

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of
LOCAL 31, AFSCME, AFL-CIO
To Initiate Arbitration
Between Said Petitioner and
VILLAGE OF MENOMONEE FALLS

Case 39
No. 43667 INT/ARB-5604
Decision No. 26581-A

Appearances:

Quarles & Brady, S. C., Attorneys at Law, by Mr. Laurence E. Gooding, Jr.,
appearing on behalf of the Village.

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, appearing on behalf of the Union.

ARBITRATION AWARD:

On September 17, 1990, the undersigned was appointed to serve as Arbitrator by the Wisconsin Employment Relations Commission, pursuant to Section 111.70 (4) (cm) 6. and 7. of the Municipal Employment Relations Act, to resolve an impasse existing between Local 31, AFSCME, AFL-CIO, referred to herein as the Union, and Village of Menomonee Falls, referred to herein as the Village or the Employer. Hearing was held at Menomonee Falls, Wisconsin, on November 7, 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 were filed in the matter. Final briefs were exchanged by the Arbitrator on January 3, 1991.

THE ISSUE:

The issue to be resolved by the Arbitrator is the proposal of the Union, which reads:

Amend Section 19.04 to provide:

Any employee upon retirement may continue to participate in the employee group health insurance plans provided the retired employee pays his/her own premium except as provided below:

The Village will pay up to \$155 per month of the cost of a single coverage health insurance premium of any one of the Village's health plans for:

- (a) any employee who has completed thirty (30) years of continuous service who retires after January 1, 1990 and who meets the Wisconsin Retirement Fund's criteria for early retirement with full benefits until such employee has reached age sixty-five (65).
- (b) any employee who has completed twenty-five (25) years of continuous service who retires after January 1, 1990 and is age sixty-two (62) until such employee has reached age sixty-five (65).

The Employer proposes to maintain the language of the predecessor Agreement which at Article 19, Section 19.04 reads:

Any employee upon retirement may continue to participate in the employee group insurance plans, provided the retired employee pays his/her own premium.

All other issues contained in the final offers filed with the Employment Relations Commission have been resolved, either by reason of the mutuality of the provisions of the parties' final offers, or because the Union withdrew its proposal with the consent of the Employer. The Employer has implemented all of the tentative agreements and those provisions of the final offers which are identical in the parties' offers.

POSITION OF THE UNION:

The Union position may be summarized as follows:

1. The comparable pool for the purpose of comparing the fringe benefits sought by the Union should be a broad pool, consisting of the municipalities within Milwaukee, Ozaukee and Washington counties. The Union argues that these municipalities were relied on in the 1986-87 police arbitration, and, further, that the Employer recently used an equally broad labor market to determine comparative wage rates for non-represented personnel who work in the same department as the employees in the bargaining unit.

2. The Union has attempted to bargain this benefit for at least six years.

3. The comparables support the Union proposal, in that: a) the Menomonee Falls School District provides paid health insurance benefits for retirees; b) the community's largest private employer, Briggs and Stratton, provides paid health insurance benefits for retirees; c) the municipalities in the greater Milwaukee area labor market, which includes Menomonee Falls, provide paid health insurance benefits for its retirees.

4. The timing of the Agreement to pick up the retirement benefits is appropriate because there was no increase in Blue Cross-Blue Shield premiums between 1989 and 1990, and, because the parties agreed to incorporate the "advantage program" which results in substantial savings to the Employer.

5. The parties entered into a tentative agreement which included this benefit sought by the Union which was rejected by a subcommittee of the Board of Trustees of the Employer. As a result of the rejection by the subcommittee, the tentative agreement was never presented to the full Board of Trustees and the Agreement was never ratified.

6. The proposal of the Union here is distinguishable from the rejected proposal of the Police in the Zeidler Award because: a) the Union here proposes a fixed dollar amount of contribution from the Employer, whereas, the Police proposed that the Employer pay 75% of the health insurance premiums for retirees and; b) the Police proposed no quid pro quo for the new benefit, while the Union here agreed to a quid pro quo of the advantage program; and c) the Police proposal potentially required that the Employer provide benefits for a period of 15 plus years compared to the relatively short time span proposed by this Union.

7. Finally, the Union argues that the third year wage increase of 3.5% as agreed to by the parties more than compensates the Employer for the cost of the Union proposal.

