ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between CITY OF SOUTH MILWAUKEE And AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL UNION 833, DISTRICT COUNCIL 48	Case 65 No. 44236 INT/ARB-5706 Decision No. 26754-A

Impartial Arbitrator

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Hearing Held

May 29, 1991
South Milwaukee, Wisconsin

Appearances

For the Employer

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of South Milwaukee and Local Union 883 of the American Federation of State, County and Municipal Employeee Union, District Council 48, with the matter in dispute the terms of a three year renewal labor agreement, covering the period of July 1, 1990 through June 30, 1993. During their renewal labor negotiations, the parties were able to reach agreement on all but two matters: (1) the wage rates to be applicable during the term of the renewal agreement; and (2) the Employer's proposal for the elimination of automatic cost of living escalation in the renewal agreement.

After failing to reach complete agreement in their preliminary renewal negotiations, the Union on June 27, 1990, filed a petition with the Wisconsin Employment Relations Commission requesting final and binding arbitration pursuant to Section 111.70(4)(cm)(6) of the Municipal Employment Relations Act. After completion of a preliminary investigation by a member of its staff, the Commission on January 22, 1991 issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration of the dispute; on February 25, 1991, the Commission appointed the undersigned to hear and decide the matter.

A hearing took place in the City of South Milwaukee on May 29, 1991, at which time all parties received full opportunities to present evidence and argument in support of their respective positions, the Employer summarized orally, the Union closed with a post-hearing brief, and the Employer filed a reply brief which was received by the Arbitrator on July 15, 1991.

The Final Offers of the Parties

Copies of the certified final offers of the parties, hereby incorporated by reference into this decision and award, provide principally as follows:

(1) The City proposes the elimination of the cost-of-living escalator provision in the prior labor agreement, the addition of 62¢ per hour in cost of living adjustments to the base wage rates in the new agreement, and the following adjustments to wages during the term of the renewal agreement:

(a) 7/1/90 through 6/30/91 - 4.5% wage increase (including COLA of 62¢);
(b) 7/1/91 through 12/31/91 - 2.0% wage increase;
(c) 1/1/92 through 6/30/93 - 2.0% wage increase;
(d) 7/1/92 through 6/30/93 - 3.0% wage increase.

(2) The Union proposes continuation of the cost of living escalator provision in the prior labor agreement, the addition of 66¢ per hour in cost of living adjustments to the wage rates in the new agreement, and the following adjustments to wages during the term of the renewal agreement:

(a) 7/1/90 through 6/30/91 - cost of living increases with 72¢ cap;
(b) 7/1/91 through 2/29/92 - 3.0% wage increase;
(c) 3/1/92 through 1/1/93 - 2.0% wage increase;
(d) 1/1/93 through 6/30/93 - cost of living adjustments, calculated from 11/1/92.

The Statutory Criteria

Section 111.70 (4)(cm) of the Wisconsin Statutes directs the Arbitrator to give weight to the following 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 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 UNION

In support of its contention that its final offer is the more appropriate of the two offers before the Arbitrator, the Union argued principally as follows:

(1) Preliminarily, that the sole issue before the Arbitrator is wages, and the major difference between the final wage offers of the parties is that the City proposes to eliminate COLA, while the Union proposed retention of the existing COLA agreement.

(a) That a cost of living provision has been a part of the parties' labor agreement since 1971, at which time it was negotiated into existence by the City and the Union.

(b) That two other bargaining units in the City of South Milwaukee are the firefighters and the police officers; that the ongoing police agreement contains a COLA provision, while the City's proposals to the firefighters would include COLA in the renewal agreement.

(2) That the final offer of the City would significantly change the previously negotiated status quo. That Wisconsin interest arbitrators have widely accepted the proposition that proposed changes in the status quo ante must be supported by evidence of both the need for such change and a quid pro quo for the changes.

(3) That the City has failed to show any compelling need for its proposed change in the status quo.

(a) That the only rationale offered for the change was a vague statement about projecting future budget costs; that this proposed basis for the change is inconsistent with the City's apparent willingness to maintain COLA plans within other units.

(b) That while consistency between bargaining units is frequently advanced as a basis for contract proposals, the City is here proposing inconsistency between bargaining units.

(c) That while the City cited the Gulf War as an example of unpredictable economic factors, recent changes in cost of living between January and March of 1991 were the lowest in the prior year.

