STATE OF WISCONSIN

BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of OAK CREEK WATER UTILITY COMMISSION To Initiate Arbitration Between Said Petitioner and LOCAL UNION 2150, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS	Case 80 No. 45289 INT/ARB-5936 Decision No. 26955-A

Appearances:

Davis & Kuelthau, S. C., Attorneys at Law, by Mr. Robert H. Buikema, appearing on behalf of the Employer.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S. C., Attorneys at Law, by Ms. Marianne Goldstein Robbins, appearing on behalf of the Union.

ARBITRATION AWARD:

On September 5, 1991, 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 Oak Creek Water Utility Commission, referred to herein as the Employer, and Local Union 2150, International Brotherhood of Electrical Workers, referred to herein as the Union, with respect to the issues specified below. The proceedings were conducted pursuant to Wis. Stats. 111.70 (4) (cm), and hearing was held at Oak Creek, Wisconsin, on October 18, 1991, 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 received by the Arbitrator on December 13, 1991.

THE ISSUES:

The disputed issues involve premium pay for employees scheduled to work on Sundays and holidays. The Union proposes that a premium of time and one-half be paid for employees scheduled to work on Sundays and holidays.

The Employer offers that employees who are scheduled to work on a Sunday or a holiday shall receive premium pay of $7.27 per hour for all hours actually worked.

The final offers of the parties set forth their wage offers in different forms, however, the amount of increase is identical in both final offers. The Employer proposes general increases of 3.5% on January 1, 1991, and January 1, 1992. Additionally, the Employer proposes that an additional .25% be applied to all wage rates effective January 1, 1991, for what the Employer labels a quid pro quo for freezing the premium pay at $7.27 per hour for employees who are normally scheduled to work on a Sunday or holiday. The Union proposes general increases of 3.75% effective January 1, 1991, and 3.5% effective January 1, 1992. Thus, no matter which party's final offer is adopted by this Arbitrator, the percentage wage increases in January, 1991 and January, 1992, will be the same; consequently, it is unnecessary for the Arbitrator to consider which party's final offer is preferred based on the general wage increases. The Arbitrator will, however, consider the Employer argument that .25% of its proposed wage increase which becomes effective January 1, 1991, is a quid pro quo for the freezing of the premium pay for employees who are scheduled to work on Sundays and holidays.

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.

The Employer argues that its proposed external comparables are the appropriate ones for consideration. In support thereof, the Employer cites City of Sturgeon Bay (Utilities), (Dec. No. 25549-B, 2/89); Twin Lakes #4 School District, (Dec. No. 26592-A, 3/91). The Employer further argues that the Union's haphazard approach to comparability is totally unacceptable, urging the Arbitrator to reject consideration of Franklin, Kenosha, Elkhorn, Two Rivers and Kaukauna as relied on by the Union.

The Employer further argues that a review of the comparable wage rates and settlements provides sufficient support for its final wage offer, arguing that the Oak Creek Utility employees receive a far superior wage rate than those of the Employer proposed comparables, and that the percentage increases proposed by the Commission are equitable.

The Employer further argues that the premium pay final offer is necessary and is supported by the external comparables, contending that a review of the cost impact reveals the necessity and support for the change. The Employer also argues that its final offer provides a sufficient quid pro quo for the premium pay dollar cap, and that the external comparisons firmly support the Employer's premium pay final offer. The Employer further contends that the evidence establishes that from a total compensation standpoint the employees in this unit rank first among the comparables. Finally, the Employer argues that its final offer is wholly supported by an analysis of other internal bargaining unit settlements, both as it relates to percentage increases and as it relates to Employer proposal for premium pay on Sundays and holidays where the employees are scheduled to work those days. The Employer, in support of its position, cites City of Appleton, (Dec. No. 21299); City of Waukesha, (Dec. No. 25636-A, 4/89); Village of Greendale, (Dec. No. 21509-A, 12/84); City of Milwaukee (Journeyman Plumbers & Gas Fitters), (Dec. No. 17197-A, 5/80).

