

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

RECEIVED
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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of
DRIVERS, WAREHOUSE AND DAIRY
EMPLOYEES LOCAL NO. 75

To Initiate Arbitration Between
Said Petitioner and

BROWN COUNTY

Case 399
No. 42305 INT/ARB-5266
Decision No. 26207-A

Appearances:

Ms. Christel Jorgensen and Mr. Danny L. McGowan, Business Agents, appearing on behalf of the Union.

Mr. John C. Jacques, Assistant Corporation Counsel, Brown County, appearing on behalf of the Employer.

ARBITRATION AWARD:

On November 8, 1989, the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator, pursuant to 111.70 (4) (cm) 6. and 7. of the Wisconsin Municipal Employment Relations Act, to resolve an impasse existing between Drivers, Warehouse and Dairy Employees Local No. 75, referred to herein as the Union, and Brown County, referred to herein as the County or the Employer, with respect to the issues specified below. The proceedings were conducted pursuant to Wis. Stats. 111.70 (4) (cm) and hearing was held at Green Bay, Wisconsin, on January 29, 1990, 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 13, 1990. On March 22, 1990, Corporation Counsel for the Employer moved to enter two arbitration decisions into the record after the exchange of reply briefs. On March 23, 1990, the Union advised the Arbitrator that it opposed the admission of the two additional arbitration decisions as evidence in this matter. On March 27, 1990, the undersigned advised the parties that because the record was closed on March 13, 1990, the date of the exchange of reply briefs, the proceedings were no longer pending, and, consequently, the admission of the decisions into evidence as sought by the Employer would be inappropriate.

THE ISSUES:

The issues in this dispute are wages for the years 1989 and 1990. All other matters have been tentatively agreed between the parties, and have been filed as stipulations with the Wisconsin Employment Relations Commission. The differences in the wage offers of the parties amount to a difference of slightly

in excess of 1% for 1989 and .75% for 1990. The Employer offers a wage increase effective December 25, 1988, of 2.95%, and a wage increase effective December 24, 1989, of 3.25%. The Union proposes a wage increase of 4% effective January 1, 1989, and a wage increase of 4% effective January 1, 1990.

DISCUSSION:

Wis. Stats. 111.70 (4) (cm) 7. direct the Arbitrator to give weight to the factors found at subsections a through j when making decisions under the arbitration procedures authorized in that paragraph. The undersigned, therefore, will review the evidence adduced at hearing and consider the arguments of the parties in light of that statutory criteria.

To determine a preference for the final offers, we look first to a comparison of the patterns of settlement, both internal and external. This Employer bargains with several other Union Locals, and has settled for the years 1989 and 1990 in those units. Additionally, there is evidence in this record with respect to patterns of settlements for the City of Green Bay and for surrounding Counties. We will first look to the internal patterns of settlement.

Employer Exhibit No. 11 sets forth the settlements of settled units for 1989 and 1990. The wage settlements negotiated in other units, with the exception of the Registered Nurses unit at the Mental Health Center, approximate the final offer of the Employer in this dispute. For 1989, the Employer has settled between 2.96% and 3% for Airport Employees, Electricians, Highway Department Employees, Mental Health Center/1901, Mental Health Professionals, Social Services Paraprofessionals, Shelter Care Workers, Neville Public Museum. For 1990, the Employer has settled with other units at a range of 3.21% to 3.53%, with the exception of the R.N.'s at the Mental Health Center. The foregoing establishes a pattern of settlements among other units which support the final offer of the Employer in this dispute of 2.95% for 1989 and 3.25% for 1990. The sole exception to that pattern of settlement is the RN unit at the Mental Health Center where two 8% increases were negotiated for 1989 and 1990. The record evidence establishes the reason for the exception was the critical shortage of nurses which required the Employer to remain competitive in recruiting and retaining nurses in its employ.

The Union has argued that they should not be held to the settlements negotiated with other units merely because the Employer was successful in establishing those settlements with others. The undersigned agrees that slavish conformity to other settlements should be avoided, however, to depart from a well established internal pattern of settlements there must be a showing that a higher than pattern settlement is warranted. A departure from the pattern may be warranted where the history of bargaining shows that the unit being arbitrated has never followed the pattern which was established, or where the wage rate comparisons for the jobs in the unit being arbitrated establish that the wage rates in that unit are substandard, and, therefore, deserve a settlement percentage higher than the pattern in order to establish appropriate wage rates for those positions.

Employer Exhibit No. 10 sets forth the wage settlements of other collective bargaining units of this Employer for 1987 and 1988. Exhibit No. 10 establishes that for 1987 and 1988, this Courthouse unit settled for 3% each of the two years. Employer Exhibit No. 10 also establishes that the settlements in other units ranged from 2.8% to 3% for 1987 and from 3% to 3.2% for 1988. Thus, the voluntary settlements for 1987 and 1988, including the unit being arbitrated in this dispute, all fall within the same patterns of settlement. From the foregoing, it is clear

that the patterns of voluntary settlement as established through the bargaining process have been applied consistently throughout all of the units in 1987 and 1988. There is no evidence to support a departure from patterns of settlement as it relates to this unit. It follows from all of the foregoing that the internal patterns of settlement support the Employer final offer.

