unit, the Employer wage rates among the ten comparable communities set forth in Employer Exhibit No. 20 ranks 10th out of those eleven communities, including the City of New Berlin for equipment operators. Thus, we have here circumstances either not in evidence in the police arbitration, or not considered by that arbitrator which shows when the Teamsters entered into a settlement for public works employees on the same terms as those offered by the Employer here, it did so where its wage rates compared at the low end of the comparable spectrum just as the wage rates compare at the low end of the spectrum among the comparables for employees in this unit, and obviously, for employees in the police unit. Because there is nothing in the police award to indicate the arbitrator there considered that the public works employees also were at the low end of the wage comparables, as were the police; the undersigned concludes that the facts here are distinguishable for that reason. It follows that the police award carries less weight than the public works voluntary settlement. Arbitral opinion relied on by the Employer in its brief (citations omitted) satisfies the undersigned that the mainstream of arbitral opinion is that internal comparables of voluntary settlements should carry heavy weight in these proceedings. Consequently, because the Teamsters entered into that voluntary settlement, obviously recognizing the special circumstances with which the Employer was confronted; and because employees in the public works unit represented by the Teamsters stand in relatively the same relative position among the comparables with respect to wage rates as do the employees of the City of New Berlin in the collective bargaining unit represented by the Union here; the undersigned now concludes that the patterns of settlement internally support the position of the Employer. It should be noted that in reviewing the foregoing award of Arbitrator Michelstetter, the Arbitrator is not in disagreement with his statement that the Union offer is an appropriate offer. The question, however, in reviewing internal patterns of settlements, is, which offer does the pattern of settlement support? They support the Employer offer.

Internal patterns of settlement, however, are not the total comparisons when looking at patterns of settlement. There are also the patterns of settlement established among comparable communities which the undersigned now turns to. Union Exhibit No. 15 establishes the 1987 percentage increases for the communities of Brookfield, Franklin, Waukesha, Menomonee Falls, Hales Corners, Greenfield, Greendale and Muskego. The range of percentage settlements ranges from 2.4% to 3% in Hales Corners to a high of 4.75% in Greendale. The average percentage settlement among the foregoing is 3.93%. (Hales Corners was a 15¢ across the board increase, which represented a range of settlement of 2.4% to 3%. The undersigned, in calculating the foregoing average attributed a 2.7% increase to the settlement in Hales Corners, the midpoint between 2.4% and 3%) Thus, the Employer offer is within the range of the settlements set forth in Union Exhibit No. 15 for 1987, but is 0.73% below the average of the comparable settlements and is 0.8% below the median settlement.

The foregoing patterns of settlement among comparable communities is supported by the record evidence in Employer Exhibit No. 24 and 25, which establishes that percentage increases for 1987 for clerk/typist range from 3% at Hales Corners to 4.9% at Muskego. Similarly, Employer Exhibit No. 25, for 1987 established that percentage increases for account/clerk typist positions range from 3% at Cudahy and

Elm Grove to a high of 4.8% at Muskego. The same conclusions are drawn from this data as were drawn from the data contained within Union Exhibit No. 15.

Finally, the patterns of settlement in the private sector are considered. The sole evidence adduced at hearing with respect to private sector settlements is found at Employer Exhibit No. 22, which sets forth national statistics for 1987. Employer Exhibit No. 22 is the Bureau of National Affairs Daily Labor Report dated December 7, 1987, which shows private sector settlements expressed as a percentage by types of industries. National data contained within Employer Exhibit No. 22 shows that all industry settlements here to date, 1987, were at 2.4% and that non-manufacturing, excluding construction, were at 3.3%. When including lump sum payments which were not included in the wage rate, the settlement showed 3% for all industries and 3.7% for non-manufacturing, excluding construction.