The Union argues that the Employer is seeking to alter the status quo, therefore, the Employer bears the burden of proof to establish the necessity for the change it proposes. In support thereof, the Union cites School District of Barron, (Dec. No. 16276, 1978); Ozaukee County, (Dec. No. 26100-A, 1990); Osseo-Fairbanks School District, (Dec. No. 26203-A, 1990); and West Allis-West Milwaukee School District, (Dec. No. 26089-B, 1990).

The Union further argues that internal comparisons favor the Union's final offer when comparing the amount of lift the increases negotiated with other units produced and the total annual compensation comparisons made between operators in this unit and police officers and firefighters in the other units.

The Union further argues that external comparisons, to the extent that they can be made, fail to support the Employer's offer. Finally, the Union argues that the Employer has failed to provide a quid pro quo for its proposed alteration of the status quo, citing Green County, (Dec. No. 20280-A, 1983); Greendale School District, (Dec. No. 25499-A, 1989); and City of Ashland, (Dec. No. 26076-A, 1989).

In reply to the Union brief, the Employer argues that because this is a first Contract there is not a status quo standard that the Employer is required to meet. In support thereof, the Employer cites Benton School District- Auxiliary Personnel- (citations omitted); Wrightstown Community School District, (Dec. No. 23649-A, September, 1986); Mellen School District (Support Staff), (Dec. No. 26309-A, 7/90).

The Employer further argues that the internal comparison arguments made by the Union are misleading, and that the internal comparisons actually favor the Employer position when considering holiday and Sunday premium pay.

In its reply brief, the Employer challenges the Union's attempt to underrate any external comparables upon which the Employer relies, arguing that external settlement comparisons favor the Employer offer. Finally, the Employer, in

response to the Union's arguments, contends that it has provided a sufficient quid pro quo for its premium pay final offer, pointing out that while the average settlement of the comparables is 4% compared to the Employer offer of 3.5% plus the .25% quid pro quo, the amount of increase generated by its 3.5% offer equals the average increase among the Employer proposed comparables (51¢ per hour), because of the higher base hourly rate paid by this Employer.

The Union, in response to the Employer offer, contends that the wage increase is no longer disputed, and that the 3.75% increase effective January 1, 1991, is fully justified based on comparative settlements without considering any quid pro quo for the Employer's freezing of the premium pay for Sundays and holidays.

The Union, in reply, further argues that it appears that the Employer argues that because water treatment plant operators are more highly compensated than operators in other utilities, it justifies a reduction in the premium pay formula. The Union disputes the Employer position in this regard, citing City of Monona, (Dec. No. 26562-A, 1991). The Union points out that the skills required by this Employer of its operators are higher than those required in the plants which the Employer considers comparable.

The Union further argues that Arbitrators recognize where a given group of employees are more highly compensated than their counterparts in comparable communities, in the absence of justification to the contrary the offer which maintains their relative position should be selected, citing North Central VTAE, (Dec. No. 18917-A, 1983) and School District of Maple, (Dec. No. 17234-A, 1980).

The general wage increases proposed by both parties are identical, thus, no matter which party's offer is adopted the amount of general increase on the wage rate will be the same. The Employer proposes that the premium pay for regularly scheduled Sunday work be frozen at $7.27 per hour. The Union proposes that the prior practice, which was outlined in the unilaterally promulgated handbook of

the Employer be continued, that is, that premium pay for regularly scheduled Sunday work and holidays be paid at time and one-half. The actual amount of difference in premium pay is 28¢ per hour in 1991 and 54¢ per hour in 1992. The foregoing calculation is based on the utility hourly rates of $15.09 per hour for 1991 and $15.62 per hour for 1992.

The question before the Arbitrator is whether the evidence in this record supports the proposed freezing of the premium pay. The parties have made considerable argument with respect to total compensation and with respect to wage rate and percentage increase comparisons among the internal comparables and the external comparables. The Arbitrator sees no need to analyze these comparisons, because the parties have already agreed to a wage increase which is the same in both parties' final offer. While the parties have expressed the amount of the increase in a different manner in their respective offers, the end result is identical, i. e., 3.75% in 1991 and 3.5% in 1992. Because the parties have reached an agreement on the amount of wage increase which is to be implemented, it is unnecessary to make the comparisons which the parties have urged with respect to the propriety of the wage increase and the propriety of the wage comparisons among the internal and external comparables. The parties voluntarily have struck that bargain, and it is concluded therefrom that the parties have reached an equitable settlement as it relates to the wage increase.