POSITION OF THE EMPLOYER:

The Employer position may be summarized as follows:

1. The City relies primarily on comparisons with the five communities found to be most comparable in the Zeidler Police Arbitration. (Brookfield, Brown Deer, Germantown, New Berlin and Waukesha)

2. The five Zeidler comparables support the Employer position, and also there are no internal comparables to support the Union offer.

3. The Union comparables are unpersuasive because, a) the Union selected only those municipalities in the labor market area which support their position; b) the Union's reliance on Waukesha's Police and Fire units is misplaced because the remaining municipal employees of the City of Waukesha who perform the same work as the employees in this bargaining unit do not have this benefit; c) the Union's reliance on Briggs and Stratton is misplaced because there is no evidence in the record with respect to the level of other benefits negotiated between the Company and the Union there.

4. The entire retirement package of Menomonee Falls is superior to that of the retirees of the "five primary comparables", and to those of the Union comparables, as well.

5. Fringe benefits for Menomonee Falls employees are superior to those provided for employees of comparable municipalities when considering the fringe benefits of vacations, holidays and educational reimbursement.

6. The prior tentative agreement is neither controlling nor dispositive of this dispute.

DISCUSSION:

Turning first to a determination of the comparables, the undersigned concludes that the Employer's reliance only upon the Zeidler primary comparables is too narrow an approach. This Arbitrator has considered the arbitral authority which holds that once comparables have been established for the negotiating parties they should not be disturbed lest, by establishing new comparables, the future bargaining relationship of the parties might be upset. This Arbitrator has so held in the past and continues to believe that once comparables have been established between negotiating parties they should not be disturbed without good and

sufficient reason. Here, however, we have a set of circumstances which causes this Arbitrator to go beyond the primary comparables established by Arbitrator Zeidler in the Police Arbitration Award in Menomonee Falls Police Association and the Village of Menomonee Falls which was issued on February 1, 1987. First of all, the comparables determined by Zeidler in 1987 involved the Village and its protective services police association. This dispute involves an AFSCME Union representing street, parks, sewer and water departments of the Employer rather than Police. Thus, the comparables have not been determined by an arbitration in this bargaining relationship. Furthermore, the Zeidler primary comparables carry less weight because the record establishes that this Employer, when surveying salaries to establish salaries for its non-represented department heads, considered data from the labor market area which included all of the municipalities in Milwaukee, Ozaukee and Waukesha counties, including the City of Milwaukee. Based on the foregoing, the undersigned concludes that it is appropriate to consider the communities within the tri-county area for the purpose of making these comparisons.

Having determined the comparables, we now consider which party's final offer is supported by those comparables. We find mixed results. When considering the internal comparables we find that there are no other bargaining units which have the benefits sought by the Union here. The record evidence establishes that the police association attempted to gain a similar benefit in 1987, and Zeidler awarded for the Employer and, specifically found on the issue of Employer paid health insurance premiums for retirees that the Employer offer was favored. The record evidence further establishes that all other bargaining units and all unrepresented employees in the Village of Menomonee Falls have treatment equivalent to that proposed by the Employer, that is, the retiree may remain within the group for health insurance purposes, but must pay the premium. While the proposal of the Association in the Police Arbitration was considerably more expensive than is that of the Union proposal here, that fact is unpersuasive when considering the internal comparables, because the record establishes that the Police Association has no proposal in this round of bargaining which would include an Employer contribution for health insurance premiums for retirees. Thus, the internal comparables remain uniform in support of the Employer position here.

We turn to a consideration of comparables within the community, and we find in evidence two examples which support the Union offer. The record establishes that the Menomonee Falls School District, in its contract with its teachers, has a provision for Employer contributions toward health insurance for retirees. The record also establishes that the Briggs and Stratton Corporation located in Menomonee Falls provides for Employer contribution for health insurance premiums for its retirees. Thus, there is an example in the public sector and in the private sector which supports the Union's position.

The external comparables are mixed. If one were to conclude that the primary comparables are those determined by Zeidler, we find that Village of Brown Deer provides health insurance benefit for retirees similar to the proposal made by the Union in this dispute. The remaining Zeidler primary comparables of Brookfield, Germantown, New Berlin and City of Waukesha non-protective service employees either provide that retirees may participate at their own expense, or that the accumulated sick leave may be used for that purpose. Thus, these comparables support the Employer position in this matter.