(d) That the matter of projecting wage increases for Local 883 should be no more difficult or burdensome to the City than

its projections of wages within the police and the fire-fighters' units, or its projected budgetary costs involved in the purchase of various goods.

(e) That the City did not content that it was unable to pay the wage increases included in the Union's final offer, and did not suggest that the elimination of COLA was an economic necessity.

(f) That the purpose of COLA is to maintain the buying power of the employees in the bargaining unit, and Local 883 wants this protection for its membership; that such a provision is particularly necessary where, as here, the parties are negotiating a three year agreement, and it will be a long time before they return to the bargaining table.

(4) That the City has offered no quid pro quo in exchange for the Union's agreement to forfeit an existing benefit.

(a) That the wage package offered by the City contains no "buy-out" of the COLA provision.

(b) That Union Exhibit 1 shows wage settlements in comparable communities, and these settlements are in the same general range as those being offered by the City, with the exception of St. Francis and West Allis, which are offering more than what is being offered by South Milwaukee.

(c) That the external comparables, consisting of the southern suburbs of Milwaukee, were identified as comparable by Arbitrator Frank Zeidler in South Milwaukee Board of Education WERC Decision #17254-A.

(d) That the City's observation that there are no COLA provisions among the external comparables, does not justify the City's failure to offer a quid pro quo in exchange for the forfeiture of a benefit. That this principle was recognized by Arbitrator Fleischli in Palymyra-Eagle Education Association, WERC Decision #19317-A.

(5) That the city has simply failed to meet its twofold burden of showing a compelling need for change and showing that it has offered a quid pro quo for the proposed change.

In summary and conclusion, that the principal difference between the final offers of the parties is the City proposed change in the status quo, wherein it seeks elimination of a benefit that has been enjoyed by those in the bargaining unit for many years; that internal comparables contain language similar to that in dispute, and the City has failed to offer any quid pro quo for the change. Accordingly, that the final offer of the Union, rather than that

of the City, should be incorporated into the parties' renewal collective bargaining agreement.

POSITION OF THE CITY

IN support of the position that its final offer is the more appropriate of the two before the Arbitrator, the City also focussed principally upon the cost of living impasse item, and it emphasized the following major arguments:

(1) In connection with the difference of 4¢ per hour in the amount to be folded into the base wage rates at the inception of the new agreement, it urged as follows.

(a) That the expired agreement refers to the last COLA adjustment taking place on May 1, 1990.

(b) That the Union's request for the additional 4¢ per hour would amount, in effect, to having thirteen months in the final year of the expired agreement.

(c) That the additional 4¢ per hour was simply beyond the contemplation of the parties.

(2) That arbitral consideration of the comparison criterion favors the selection of the final offer of the City, in that the wages paid by the City are comparable to those paid by others.

(3) That the City's final offer was made prior to the Persian Gulf conflict, and was most reasonable in light of anticipated cost of living increases at the time of the offer.

(a) That neither of the parties contemplated the existence of a Middle-Eastern War at the end of the contract.

(b) That with the beginning of the Gulf War, cost of living skyrocketed.

(c) That the above described conditions make it extremely difficult to properly carry out the budgeting process.

(d) That three-quarters of the budget consists of wages, that budgets are completed in October and November, published in December, in time for January tax levies to be determined. That uncertainties with respect to wages also impacts upon the availability of state aids, which are based upon revenue estimates.

(4) That there is no real question relating to the adequacy of wages paid to bargaining unit employees.

(a) That percentage wage increases are comparable to those paid by other employers, without cost-of-living escalation.

(b) That if at the end of the contract, wages are "out of whack," they will be adjusted at that time.

(c) That there is no COLA provision within the School District.

(d) That there are no COLA provisions within the comparable surrounding communities.

(5) That automatic cost of living escalation is simply not workable from the perspective of management of large units of municipal employees.

In its reply brief the City emphasized the following additional arguments, and expanded upon its earlier arguments as follows:

(1) That various facts relied upon the Union were not completely addressed in its brief.

(a) That the firefighters proposed contract has a COLA provision with a cap, which provides for maximum COLA increases of 4.5% in 1991, 3.75% in 1992 and 3.25% in 1993.

(b) That the comparable cities of Hales Corners, Greenfield, West Milwaukee, St. Francis, Oak Creek, Greendale, Cudahy, West Allis and Franklin have no COLA provisions in any of their collective agreements.

(c) That the non-public comparisons cited by the Union, Cooper Power Systems and Bucyrus Erie, have no COLA provisions in their collective agreements.

