

IN ARBITRATION BEFORE
ROBERT J. MUELLER

RECEIVED
JUN 19 1992
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Interest
Arbitration Between

CITY OF KAUKAUNA

and

KAUKAUNA CITY EMPLOYEES LOCAL
130, AFSCME, AFL-CIO

AWARD
Case 65 No. 45833
INT/ARB-6054
Decision No. 27097-A

APPEARANCES:

MR. BRUCE K. PATTERSON, Employer Relations Consultant,
for the employer.

MR. JAMES E. MILLER, Staff Representative, Wisconsin
Council 40, AFSCME, AFL-CIO, for the Union.

INTRODUCTION:

The above-entitled matter came on for hearing before the undersigned who was selected as the sole arbitrator from a panel furnished by the Wisconsin Employment Relations Commission. By Order dated January 15, 1992, the undersigned was appointed as the arbitrator by the Commission. A hearing was held at Kaukauna, Wisconsin on March 30, 1992. At that time, the parties were present and were afforded full opportunity to present such evidence, testimony and arguments as they deemed relevant. Post-hearing briefs were filed with the arbitrator.

THE ISSUES:

The parties joined two issues in the case. The first involved offers of a wage increase for each of the two years of the agreement by each party.

The second involved proposals by each party to revise Article XIII concerning insurance.

WAGES:

Union offer: Four percent (4%) 1/1/91 across the board.

Four percent (4%) 1/1/92 across the board.

Employer offer: Effective January 1, 1991 increase all 1990 Step B rates on Appendix A by 4%.

Effective January 1, 1992 increase all 1991 Step B rates on Appendix A by 4%.

INSURANCE

Union offer:

HEALTH INSURANCE - All Employees of the City of Kaukauna who leave their employment with the City at age fifty-five (55) or older shall continue to be eligible to participate in the City's health insurance program, and the City hereby agrees to pay seventy-five percent (75%) of the cost of such health insurance program for the Employee after he or she has left employment with the City until the month they are eligible for Medicare subject to the following conditions:

- a. The Employee must have been employed with the City at least ten (10) years at the time the Employee leaves employment with the City.
- b. After leaving the City the Employee must not be employed by another employer who provides medical insurance coverage for its employees.

Employer offer:

4. Retiree Health Insurance-Article XIII

Section 1. To be revised as follows:

Delete the second sentence. Create Section 3.-Retiree Health Insurance. If an employee retires between the ages of 60 to 65 and is not eligible for health insurance from any subsequent employer, the City will pay a portion of the premium for continuing the group health insurance if the employee desires the coverage in accordance with the schedule set forth below. Employees hired after January 1, 1991 shall

have completed twenty consecutive years of service in addition to the requirements set forth above.

<u>Months Prior to Age 62 Retirement</u>	<u>% of Premium Paid By City to Age 65</u>
0	75%
1	73%
2	71%
3	69.2%
4	67.5%
5	65.9%
6	64.3%
7	62.8%
8	61.4%
9	60%
10	58.7%
11	57.4%
12	56.3%
13	55.1%
14	54%
15	52.9%
16	51.9%
17	50.9%
18	50%
19	49.1%
20	48.2%
21	47.4%
22	46.6%
23	45.8%
24	45%

The current ARTICLE XIII contract provision is as follows and is best set out herein so as to make clear what the parties are proposing to modify.

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ARTICLE XIII

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INSURANCE

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Section 1. Group health insurance will be available to all full-time employees with the Employer paying ninety-five percent (95%) of the premium of the employee rate, single or family. The employee shall be required to pay the fifty dollars (\$50) deductible. If an employee

1 retires at age 62-65 and is not eligible for health insurance from any
2 subsequent employer, the City will pay seventy-five (75%) of the
3 premium for continuing under the group health insurance if the employee
4 desires coverage.

5 Section 2. Effective January 1, 1981, the Employer agrees to pay
6 up to a maximum for six dollars (\$6) per month toward the payment of
7 the employee's contribution to the Wisconsin State Life Insurance
8 program.

One of the stipulations entered into by the parties was that the second sentence of ARTICLE XIII, Section 1 (identified as found at lines 21 and 22 of page 18 of the contract) be deleted.

It is noted that the union offer on the insurance issue does not provide for the deletion of any particular part of the current provisions, yet it is obvious that their proposal is intended to replace the third sentence of Section 1 of said article.