The undersigned, however, has determined that the Zeidler primary comparables

are too narrow a view for these purposes. We now consider the evidence submitted by the Union in support of its position that its offer should be adopted. In Exhibit Nos. 16 through 27, the Union has submitted data showing that the municipalities of Milwaukee, West Allis, Cudahy, Wauwatosa, Oak Creek, Brown Deer, Greendale, Greenfield, Whitefish Bay, Shorewood, Waukesha Police and Waukesha Fire all have provisions in their Collective Bargaining Agreement supportive of the Union position in this dispute. Thus, this data supports the Union offer when considering benefits in those comparable communities.

The Arbitrator now concludes that when considering all of the comparables, internal, external in the same community, and external comparables in comparable communities, the Employer offer is supported by these statutory criteria. The undersigned has arrived at the foregoing conclusion because the internal comparables of other bargaining units and unrepresented employees clearly support the Employer offer. While the union Exhibit Nos. 16 through 27 support the Union position, the undersigned is persuaded that those data are not determinative in this dispute. The Arbitrator has reached the foregoing conclusion because it is the proponent of change that has the burden to establish that the comparables support its position, and the Union has simply failed to do so here, because it has failed to submit comparable data for all of the communities in the tri-county area. There has been no submission by the Union for the following municipalities in the tri-county area: Brookfield, New Berlin, St. Francis, South Milwaukee, Fox Point, Bayside, Cedarburg, Delafield, Elm Grove, Franklin, Grafton, Hales Corners, Mukwonago, Muskego, Sussex, Thiensville and City of Waukesha employees in streets, parks, sewer and water departments. Because the Union has the burden of proof; and because the Union has failed to submit data in support of its proposal in a majority of the municipalities in the tri-county area which it argues are comparable; the undersigned concludes that Union Exhibit Nos. 16 through 27 are unpersuasive for that reason. It follows from all of the foregoing that when considering all of the comparables, the Employer's final offer is preferred.

The evidence satisfies the undersigned that the Employer argument that the retirement package and the fringe benefits program of the Village of Menomonee Falls is superior to those of the comparables is supported by the evidence. Considering first the retirement package, the undersigned has calculated the dollar amount of sick leave payout to retirees, based on the rates in effect in the first year of the Collective Bargaining Agreement being arbitrated. The evidence establishes that the 120 day payout at Menomonee Falls generates \$11,422 to those retirees who have accumulated the maximum. This compares to the maximum cash payout in other municipalities as follows: Brookfield, \$6,321; Brown Deer, \$3,990; Germantown, \$3,834; Waukesha, \$6,048; Cudahy, \$3,849; Greendale, \$3,343; Greenfield, \$5,520; Milwaukee, \$2,678; Oak Creek, \$4,086; Shorewood, \$3,031, and Whitefish Bay, \$2,703. Wauwatosa, West Allis, Waukesha Police and Waukesha Fire have no sick leave payout provisions. The foregoing satisfies the undersigned that the retirees in Menomonee Falls have superior retirement benefits when considering cash payment of sick leave accumulations at retirement.

The undersigned has also considered the record evidence with respect to fringe benefit packages generally, and notes that unit employees of the Village enjoy thirty days of vacation after 29 years of employment, and that none of the other Zeidler primary comparables provide vacations in excess of twenty-five days per year. Similarly, the unit employees of the Village have 11 1/2 holidays compared to 11 at Germantown, 10 1/2 at New Berlin and Waukesha, and 10 at Brookfield and Brown Deer. The evidence also establishes that Menomonee Falls provides

100% education reimbursement for approved courses, compared to 100% for job related courses at Germantown, and no provision for education reimbursement in Brookfield, Brown Deer, New Berlin or Waukesha. Thus, the evidence here establishes that the fringe benefit package enjoyed by employees of this Village is superior to those provided to employees in the municipalities of the Zeidler primary comparables.

Finally, the undersigned has considered the wage rates paid to employees of the Village of Menomonee Falls compared to the wage rates paid among the tri-county municipalities. The Laborer wage rate for 1990 in Menomonee Falls is \$12.98 per hour compared to an average wage rate of the tri-county employees of \$12.30 per hour. Menomonee Falls ranks fifth among 26 tri-county employers when comparing Laborer wage rates for 1990. Similar wage relationships exist when comparing the wage rates of truck drivers, equipment operators, sewage plant operators and water plant operators.