(d) That wage comparisons for labor in the City of South Milwaukee, versus the private sector, show differences of 50¢ to 75¢ per hour in favor of the City employees.

(2) That the final offer of the City best meets the arbitral criteria contained in Section 111.70 of the Wisconsin Statutes.

(a) That the City's offer would bring the contract between the City and Local Union 883 into line with the contract between all of the municipalities of all the surrounding comparable communities and their unionized employees.

(b) That none of the surrounding communities have cost of living escalation provided for in their collective agreements, and the City of South Milwaukee School District also does not contain such a provision. Similarly, that no private employers which have contracts with unionized employees doing comparable work, have cost of living escalation in their contracts.

(c) That the City offered 4.5% increase for July 1, 1990 to June 30, 1991, is higher than any of the other reported increases; that the City proferred 2% increase for the first six months

of 1991, and 2% for the second six months of 1991, is in line with the comparable settlements in Greenfield, West Milwaukee, Oak Creek, Greendale and Cudahy. That the City's 3% increase for 1992-93, is comparable with the St. Francis package if coupled with a comparison of the wages paid employees of St. Francis and South Milwaukee.

(d) That the Union's reference to the Greendale School District is inappropriate in the case at hand, due to the fact that the statutory guidelines do not require or direct the Arbitrator to consider the three items deliniated; rather, the Arbitrator is directed to consider comparisons to other municipal employees within the same municipality, other muncipal employees within comparable municipalities, and other employees in comparable private sector settings, thus providing that municipal labor contracts are interdependent. That the intent of the statute is to make it impossible for any municipality or union to get significantly out of line.

(e) That the statutory reference to cost of living makes it impossible for an arbitrated contract to get significantly away from cost of living.

(f) That the City's proposal is in line with all surrounding comparables, both private and public, is in line with cost of living considerations, and achieves the goal of budgetary responsibility as addressed below.

(3) That a cost of living wage formula is not fiscally responsible for any municipality.

(a) That an uncapped COLA formula in a labor agreement, as proposed by the Union, represents an unknown that is simply too significant for responsible budgeting.

(b) That the above principle is reflected in a 1979 treatise by Charles Mulcahy (Municiple Labor Relations in Wisconsin, published by ATSCLE, State Bar of Wisconsin).

(c) That the introduction of a COLA formula in a large municipal/union agreement introduces a significant degree of uncertainty into the budgetary process; it is impossible to predict the COLA rise in any given year, but the budgetary mandates of Chapter 65, Wis. Stats, require the municipality to set budgets despite the COL unknows, and to make selections between program priorities without sufficient information regarding the impact of cost of living escalation formulas.

(4) In response to the Union's arguments that the City must demonstrate a compelling need for the abandonment of a COLA agreement, that budgetary responsibility alone demonstrates such need.

(a) That the Union suggestion that a municipality must "buyout" a change in COLA is meritless, in that there is no such provision in the statutory criteria. Rather, the statutes provide merely that the proposal accepted by an arbitrator be fair and reasonable in light of comparable wage settlements

entered into voluntarily between comparable employers and employees.

(b) In the above connection, that the City's wage proposal is comparable in all respects; indeed, the lack of a COLA provision makes it more comparable.

(5) That the Union suggestion that the City's proposed contract with the firefighters supports the selection of its offer is flawed, in that the firefighter proposal contains a capped COLA.

(a) That the effect of a cap is to segment the increase during the course of the year, rather than simply grant it at the beginning of the year as proposed by the City to Local 883.

(b) That the use of a COLA cap, in itself, allows a municipality to avoid the budgetary pitfalls which are referenced above.

(c) That the proposed elimination of COLA for Local 883 and its retention in two other units, merely recognizes that the COLA removal must start somewhere, and at least the Firefighters' COLA is capped.

(6) If a quid pro quo is needed for the elimination of COLA, then the City's final offer, which is fair and reasonable, and greater than most of the comparables, provides such quid pro quo.

(a) That it would be both unkind and improper to significantly increase the wages of a given bargaining unit in one year and then turn around in later years and demonstrate that by virtue of that buyout, the wages were significantly out of line with comparables.

(b) That the statute requires no quid pro quo, but rather requires appropriate comparability.