When considering patterns of settlement among the comparable communities, it is clear that the Union offer is closer to the patterns among comparable communities than that of the Employer. When private sector patterns of settlement nationally are considered, however, the national data is closer to the percentage increase proposed by the Employer. Because the national data is overly broad, in the opinion of the undersigned, and because there is no evidence furnished with respect to private sector settlements in the same or comparable communities; the private sector data contained in Employer Exhibit No. 22 carries little weight. It follows, then, that the patterns of settlement among comparable communities in the public sector favor the adoption of the Union offer.

Turning to the question of cost of living criteria, both parties claim that the cost of living criteria favors the adoption of its offer. The undersigned first looks to the cost of living data as it affects the 1987 rates. The Employer would have the Arbitrator look to the average annual increase during the negotiation period from July, 1986 through July, 1987, which averaged 2.27% or alternatively the average annualized increase in the Consumer Price Index for the months in 1987 that were known at the time of hearing (3.39%). The undersigned rejects the Employer argument because the statutory criteria, at criteria i, directs the Arbitrator to take into consideration changes in any of the foregoing circumstances during the pendency of the arbitration proceedings. Employer Exhibit No. 23-B establishes that the Consumer Price Index increased by 4.6% from October, 1986, to October, 1987. Thus, the 1987 percentage increase in the Consumer Price Index for 1987 is closer to the Union proposal of 4% than is the proposal of the Employer at 3.2%. Furthermore, there is in evidence as Union Exhibit No. 12 the November 13, 1987, Kiplinger Letter which estimates that the 1988 cost of living increase will be 5% for 1988. The foregoing Kiplinger estimate appears to be a reliable estimate at this point, and consequently, the undersigned concludes that the Union offer of 4% more nearly approximates the estimated cost of living increase for 1988 than does that of the Employer at 3%. Having concluded the cost of living supports the Union offer, however, does not dispose of this matter, since the undersigned has consistently held that the weight to be accorded cost of living is to be measured in terms of the patterns of settlement entered into among others who have negotiated salary increases under the same inflationary climate. That consideration will be considered when determining which of the parties' final offer should be adopted in the summary and conclusion section of this Award.

#### SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the interest and welfare of the public, the internal patterns of settlement, and the private sector settlement data supports the offer of the Employer. The undersigned has further concluded that the patterns of settlement among comparable communities in public employment, increases in the cost of living, and wage rate comparisons among comparable communities for the same or similar jobs, support the final offer of the Union. It remains to be determined which final offer should be adopted in its entirety.

The undersigned is faced with a difficult decision. After lengthy deliberation, the undersigned is persuaded that the internal patterns of settlement, and the interest and welfare of the public criteria should control in the instant dispute under these facts. While the Employer offer is low in comparison to the patterns

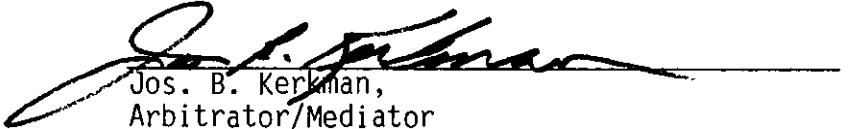
of settlement among comparable communities, it, nevertheless, falls within the low range of those settlements. Because the voluntary settlement which was entered into in the public works department was entered into under the same set of circumstances as experienced by the instant bargaining unit in that the relative position of wage rate comparisons among comparable communities place the employees in the instant unit last or almost last in those comparisons as did the wage rate comparisons for the public works employees; the undersigned concludes that the internal patterns of settlement should control in the instant matter, given the taxpayer reaction to both the budgetary increases and the increased tax levies which bordered on a taxpayer's revolt.

Therefore, based on the record in its entirety, and the discussion set forth above, after considering all of the arguments of the parties, and all of the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the City, along with the stipulations of the parties which were filed with the Wisconsin Employment Relations Commission, and those terms of the predecessor Collective Bargaining Agreement which remain unchanged through the course of bargaining, are to be incorporated into the parties' written Collective Bargaining Agreement for 1987 and 1988.

Dated at Fond du Lac, Wisconsin, this 27th day of April, 1988.

  
Jos. B. Kerkman,  
Arbitrator/Mediator

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