The Union asserts that the tentative agreement requires the adoption of the Union offer in this dispute. The evidence unequivocally establishes that in the negotiations between the parties, the Employer negotiating committee and the Union negotiating committee entered into a tentative agreement which included the Union's last offer proposal in this arbitration relating to the Employer contribution to health insurance premiums for retirees. The evidence is undisputed that the subcommittee of the Board of Trustees of the Employer rejected that agreement. The Union cites City of Beaver Dam (Police Department), 11760-C, 8/13/73; Green County, 17937-B and 17932-B, 1/27/81; City of Wauwatosa, 19760-A, 3/9/83; and Portage County, 25654-A, 11/25/88 in support of its position that the existence of a tentative agreement should be given great weight by an arbitrator where there are no new facts presented which did not exist at the time of ratification. The Union particularly notes the holdings of Arbitrator Petrie in Green County where he found that "tradeoffs made in pre-arbitration negotiations leading to a tentative agreement strongly favor the position of the party adopting the tentative agreement as its's position in arbitration."

The Union also cites awards of the undersigned in Kenosha Unified School District, 17368, 4/15/80; City of Oshkosh (Public Library), 24800-A, 2/23/88; Milwaukee Metropolitan Sewerage District, 24813-A, 5/20/88; and Mukwonago School District, 25821-A, 9/12/89. In Kenosha, Oshkosh, Milwaukee Sewerage and Mukwonago Schools, the undersigned held that the existence of a tentative agreement established the reasonableness of a proposal contained in the final offer which had previously been agreed to in negotiations by the negotiating committees of the Employer and the Union. In each of the cases, the undersigned, however, also concluded that the final offer of a party should not be adopted solely by reason of the fact that there had been a prior tentative agreement which included the proposal of one of the parties. The undersigned continues to be of the opinion that the final offer of a party should not be adopted solely for the reason that there had been a prior tentative agreement which included the proposal being arbitrated. To do so would undoubtedly create a chilling effect in the bargaining process, because parties would be reluctant to enter into tentative agreements which might later be rejected by either the employer ratifying body or the union ratifying body. In each of the foregoing cases, the arbitrator selected the final offer of the party who proposed the terms tentatively agreed to in committee by reason of other evidence in the record. For example, in Mukwonago Schools, the Employer's offer was adopted, which included the proposal previously tentatively agreed to between the parties, because the internal comparables also supported the Employer proposal.

While the tentative agreement here establishes that the Union proposal is reasonable on its face (in fact, the Employer so admits in its brief), that fact is not so controlling that the offer of the Union should be adopted exclusively for that reason. It remains to be determined the degree of weight the tentative agreement will have in selecting the final offer of one party or the other. That consideration will be addressed in the summary and conclusion section of this Award.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the internal comparables and the five Zeidler primary comparables support the Employer position in this dispute. The undersigned has further concluded that the comparables in the same community, private and public sector (Menomonee School District and Briggs and Stratton) support the Union offer in this dispute. The undersigned has further concluded that the evidence submitted by the Union for the tri-county comparables is unpersuasive, because it falls short of the Union's required burden of proof because they submitted only selective data for municipalities in the tri-county area rather than data from all of those municipalities. From the foregoing it was concluded that the comparables support the Employer offer in this dispute. Furthermore, the undersigned concludes that the entire retirement package for Menomonee Falls retirees; the fringe benefits provided for Menomonee Falls employees; and the wage structure for Menomonee Falls employees, when compared to comparable municipalities support the adoption of the Employer offer in this dispute. Finally, the undersigned has concluded that the existence of a tentative agreement which was rejected by a subcommittee of the Employer's Board of Trustees supports the reasonableness of the Union proposal here. While the undersigned is persuaded that the tentative agreement should carry significant weight, that conclusion is offset by the other conclusions reached by the Arbitrator which lead to the opposite result. The undersigned now finds those other conclusions which support the Employer offer carry the greater weight. It follows therefrom that the Employer's offer is selected.

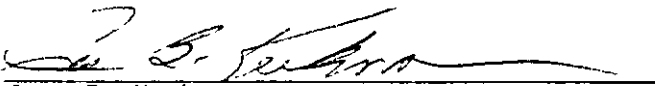
Therefore, after considering the statutory criteria, and all of the arguments of the parties, based on the record in its entirety, and the discussion set forth above, the Arbitrator makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties as they have been filed with Wisconsin Employment Relations Commission, and those terms of the predecessor Agreement which remained unchanged through the bargaining process, are to be incorporated into the parties' written Collective Bargaining Agreement for the years 1990, 1991 and 1992.

Dated at Fond du Lac, Wisconsin, this 26th day of February, 1991.

JBK:rr



Jos. B. Kerkman,
Arbitrator