FINDINGS AND CONCLUSIONS

While the parties have presented the Arbitrator with a dispute as to the wages to be paid those in the bargaining unit during the three year term of the renewal agreement, the scope of their wage dispute is somewhat unusual. In this connection, the Employer is proposing and the Union resisting the elimination of the cost of living escalator provision which has existed since it was negotiated into the agreement by the parties in 1971, the parties are in dispute as to whether 62¢ or 66¢ per hour of previous cost of living escalation should be folded into the base rates upon the effective date of the renewal agreement, and they are also in disagreement with respect to the deferred wage

increases to be applied during the contract term. In arguing their respective positions the parties called into question the following major considerations:

(1) The role played by a Wisconsin interest arbitrator in the final offer selection process;

(2) The standards utilized by Wisconsin interest arbitrators in cases involving proposed significant changes in the status quo ante;

(3) The compatability of automatic cost of living escalation during the term of a labor agreement, with the municipal budgeting process;

(4) The application of the Wisconsin interest arbitration criteria to the case at hand, in light of the above considerations.

For the purpose of clarity, the Arbitrator will separately address each of the above areas of consideration, prior to reaching a decision and rendering an award in these proceedings.

The Role of a Wisconsin Interest Arbitrator in the Final Offer Selection Process

In the application of the various interest arbitration crtieria to a specific dispute, it must be emphasized that interest arbitrators do not merely operate in a judicial role, assimilate the information and arguments of the parties, plug the information into a formula, and determine the "correct" answer. Rather, they operate as extensions of the contract negotiations process, with the ultimate goal of arriving at the same decision that the parties would have reached over the bargaining table, had they been able to achieve a voluntary settlement. These considerations are rather well described in the following excerpts from the highly respected and frequently cited book by Elkouri and Elkouri:

> "In a similar sense the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination

> upon consideration of policy, fairness, and expediency, of what the contract ought to be. In submitting their case to arbitration, the parties have left to this board to determine what they should by negotiations have agreed upon. We take it then that the fundamental inquiry, as to each issue is: what should the parties themselves as reasonable men have agreed to? ....To repeat, our endeavor will be to decide the issues, as upon the evidence, we think that reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining.'..." 1./

In accordance with the above, the underisgned must determine the propriety of the Employer proposed elimination of the cost-of-living escalator, with significant consideration toward what the parties would have been likely to agree upon, had they been able to do so.

The Standards Utilized by Wisconsin Interest Arbitrators in Cases Involving Proposed Significant Changes in the Status Quo Ante

As referenced above, interest arbitrators are normally very reluctant to give either party something that they would not have been able to achieve across the bargaining table, and this has been quite apparent in situations involving either the addition of new or innovative benefits or language, and/or the elimination of established benefits or language. In this connection, however, there is a significant distinction between private sector interest impasses, where the parties have the future right to strike or to lock out in support of their bargaining positions, versus public sector impasses where the parties normally lack the right to undertake strikes or lockouts. A complete refusal to allow innovation or to consider change in the status quo in the public sector would operate to prevent either party from gaining important changes, which changes have already been enjoyed by their private and public sector counterparts. These principles have been rather well addressed as follows, by Arbitrator Howard S. Block:

> "One of the most compelling reasons which makes it necessary for neutrals in public sector disputes to strike out on their own is the dearth of public sector bargaining history. The main citadels of unionism

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1./ Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105. (footnotes omitted)

in private industry have a continuity of bargaining history going back at least to the 1930s. Public sector collective negotiations, on the other hand, is still a fledgling growth. In many instances its existence is the result of an unspectacular transition of unaffiliated career organizations responding to competition from AFL-CIO affiliates. As we know, a principal guideline for resolving interest disputes in the private sector is prevailing industry practice--a guidelines expressed with exceptional clarity by one arbitrator as follows:

> 'The role of interest arbitration in such a situation must be clearly understood. Arbitration in essence, is a quasi-judicial, not a legislative process. This implies the essentiality of objectivity--the reliance on a set of tested and established guides.
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> 'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressurs which led to the exhaustion or rejection of their traditional remedies.
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> 'The arbitrator attempts to establish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accomodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past, but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table.

Viewed in the light of the foregoing principles, the public sector neutral, I submit, does not wander in an uncharted field even though he must at times adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting precollecitve negotiations practice which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt." 2./

Although Arbitrator Block was specifically addressing employer resistance to union requested change or innovation in a context where there was no right to strike, the described principle has equal application to the situation where a public sector employer is proposing innovation or change, which proposal is being resisted by a union. If public sector interest neutrals were precluded

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2./ Block, Howard S., Criteria in Public Sector Interest Disptues, Reprint No. 230, Institute of Industrial Relations, University of California, Los Angeles, California, 1972, pp. 164-165. (Internal quote from Des Moines TRansit, 38 LA 666.)

from recommending or adopting innovation or change in the status quo ante, a union dedicated to avoidance of change in a mandatory interest arbitration situation, could forever preclude an employer from achieving needed change, even where it was desirable or necessary, and/or where the change had achieved substantial acceptance elsewhere.