It is also noted that the employer's offer provides for deletion of the second sentence of Section 1 of Article XIII. It is obvious that the intent was to propose that the third sentence be deleted and their proposed language be incorporated as a new section 3 of said article. I am therefore treating the two offers as joining issue as to language to be included in the contract in lieu of sentence # 3 of Section 1 of Article XIII, the union's as a part of Section 1 and the Employer's as a new Section 3.

ARGUMENTS OF THE PARTIES AND DISCUSSION:

Both parties were in general agreement that the wage issue is not the primary issue in this case. Each argues that their offer is the most appropriate and justified by the comparables. The employer argues that the Step A, or starting rate, does not need to be increased because the

employer anticipates hiring no new employees during the term of this agreement as there is very little turnover of employees in the department. Additionally, the starting rates at Kaukauna compare favorably with the starting rates at the comparables.

The union argues that most, if not all, comparables applied their wage increases across the board. The Step A rate also applies to other than new employees. It would be applicable to employees who post into a different pay classification and would serve to widen the gap between the Step a and Step B rates, thereby discouraging current employees from bidding on different jobs.

Either offer, in my judgment, is supportable by all applicable factors of consideration. The employer's offer deviates from the normal settled wage application by the comparables, however, by excluding application of the increases in each of the two years from the starting Step A rate. The argument that such fact does not affect the bargaining unit because the employer does not anticipate hiring in any new employees, in my judgment, is not a persuasive reason or justification for excluding the increase to such step. Such exclusion would affect current employees who may bid into a different classification. It would also serve to widen the spread between the Step A and B rates. Justification for excluding an increase so as to result in a lower hiring in rate should be supported by a showing that the current hiring in rate is excessively high in comparison to internal and/or external comparables and should therefore be adjusted, or by other supportable reason or reasons. None have been presented in this case and the union offer on wages is therefore entitled to favor for such reasons.

The wage issue is not the dominant or controlling issue in this case however. Both parties concede such fact. The insurance issue is regarded as the most important of the

two.

The union relies solely on internal comparables for support of its proposal. Union Exhibit H sets forth the city's fringe benefit policy for elected and appointed officials with the city concerning payment of health insurance for retirees. The union's offer in this case is identical to such stated policy for elected and appointed officials. Such policy was adopted effective 2/2/88.

They point out that employees of the city fire department have received such benefit similar to what the union is proposing since 1/1/81. The firefighters contract provision for the 1990-92 contract is as follows:

"The City shall pay up to seventy-five percent (75%) of a retired employee's monthly health insurance premium until the employee reaches age sixty-five (65). Said contribution will be made only under the insurance provisions contained in the collective bargaining agreement and the City shall have no liability to contribute to any other insurance program. If an employee, as a result of other employment, is offered an insurance plan comparable to or better than the City's plan at no cost to the employee, the above provision shall be inoperative. The cost of retiree's insurance for one year shall be charged as a cost item to the wage and fringe package for the year in which any affected

The police department employees have also had a retiree benefit similar to what the union is proposing in this case since 1981 at 75% of the premium being paid by the city. The relevant provision as contained in their 1991-92 labor agreement is as follows:

"Effective January 1, 1972, for employees covered under this Agreement who retire pursuant to Chapter 40 of the Wisconsin State Statutes, the City shall pay fifty percent (50%) of the monthly health insurance premium in effect at the date of an employee's retirement. Said monthly amount shall be paid each month to the insurance carrier then in effect. The cost of retiree's insurance for one year shall be charged as a cost item to the wage and fringe package for the year in

which any affected employee retires. For employees who retire after December 31, 1980, the City shall pay seventy-five percent (75%) of the monthly premium, whatever it may be during the period of retirement until age sixty-five (65)."

The union contends the external comparables are too inconsistent to be of any help. Some comparables provide a better benefit as to such retiree item while some provide a lesser or no benefit. The wide range of benefit provided as to retired employees is too divergent to be meaningful.

The union further contended that as observed by arbitrator Petrie in a prior case between the parties, both parties agreed, "that the various past settlements within the City of Kaukauna have closely followed one another in their terms." That is, the police, fire, utility and DPW internal comparisons have been most closely adhered to for comparison purposes. As in the past, the union argues, it should be the dominant area of comparison in this case.