In arriving at the foregoing conclusions, the Arbitrator has considered the Employer argument that .25% of the 1991 increase is offered as a quid pro quo for freezing the operators' premium pay for scheduled Sunday work and for holiday pay. The undersigned is not persuaded that the .25% which the Employer offers, establishes a quid pro quo as the Employer urges. A review of settlement data among the Employer comparables fails to support that conclusion, because the 1991 percentage increases among the Employer proposed comparables range from 3.5% to 4.5%.

Making the same comparisons for the Employer comparables in 1992, we find that the settlements range from 3.5% to 4.5% among the Employer comparables. From the foregoing, it is concluded that the additional .25% which the Employer argues is a quid pro quo for freezing the premium pay fails to achieve that purpose. The wage percentage increase settlements among the Employer proposed comparables approach the Employer's 3.75% total offer without considerations of any quid pro quos among those comparables. Therefore, the Employer's argument that a quid pro quo has been established is rejected.

Having rejected the Employer argument that .25% in 1991 is a quid pro quo for freezing the premium pay, the matter, however, is not resolved. There is other evidence which must be considered. First of all, this is a first Contract between the parties, and the give and take of bargaining which occurred satisfies this Arbitrator that not all of the terms and conditions of employment which existed prior to Union representation were perpetuated or improved upon in the first Collective Bargaining Agreement. There is in evidence Union Exhibit NO. 11, which indicates that there has been give and take in bargaining, and that certain issues have been improved over the provisions set forth in the handbook of 1990 in the bargaining process; that other issues have stayed the same as they were set forth in the 1990 handbook during the course of bargaining; and that some issues were reduced from the level set forth in the 1990 handbook. For example, longevity pay and comp time stayed the same without change in the newly negotiated Agreement as they were stated in the handbook in 1990. Vacations, however, were modified to a two tier arrangement so that those employees employed in the bargaining unit prior to May 1, 1990, continue to have vacations as provided in the 1990 handbook, while those employees hired after May 1, 1990, have a different benefit level which caps at 30 days after 25 years. Under leave of absence, the parties negotiated a variation from the prior existing conditions in the 1990 handbook, where maternity

leave was reduced from eight weeks to six weeks, and child rearing leave was reduced from one year to six months. Pension payment by the Employer was improved from 6% to 6.1%, and the insurance provisions were renegotiated so as to increase the amount employees pay for prescription drugs, etc. All of the foregoing causes the undersigned to conclude that the give and take of bargaining in this first Contract was done without the consideration of a specific quid pro quo, because the record fails to establish that quid pro quos were considered when the parties reached these agreements. It follows that the reliance the Union places on an insufficient quid pro quo for the change proposed by the Employer will be given limited weight.

In the view of this Arbitrator, the prime consideration in determining which final offer is to be adopted should be based on the practices shown in the internal and external comparables as it relates to premium pay for regularly scheduled Sunday work and for holidays. A review of the evidence creates mixed results. When considering internal comparables of the Police and the Firefighters, we find that Police Officers are paid no premium pay for Sunday work, but that they are paid premium pay for holidays. At Employer Exhibit No. 10, page 5, Article IX, the Oak Creek Police Labor Contract sets forth that there are ten paid holidays, and that an employee shall receive double time for all hours worked on that day. The Firefighters' Contract provides that employees are paid time and one-half for working holidays. Thus, the internal comparisons between the Police, Firefighters and Operators in this unit support the Union offer as it relates to holiday pay.

When we consider premium pay for regularly scheduled Sunday work, we find that the internal comparisons have an entirely different result. Neither the Police nor Firefighters receive any premium pay for working on a regularly scheduled Sunday, whereas, the Operators in this unit would receive $7.27 per hour under the

Employer proposal, and time and one-half under the Union proposal. From the foregoing, it is concluded that the internal comparables as they relate to regularly scheduled Sunday work support the Employer offer in this matter.