In accordance with the above, the question before the undersigned is whether the Employer has established the requisite persuasive case for its proposed elimination of automatic cost of living escalation in the renewal agreement? In this connection the Union cited the continued existence of cost of living escalators in two other bargaining units in the City, the long standing status of the present cost of living escalator (dating back to 1971), and the lack of any Employer proposed quid pro quo for the proposed elimination of the benefit. The Employer decried the need for any so-called quid pro quo, urged arbitral consideration of the municipal budgetary difficulties generated by automatic cost of living escalation, and urged that such plans were simply not appropriate within labor agreements between large municipalities and unions.

While the Wisconsin Statutes provide various arbitral criteria for use in the resolution of interest arbitration disputes, they have not been prioritized by the legislature, and the relative importance of the criteria will normally vary from case to case, depending upon various factors, including the parties' bargaining history. While Section 111.70(4)(cm)(6) of the Wisconsin Statutes does not specifically include negotiations history as an arbitral criterion, it falls well with the scope of sub-section (j), and it has frequently been assigned critical importance in the final offer selection process. If there is a dispute with respect to the relative weight to be placed upon the various possible comparisons, for example, interest arbitrators will frequently look to the comparisons which have been used by the parties in their past negotiations for guidance, and they are extremely reluctant to abandon the

primacy of such comparisons. These principles and their underlying rationale are described as follows in an old but still authoritative book by Irving Bernstein:

> "This, once again, suggest the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential..."
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> "The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..." 3./

The force of the parties' bargaining history on wage determination is also apparent in the following additional excerpts from the Elkouris' book:

> "When each of the various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons which the parties themselves had considered significant in free collective bargaining, especially in the recent past." 4./

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that when the parties to negotiated agreements have, for almost two decades, agreed upon cost of living escalation on the apparent basis of internal comparisons (ie. comparisons between the bargaining unit represented by Local Union 883, and the police and firefighter units), it is extremely difficult to assign determinative importance to the City's argument that the continued existence of automatic cost of living escalation should depend largely upon certain external comparisons with other municipalities which apparently have not been regarded as persuasive by the parties in the past. Accordingly, the Impartial

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3./ Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkely and Los Angeles), 1954, pp. 63, 66.

4./ How Arbitration Workes, p 811.

Arbitrator has preliminarily concluded that significant weight should be placed upon the parties' bargaining history relative to cost of living escalation, wherein they have apparently placed principal weight upon internal comparisons with the police and firefighter units, rather than upon external, intra-industry comparisons. At this point the undersigned will observe that it is not unusual for parties to negotiated agreements to look to internal comparisons for determining certain matters, while looking to external comparisons to determine other matters; the amounts of general wage increases, for example, may be determined externally, while detailed contract language, group insurance coverage, and other factors may depend upon internal comparisons.

In spite of the weight normally placed upon bargaining history and the parties' internal comparisons relating to cost of living escalation, it must be emphasized that the parties themselves are not precluded from negotiating its elimination or modification, and the Arbitrator should direct its elimination or modification if the Employer, as the proponent of change, has made the requisite persuasive case. Cost of living escalators are normally regarded as the tradeoff for the stability of multiple year labor agreements, where the parties are unable to accurately project future increases in cost of living. Some plans contain corridors on benefits, some contain caps on possible increases during the course of any year or during the contract term, there are several methods of adjusting wages based upon changes in cost of living indices, and some contracts merely provide for conditional wage reopeners. While the Employer has demanded the stability of a three year renewal labor agreement, the Arbitrator is struck by the fact that it has proposed neither a modified COLA plan, nor a wage reopener to replace the old escalator. No explanation was offered, for example, for the Employer proposed use of a capped COLA plan in the firefighters' agreement, and its failure to offer a similar plan to Local 883. Further, it will be noted that the Employer's argument that future cost of living considerations will be

adequately addressed at the bargaining table or in future interest arbitration proceedings, would be more persuasive outside the context of a multiple year labor contract renewal proposal. The Union is also quite correct that proposals for the reduction or elimination of employee benefits or beneficial contract language are frequently accompanied by a proposed quid pro quo, but no such trade off has apparently been proposed by the Employer in the dispute at hand.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the record falls far short of creating a persuasive case for the Employer proposed elimination of cost of living escalation in the parties' renewal labor agreement.