We now look to a comparison of the patterns of settlement among the external comparables. Turning first to a comparison of Brown County and the City of Green Bay, we find that the Employer offer more closely approaches the City of Green Bay settlement than does that of the Union. Union Exhibit No. 10 sets forth the City of Green Bay settlement showing that the wage settlement in the City was 3.15% for 1989 and 3.4% for 1990. Thus, the Employer offer here is within .2% of the City settlement for 1989 and within .15% of the City settlement for 1990, whereas, the Union offer of 4% exceeds the City settlement by .85% for 1989 and by .6% for 1990. From the foregoing, it is clear that the final offer of the Employer is preferred when considering the pattern of settlements established in the City of Green Bay.

Union Exhibit No. 7 establishes the patterns of settlement among the Union proposed comparable counties. Exhibit No. 7 establishes that county settlements among Sheboygan, Manitowoc, Winnebago, Outagamie and Racine Counties for 1989 range from a low of 2.2% in Manitowoc County to a high of 3.5% plus longevity in Outagamie County. The record further establishes that in Winnebago County, in addition to the 3.5% effective January 1, 1989, there is another increase negotiated effective July 1, 1989, of 1%. The exhibit further establishes that two counties have settled for 1990: Sheboygan County, 4% effective January 1, 1990; Manitowoc County, 2.2% effective January 1, 1990. Thus, among the surrounding comparables, there is some support for the 4% increase proposed by the Union in this dispute for each of the two years of 1989 and 1990. Sheboygan County shows a settlement of 4% for 1990, which matches the Union offer here. Winnebago County shows a 3.5% increase effective January 1, 1989, and a 1% increase effective July 1, 1989, which calculates to an average 4% increase for the year. Other settlements among the Union comparables, notably Racine County and Manitowoc County support the Employer offer because of the 3% and 2.2% settlements in those counties. From the foregoing, the undersigned concludes that the comparisons of patterns of settlement among the external comparables are inconclusive because there are settlements which have occurred among the external comparables which support each party's offer.

The internal comparables support the Employer offer here, and the external comparables are inconclusive. The undersigned now concludes that when considering both internal and external comparables, the Employer offer is preferred.

We now consider whether a comparison of wage rates would warrant a settlement in this dispute which would exceed the patterns of settlement. Union Exhibit No. 7 compares wage rates paid for 1988 for Brown County, Sheboygan County, Manitowoc County, Winnebago County, Outagamie County, Racine County and the City of Green Bay. The exhibit establishes that a Typist II in 1988 was paid a top rate

1/ The Employer disputes the applicability of Racine County as a comparable. The undersigned has included the Racine County data solely for the purpose of making the comparisons here, irrespective of whether or not it is an appropriate comparable.

\$8.09 in this collective bargaining unit. The \$8.09 rate compares favorably to the top rates in Sheboygan County of \$7.93; Winnebago County of \$7.57; Outagamie County, \$7.14; Racine County, \$8.39; and City of Green Bay, \$8.10. When considering the Clerk, Secretary, and Account Clerk classifications, we find that a Clerk I was paid a top rate of \$7.77 in Brown County in 1988 compared to \$7.36 in Winnebago County; \$6.92 in Outagamie County; \$7.80 in the City of Green Bay. A Clerk II was paid a top rate in Brown County in 1988 of \$8.09 per hour compared to a top rate in Manitowoc County of \$8.11; in Winnebago County of \$7.57; in Outagamie County of \$7.14; and in the City of Green Bay of \$8.10. A Secretary I in Brown County in 1988 was paid a top rate of \$8.09 per hour compared to \$7.63 per hour in Sheboygan County; \$7.49 per hour in Manitowoc County; \$7.67 per hour in Winnebago County; and \$7.96 per hour in Outagamie County. An Account Clerk III in Brown County was paid a top rate of \$9.85 per hour in 1988 compared to \$9.43 per hour in Sheboygan County; \$9.36 per hour in Manitowoc County; \$9.28 per hour in Outagamie County; \$10.15 per hour in Racine County. A Deputy position in 1988 was paid a top rate of \$9.95 per hour in Brown County compared to \$9.27 per hour in Sheboygan County; \$8.83 per hour in Winnebago County; \$8.68 per hour in Outagamie County; and \$13.01 per hour in the City of Green Bay. A Maintenance Worker II in Brown County was paid a top rate in 1988 of \$8.58 per hour compared to \$9.27 per hour in Sheboygan County; \$8.67 per hour in Manitowoc County; \$9.82 per hour in Outagamie County; \$11.97 per hour in Racine County and \$10.64 per hour in the City of Green Bay. The foregoing recital of statistical data for 1988 is not all inconclusive of all of the data contained within Union Exhibit No. 7; however, it is sufficient to show that when making wage rate comparisons certain of the classifications of the Employer are paid at or above the external comparables, whereas, others, such as Maintenance Worker II are not. The foregoing comparisons suggest that there may be some need for what are normally considered equity increases to specific classifications rather than a general increase higher than pattern for all of the classifications. Because a number of classifications are at or superior to the wage rates paid among the comparables, the undersigned concludes that the evidence in this record fails to support a settlement higher than the patterns of settlement.

