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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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In the Matter of an Arbitration
between
CITY OF OSHKOSH
and
OSHKOSH CITY PROFESSIONAL
EMPLOYEES ASSOCIATION
* * * * *

Case 156 No. 45899
INT/ARB-6066

Decision No. 27003-C

Appearances:

Mr. Bruce Patterson, representing the City.

Attorney Frederick J. Mohr, representing the Association.

Before: Mr. Neil M. Gundermann, Arbitrator.

Date of Award: March 3, 1993.

ARBITRATION AWARD

The City of Oshkosh, Oshkosh, Wisconsin, hereinafter referred to as the City, and Oshkosh City Professional Employees Association, hereinafter referred to as the Association, were unable to agree on the terms of a collective bargaining agreement covering calendar years 1991 and 1992. The parties selected the undersigned through the appointment procedures of the Wisconsin Employment Relations Commission to hear and determine the matter in dispute and such hearing was held at the Oshkosh City Hall, Oshkosh, Wisconsin on December 8, 1992. The parties filed post-hearing briefs.

CITY'S FINAL OFFER:

1. Term of Agreement: From January 1, 1991 through December 31, 1992.

2. Health Insurance:

Amend the health insurance program so as to provide for an employee contribution for the year of 1991 of \$30 per month for the family plan and \$10 per month for the single plan. Further, to provide for an employee contribution for 1992 of \$30 for the family plan and \$10 for the single plan plus 25% of the total increase in cost of the plan for 1992 not to exceed \$20 per month.

3. Salary: Amend the salary schedule as follows:

- a. An increase of 2% effective pay period #1, 1991
- b. An increase of 2% effective pay period #14, 1991
- c. An increase of 2% effective pay period #21, 1991
- d. An increase of 3% effective pay period #1, 1992
- e. An increase of 2% effective pay period #14, 1992

ASSOCIATION'S FINAL OFFER:

1. Term of Agreement: From January 1, 1991 through December 31, 1992.

2. Health Insurance:

Amend the health insurance program so as to provide for an employee contribution for the year of 1991 of \$30 per month for the family plan and \$10 per month for the single plan. Further, to provide for an employee contribution for 1992 of \$30 for the family plan and \$10 for the single plan plus 25% of the total increase in cost of the plan for 1992 not to exceed \$20 per month.

3. Salary: Amend the salary schedule as follows:

- a. An across-the-board wage adjustment of 5% 1/1/91
- b. An increase of 2% effective pay period #1, 1991
- c. A pay raise of 2% effective pay period #14, 1991
- d. A 2% increase effective pay period #21, 1991
- e. A 3% increase effective pay period #1, 1992
- f. A 2% increase effective pay period #14, 1992

UNION'S POSITION:

The sole issue in dispute in this arbitration is the Association's request for a catch-up increase in wages. The Association has requested a 5% wage adjustment to commence on the first pay period of 1991.

Only two of the statutory criteria have relevance in this arbitration. These are:

- (1) Cost of Living.
- (2) External Comparables.

Traditionally arbitrators have considered the prior contract period as the focal point for a cost-of-living analysis. The years of 1989 and 1990 saw inflation rise 5.2% and 5.7% respectively.

The City's wage offer results in an 11% lift for employes, which is comparable to the cost-of-living increase experienced. However, the method of granting this lift results in a cost to the City of only 3.5% in 1991 and 4% in 1992. The actual dollars received by an employe are significantly under the inflationary factor.

The average wage for members of the bargaining unit at the end of 1990 was \$28,860 per year. Over this two-year period employes will be required to pay an additional \$720 for medical insurance, i.e., \$360 per year. In other words, 1.25% of an average employe's salary will go toward the increase in medical insurance. Under the Association's offer, employes will have a 16% lift. However, the cost to the City is 8.5% the first year and 4% the second year.

The parties have agreed on four communities, but the City requests two additional comparables, Neenah and Menasha. Generally, two factors are considered in determining whether a community is an appropriate comparable, i.e., size and location.

While both Neenah and Menasha qualify under the location criteria, neither qualifies under the population criteria.

Additionally, the City has presented no evidence to indicate these communities have comparable jobs. Because the issue in this arbitration is a "catch-up" raise, the City's failure to provide specific wage data for positions in these communities would negate their appropriateness.

The evidence discloses that many of the City's positions are grossly underpaid. One striking example is that of the chemist, who is paid \$2.96 below the average.