The Compatibility of Automatic Cost of Living Escalation During the Term of a Labor Agreement, with the Municipal Budgeting Process

What next of the Employer's ingenious argument that there is a basic incompatibility between automatic cost of living escalation during the term of a labor agreement and the statutorily required municipal bargaining process, and that this incompatibility alone creates a persuasive case for the elimination of COLA in the parties' renewal labor agreement? What the Employer is seeking from the Arbitrator in this connection is, in effect, a determination that cost of living escalation is a non-mandatory items of bargaining in negotiations between Wisconsin municipal employers and unions. Such a determination would not only be beyond the authority of the Arbitrator, but would also be inconsistent with the fact that cost of living considerations have been a criterion in Wisconsin interest disputes for a period of many years, and cost of living escalators have been common in both private and public sector Wisconsin labor contracts over an extended period of time. An incompatibility argument can be made, however, and if it is the desire of the Employer to either test the bargaining status of cost of living escalators under present law or to seek a change in the statutory law, the matter should be addressed through either the Wisconsin Employment Relations Commission or through the legislative or executive

branches of government.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the Employer alleged incompatibility between cost of living escalation and the municipal budgeting process, does not alone establish a persuasive case for the elimination of the cost of living escalator in the parties' renewal labor agreement.

Summary of Principal Preliminary Conclusions

As addressed in more comprehensive detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

(1) A Wisconsin interest arbitrator operates as an extension of the parties' contract negotiations, and he or she will normally attempt to place the parties into the same position they would have reached over the bargaining table, had they been able to reach a voluntary settlement.

(2) That when Wisconsin interest arbitrators are faced with proposals for significant change in the negotiated status quo ante, they generally recognize that the proponent of change is obligated to establish a persuasive case for such change.

(3) The parties' bargaining history often indicates the relative weights to be placed upon certain statutory criteria. The historical presence of cost of living escalation in the bargaining unit represented by Local Union 883, and its historical and continued presence in the police and firefighter units within the City, signficantly support the position of the Union in these proceedings.

(4) The record in these proceedings falls far short of creating a persuasive case for the Employer proposed elimination of cost of living escalation in the parties' renewal labor agreement.

(5) The Employer alleged incompatibility between automatic cost of living escalation and the municipal budgeting process in Wisconsin, cannot be assigned determinative weight in these proceedings.

Selection of the Final Offer

In the final offer selection process the Arbitrator is faced with a limited evidentiary record, with the focus of the parties primarily upon the cost of living impasse item, and with the parties' arguments based upon only a few of the statutory criteria. The following major factors bear upon the final offer selection process:

(1) Neither the lawful authority of the Employer, the stipulations of the parties, the average consumer prices for goods and services, the overall level of compensation of those in the bargaining unit, nor changes during the course of the arbitration proceedings, can be assigned determinative weight in these proceedings.

(2) Arbitral consideration of the parties' negotiations history, which includes the historical use of cost of living escalation within the bargaining unit represented by Local Union 883, and within the police and the firefighter units, favors the final offer of the Union in these proceedings.

(3) In accordance with the parties' bargaining history, the internal comparison criterion is entitled to significant weight on the cost of living impasse item, much greater weight than can be accorded external comparisons with other cities.

(4) The record does not definitively favor the position of either party with respect to the remaining impasse items, including the amount to be folded into the base rates at the inception of the new agreement, and the amount of deferred wage increases during the term of the renewal agreement.

After a careful consideration of the entire record, including consideration of all of the statutory criteria, the Arbitrator has preliminarily concluded that the final offer of the Union is the more appropriate of the two final offers. As described above, this conclusion is principally based upon arbitral consideration of the internal comparison and the negotiations history criteria in connection with the cost of living impasse item. By way of dicta, the Arbitrator will add the the Employer's arguments relating to budgeting difficulties, and its observations relating to various other employers within the primary external comparison group which do not have escalator clauses, might have been more meaningful if the Arbitrator had been faced with a Union proposal for the adoption of such a plan. In the dispute at hand, however, it will be reemphasized that the Union is merely proposing the continuation of a long term and previously negotiated plan, which the Employer is attempting to eliminate.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(6) 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 final offer of the Union, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

September 11, 1991