Employer Exhibit No. 10 and Union Exhibit No. 8 set forth data relating to the total compensation criteria. Employer Exhibit No. 10 sets forth comparisons of benefits among all employes and units with which this Employer bargains. Union Exhibit No. 8 sets forth the benefit comparables comparisons among the Union proposed comparable counties and the City of Green Bay. Employer Exhibit No. 10 establishes that the participation of premium for health and dental insurance is uniform among all of the employes bargained by the Employer. The exhibit establishes that the Employer provides what appears to be consistent equivalencies for disability leave and sick leave for its employes. The exhibit establishes that Wisconsin Retirement contribution for employes vary as to dollar amounts from unit to unit. The exhibit establishes that the Employer contributes toward life insurance in all of the units at varying levels. Finally, the exhibit establishes that the longevity formula, except for the District Attorney unit and the Social Service unit is uniform across all bargaining units. The evidence satisfies the undersigned that the total compensation benefits negotiated in the various units are closely related. Because the benefits are similar across the units, it is concluded that the total compensation factor among the internal comparisons produce the same result as the wage comparisons. It follows therefrom that the total compensation criteria, the internal comparables fail to establish a reason to depart from the patterns of settlement.

We look to Union Exhibit No. 8 for a comparison of benefits among the Union proposed comparable Counties and the City of Green Bay, and we find that as far as

vacations are concerned, the maximum vacation approximates 5 weeks in all of the counties after 18 to 26 years. The holidays comparison ranges from 10½ to 12 days; the sick leave comparisons vary with only Brown County and Racine County providing for S and A benefits in addition to an accumulation of 5 days per year of sick leave. The undersigned concludes that the variances and combinations of sick leave and S and A benefits equate to the more generous sick leave formulas found among the other counties. Union Exhibit NO. 8 also establishes that the Employer contributes a dollar amount to the Wisconsin Retirement Fund on behalf of its employes. The stipulations of the parties establish that the dollar amount for 1989 is up to \$66 bi-weekly and for 1990 is \$69 bi-weekly. All of the other counties in Exhibit No. 8 pay the full 6% share of the employes' contribution to WRF. The undersigned has reviewed the wage structure and calculated that the stipulated amount of pension contribution expressed as a dollar by the Employer is sufficient to cover the full 6% employe share of WRF, and, therefore, the WRF benefit comparables are the same across all of the external Union comparables. As far as health insurance contributions are concerned, the Employer pays 100% single and 95% family, as does the City of Green Bay. Outagamie pays 100% single and 80% family. The remaining Union external comparables pay 100% of both single and family. The foregoing evidence satisfies the undersigned that the insurance benefits furnished by the Employer fall within the range of the external comparables. Lastly, Exhibit No. 8 shows that longevity is paid among all of those external comparables and that Brown County longevity falls within the range of longevity established among those comparables.

A review of the benefits among the comparable external communities contained within Union Exhibit No. 8 leads to the same conclusions reached when considering the comparison of benefits among the internal comparables. The benefit comparisons establish reasonable uniformity of benefits among these comparables, leading to the conclusion that the total compensation criteria fails to establish a reason to depart from the patterns of settlement.

Finally, we turn to a consideration of the cost of living criteria. The record evidence establishes that the 1989 cost of living increase for the year ending December, 1989, calculated to 4.6%. The Employer argues that its offer is preferred, because the total cost impact of the Employer package amounts to 5.57% for 1989 and 4.78% for 1990. The Employer's reliance on the cost of the package is misplaced. When considering the cost of living criteria, it is the opinion of this Arbitrator that it should be compared to the percentage wage increases and not to the cost of the package. It is the wage increase which insulates employes against the erosion of the dollar caused by inflation, the cost to the Employer does not. Since the Union offer is 4% each year, compared to 2.96% and 3.25% for the first and second years respectively in the Employer offer, it follows that the Union offer is closer to the cost of living increases than is that of the Employer. It follows therefrom that the cost of living criteria supports the Union offer.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the patterns of settlement support the Employer final offer in this matter, and that the total compensation criteria and the comparison of wage rates fail to establish a reason to depart from those patterns. The undersigned has further concluded that the cost of living criteria supports the Union offer in this matter. It remains to be determined whether the cost of living criteria carries sufficient weight to offset the conclusions reached

with respect to the patterns of settlement. The undersigned now concludes that the cost of living criteria fails to establish a preference for the final offer of the Union. This is so because there is nothing in this record to establish that the employees in this unit should be protected against cost of living increases to a superior degree than any other employees employed in other collective bargaining units of this Employer. The undersigned, therefore, concludes that after considering all of the criteria, the Employer final offer is favored.

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

AWARD

The final offer of the Employer, along with the stipulation of the parties as furnished to the Wisconsin Employment Relations Commission, as well as 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 the years 1989 and 1990.

Dated at Fond du Lac, Wisconsin, this 23rd day of May, 1990.



Jos. B. Kerkman,
Arbitrator

JBK:rr