Using the end-of-year 1992 rates, we find the following ranking for each final offer:

	<u>Association</u>	<u>City</u>
Civil Engineering Technician/ Draftsman	2nd of 4	2nd of 4
Assessment Specialist	4th of 4	4th of 4
Civil Engineering Technician	3rd of 4	3rd of 4
Public Health Nurse	3rd of 4	4th of 4
Housing Inspector	3rd of 4	4th of 4
Sanitarian	2nd of 2	2nd of 2
Deputy City Assessor	3rd of 4	4th of 4
Chemist	3rd of 3	3rd of 3
Electrical Inspector	1st of 5	3rd of 5
Plumbing Inspector	1st of 5	3rd of 5
Civil Engineer I	4th of 5	5th of 5
Plumbing Supervisor	2nd of 4	3rd of 4
City Sealer/Heating Inspector	1st of 3	2nd of 3

The above chart dramatically shows the need for a catch-up raise. Although the City sits comfortably in the middle of the other comparables in terms of population, it is clear that the City's wage rates are significantly below the average. In the above chart we see that acceptance of the Association's offer would result in four positions being among the highest comparables, seven in the middle group and three remaining the

lowest paid. Under the City's offer, no rates are at the highest level, seven positions are in the middle, but seven positions remain at the lowest level.

Association Exhibit No. 10 shows a comparison of the average wage rates for comparables. Using the end-of-year 1992 figures, we see that the Association's offer exceeds comparable averages in five positions, but trails in nine. The City's offer exceeds comparables in four positions but trails in ten.

A "catch-up" increase is warranted whenever a city's wage rates are out of skew with its comparables. A catch-up increase is appropriate if the City ranks below third among the five communities considered. Under the Association's offer, six of the positions are in the top half of the comparable rates, while eight are in the bottom half. Under the City's offer, however, only one is in the top half while nine fall in the bottom half with four at the middle position. This dispersion makes the Association's catch-up argument compelling.

The Association believes it has met its burden of proving the need for a catch-up raise.

Although the City is offering a substantial lift, the actual dollars received by employees are significantly lower than the cost-of-living increase for the relevant time period. After factoring the increased health cost to employees, the net effect of the City's offer is a 6.25% increase in spendable dollars over two years. The effect of the Association's offer is 11.25%. The Association's offer, therefore, compares favorably with the cost-of-living increase of 10.9%. Under the City's offer, employees

lose nearly 4% of their spending power during this two-year period. The cost-of-living factor strongly favors the Association's offer.

Regarding external comparables, the City is third in population among the five communities. The City's offer results in a skewed dispersion among the mid-point for Association wage rates. Only one position is in the top half of the comparables and nine positions are in the bottom half. Using the comparable wage averages, the City's offer results in 10 of the 14 positions being below the average.

Because the City's wage rates are so dramatically under comparable communities, there is a need for a wage catch-up. The Association requests that this need be fulfilled during this contract period. Because of the split raise offered by the City, the impact of the catch-up for the City is minimized and results in an actual cost to the City reflective of the cost-of-living rates. For these reasons, the Association respectfully requests that its final offer be adopted.

CITY'S POSITION:

From the City's perspective, the primary element of concern is the internal comparability as it relates to the matter of wages. The City's final offer relative to wages and benefits mirrors that internal pattern.

Arbitrators have been concerned over the question of internal consistency in its role in the arbitration process. Arbitrator Gil Vernon (Dec. No. 24656-A) commented as follows:

"Arbitrators when confronted with such situations, have taken a fairly uniform approach. It has been stated before: ' . . . where a consistent internal pattern of wage rate increases can be shown in the contract year this internal pattern should be given controlling weight unless the union can demonstrate that acceptance of the employer's Final Offer would result in significant disparities in wage levels relative to the external comparisons. In other words consistent internal comparisons, even though they involve dissimilar employees, should be adhered to unless the wage rates of the bargaining unit is too far out of line. There are very strong equity considerations which arise when an internal pattern is established. Instability in bargaining, dissension and moral problems can occur when one group is treated differently than others' (Dec. No. 24319).

It could be stated in addition, that within the context of this case, the strength of the inferences to be drawn from the internal pattern are enhanced when there has been a history of consistent settlements among the internal bargaining units."

The City's offer of an 11% salary lift over two years meets the concept of "quid pro quo" in exchange for the modification of the health insurance provision. It is appropriate to note that health insurance provisions are not in dispute in this matter and have been voluntarily accepted by employees in this bargaining unit. The City's final offer is consistent with the insurance program modification negotiated in the city of Appleton. In both instances, the employers' offers relate to an 11% salary lift over two years.

An examination of the evidence introduced by the Association raises significant questions relative to the veracity of the Association's wage data. Specifically, with reference to the city of Fond du Lac, there are serious questions identified when one examines Association Exhibit 9 and the corresponding section of the Appendix relative to the support data for the city of Fond du

Lac wage rates. There is no supporting wage appendix for 1991 for the city of Fond du Lac rates cited in the Association exhibit. The Appendix only contains wage rates for 1990, and 1992 through 1994. Additionally, there is a serious question as to how the hourly wage rate was arrived at by the Association. The annualized salaries have been calculated, however they are neither a conversion of the 38.75-hour work week nor a 40-hour week. Therefore, the data provided by the Association regarding the city of Fond du Lac raises serious questions.

The City also challenges the method by which the Association created Association Exhibit 9. The City contends the Association has taken combined jobs which are not demonstrably comparable to the positions in the City and the Association has opted not to use a lower wage rate when comparable.