When considering external comparables, we find the same results as found when considering internal comparables, i. e., the external comparables support the Employer final offer as it relates to premium pay for scheduled Sunday work, while the Union final offer is supported by the external comparables as it relates to premium pay for holidays worked. In the Employer comparables, we find that time and one-half is paid for holiday premium pay in three of the five Employer proposed comparables for holidays worked. The opposite results occur when considering comparisons of premium pay provisions among the Employer proposed comparables when considering premium pay for Sunday work. Four of the five Employer proposed comparables pay Sunday premium pay ranging from 19¢ per hour to a high of 25¢ per hour. The fifth Employer proposed comparable pays no premium pay for regularly scheduled Sunday work to its Operators. Thus, the Employer proposed comparables support the Employer offer as it relates to premium pay for Sundays worked since the Employer is proposing premium pay of at least $7.00 per hour more for Sundays worked than any of the other Employer proposed comparables pay. The undersigned has also considered Union Exhibit No. 12, which sets forth the Kenosha Contract as it relates to premium pay for Sunday and holidays. Union Exhibit No. 12 establishes that Operators in the Kenosha plant are paid time and one-half for holidays worked and that employees working a seven day operation receive time and one-half overtime on their first scheduled day off and double time for overtime worked on their second scheduled day off, regardless of the day of the week on which the days fall. Thus, the Kenosha Contract supports the Union position in this matter as it relates to holiday premium pay, but does not support the Union position in this matter as it relates to premium pay for Sunday work, because it

provides premium pay only when employees work the sixth and seventh day. It is concluded from all of the above that the evidence supports the Employer offer for Sunday premium pay, and the Union offer for holiday premium pay.

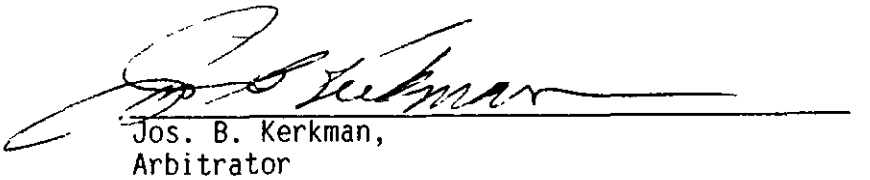
The undersigned has concluded that the Union proposal with respect to premium pay for holidays is supported by the comparables, both internal and external, and that the Employer offer is supported by the comparables for premium pay for scheduled Sunday work. The Arbitrator is faced with the choice of selecting a final offer which is supported on the one hand by the evidence for the Union offer (premium pay for holidays); and on the other hand by the evidence for the Employer offer (premium pay for scheduled Sunday work). Because the proposal of the Employer will continue to pay premium pay in the amounts heretofore paid for Sunday work for employees scheduled to work on Sundays since it is based on time and one-half of the 1990 rates; and because the premium pay amount proposed by the Employer for employees who are scheduled to work Sundays exceeds the pay among the comparables by at least $7.00 per hour; and because the differential of premium pay between the offers for holidays worked is 28¢ per hour in the first year of the Agreement and 54¢ per hour in the second year of the Agreement; the undersigned concludes that the Employer offer must be favored, because, employees working scheduled Sundays are receiving significantly more premium pay than any of the comparable units, either internal or external, whereas, the amounts of premium pay which the employees will not receive under the Employer offer for holiday pay is considerably less. The undersigned, therefore, concludes that the equities and the comparisons favor the adoption of the Employer final offer, and it will be so ordered.

Therefore, based on the discussions set forth above, and the record in its entirety, after considering all of the arguments of Counsel, and all of the statutory criteria, the undersigned makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties as furnished to the Wisconsin Employment Relations Commission, are to be incorporated into the parties' written Collective Bargaining Agreement for the years 1991 and 1992.

Dated at Fond du Lac, Wisconsin, this 12th day of February, 1992.



Jos. B. Kerkman,
Arbitrator

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