A review of the other comparable jurisdictions' pay rates, as submitted under the Appendix in Association exhibits, shows that without supporting data relative to comparability the Association has selected the higher rate classifications for its comparability to the City's positions.

It is further noted by the City that the growth in the Consumer Price Index for 1991 was at a 3.1% level. This level of increase is clearly exceeded by the City's final offer which provides for a salary level in excess of 11% for the 1991-92 contract term. The City area's cost of living, when compared with other areas in the state of Wisconsin, was significantly lower and would certainly indicate that the City's final offer is more

appropriate than the excessive demand set forth in the Association's final offer.

The City believes that based on the internal pattern of voluntary settlements its final offer providing a salary lift over two years in excess of 11% is the more reasonable before the arbitrator. Finally, the City believes the Association has provided data that is distorted because of the inaccuracies relative to the city of Fond du Lac data as well as the distortion that occurs in its figures shown under comparables. Those averages are skewed significantly by inaccuracies in the Fond du Lac data. For those reasons as well as the relationship of the City's final offer to the Consumer Price Index increase, the internal comparables and the external comparables, the City respectfully requests that its position be awarded.

DISCUSSION:

There appears to be some question regarding certain of the data provided by the Association on its Exhibit 9 for the 1992 end-of-year rates. In regard to the city of Fond du Lac, the hourly rate shown for the Chemist classification is \$18.38. The supporting evidence provided by the Association establishes an annual rate of \$35,850 effective July 2, 1992. According to information provided by the City, Fond du Lac employees work either 40 hours or 38 3/4 hours per week. The hourly rate for 40 hours (\$35,850 divided by 2,080) would be \$17.24, and the hourly rate for 38 3/4 hours (\$35,850 divided by 2,015) would be \$17.79. Apparently the Association assumed a 37 1/2 hour week, as the hourly rate would then be \$18.38.

Apparently all of the calculations for Fond du Lac are based on a 37 1/2 hour week. This materially affects the hourly rates as shown on Association Exhibit 9.

The same exhibit lists the hourly rate for a Civil Engineer I in Sheboygan at \$18.49. However, in the supporting data provided by the Association in the Appendix the hourly rate shown is \$17.05 if in Classification Grade 18, and \$17.74 if in Classification Grade 19. There is nothing on the data to indicate how, or if indeed a Civil Engineer I does move to the higher classification grade. There is a notation on the top of the data referring to a pay increase effective 12/22/91, however, it is also noted that the date of the computer run was 7/28/92 and presumably, in the absence of any indication to the contrary, the rates include the 4% increase granted 12/22/91. The data specifically states, "Professional City Employees - 1992."

While these are not monumental discrepancies, they nonetheless serve to raise questions as to the comparisons of the City's salaries and the salaries paid by what the Association deems to be the comparables. It would appear that the differences in salaries paid by the comparables and the City are somewhat less than Exhibit 9 indicates.

Assuming, arguendo, the City's salaries are below the salaries of the comparables, its wage offer for 1991 and 1992, which represents a lift of 11%, would have a positive impact on the City's position *vis-a-vis* the comparables. The evidence indicates that among the comparables urged by the Association the increases for 1991 and 1992 were as follows:

<u>Employer</u>	<u>1991</u>	<u>1992</u>
Appleton	8%	4%
Fond du Lac		
1/1	3%	4%
7/1	2%	
Green Bay	4%	4%
Sheboygan		
1/1	3%	4%
10/1	1%	

Among the comparables, only Appleton gave an increase which was larger than what is contained in the City's final offer, and that increase was granted in return for concessions in the area of insurance. None of the comparables granted increases of the magnitude being sought by the Association, 16%. Assuming there is justification for "catch-up," the Association has made some progress during 1991-1992, admittedly due in part to its willingness to accept a change in the payment of insurance.

However, even recognizing the concession made by the Association in the area of insurance, the arbitrator cannot ignore the settlements among the external comparables. It must also be noted that the internal comparables also favor the City's position. The other bargaining units within the City have accepted basically the same wage settlement that is being offered by the City.

It is argued by the Association that the cost of living supports its position in that the cost of living for the preceding period is usually used to measure the cost of living for a new agreement because the cost of living can't be viewed prospectively. In this case, due to the delay in getting to

hearing, the cost of living for both 1991 and 1992 is known. For 1991, computing from December to December, the cost of living was 3.1%. For 1992 it was also in the 3% range. Thus, the cost-of-living factor favors the City's final offer.

Three of the statutory criteria frequently used by arbitrators in reaching a decision support the City's final offer: the settlements of the external comparables, the settlements of the internal comparables and the cost of living. Based on these factors, it is the opinion of the undersigned that the City's final offer is to be preferred over the Association's final offer.

After giving due consideration to the applicable statutory criteria and the evidence introduced, the undersigned renders the following

AWARD

That the City's final offer and all other agreements reached between the parties be incorporated into the 1991-1992 collective bargaining agreement.


Neil M. Gundermann, Arbitrator

Dated this 3rd day
of March, 1993 at
Madison, Wisconsin.