In its conclusion section of its brief, the union addresses the matter as follows:

"In making the appropriate comparisons with the internal comparables the union has made a clear case that its proposal as to the payment of retiree health benefit premiums is more in line with these settlements than the City proposal which bases its entire case upon the Utility Commission and its contract at the Electric Power Plant. The union has emphasized that the Utility Commission is not part of the City of Kaukauna and is not funded by any tax dollars, but rather is a profit making facility. Both the Police and Fire Department contracts provide similar language (with more liberal age requirements) to the union proposal. In addition, the City's policy for elected and appointed officials provides the exact benefit that the union is proposing."

The city contends its offer, with cost containment in mind, nevertheless increases the window of availability of retiree health insurance to employees by lowering the age to 60. Such proposed change is a significant improvement in such benefit in view of the ever escalating cost situation

of insurance.

The city submitted the following observations as to its offer compared to the union's in its brief, excerpts thereof being as follows:

The City's proposed early retirement health insurance premium package is similar in design to one negotiated with the Kaukauna Electric and Water Department (Er. Ex. 5-3, Page 3). In offering the package relative to retiree health that the City has, it is to some degree relying on direction from Arbitrator William W. Petrie (WERC Dec. No. 24533A) and his reliance on internal comparability between the City and the City operated Utility. The Utility is the collective bargaining unit of municipal employees that performs work which is similar in overall character to the work performed by the employees in Local 130 AFSCME. The City therefore feels that its proposal is not only externally consistent with what is being done in comparables but is also internally consistent.

The essential difference between the City of Kaukauna's Final Offer and the Union's Final Offer is the significant change in retiree health insurance benefits contained in the Union's Final Offer. The proposed changes have both an immediate impact and a long term impact.

The immediate impact will be to make available retiree health insurance premium payment by the City to five employees should they choose to retire during 1992. The impact of that eligibility may be seen from a review of Employer Exhibit 6-2 and Attachment A, II to this Brief. The cost is the equivalent of 2.2% of base wage and would bring the cost impact of the Union's Final Offer when combined with the wage increase of 4% to 6.2%. This amount is clearly above the pattern of any settlement shown in either party's exhibits for 1992.

The second element of concern to the City with the Union's Final Offer is the significant expansion of the benefit by increasing the employer's responsibility to pay 75% of health premiums from a 36 months period to a period of 120 months (Er. Ex. 6-3 and Attachment C). The affect of the offer would be to add 1,633 of insurance premium liability to the City. Of those months, 84% or 1,370 months would occur within the next twenty years (Attachment B and C). During that timeframe, the City could be required to pay, as its share of the Union's proposal, almost \$6 million in added health premiums.

In the Union's exhibits, there is a reference to a benefit for retiree health for certain City employees not represented by collective bargaining units. This reference is totally inappropriate as a comparable inasmuch as it fails to meet the statutory criteria the arbitrator is required to consider in arriving at his decision. The Union also asks the arbitrator to consider the police and fire employees as comparables in support of their position. The City would submit that they are not comparable for purposes of the benefit of this nature inasmuch as the retirement statutes establish a normal retirement age significantly younger than that required for the employees in the instant dispute. The benefit provided for police and fire employees is not for early retirement but at normal retirement. The Union's demand is for a retirement that is at an age ten years under the statutorily established normal retirement age of 65 for the employees concerned in this dispute.

FINDINGS AND CONCLUSIONS:

It appears from the various exhibits submitted by the parties that the external comparables are quite divergent. Several provide a somewhat better benefit for retirees than would be provided under either the city or union offer. A majority of the comparables, however, provide a lesser benefit, with some providing none. It is not possible to draw an average or median level of benefit provided for comparison purposes from the external comparables.

The union argues the city's street and park department employees comprising this bargaining unit, should have retiree insurance benefits similar and/or comparable to those enjoyed by the police and fire employees. The city contends they should not be compared to those employees because of wholly different conditions of retirement. They contend both police and fire department employees are subject to statutes relating to retirement that provide for retirement at a significantly earlier age. The retirement insurance provisions for such employees are specifically related to such fact. The normal retirement age for employees of this bargaining unit is normally from 62 to 65. The retiree insurance benefit has been and should continue to be related to such normal retirement ages. There is no

comparable reason similar to that for the police and fire employees, for providing retiree insurance benefits below the age of normal retirement. Despite such fact, the city's offer goes below the age of 62 and appears to be a compromise effort to accommodate the desires of the union.

While the City Electric and Water Department is a separate for profit operation, the fact remains that it is a city operated facility. The employees of such facility are united into a collective bargaining unit, unlike appointed and elected officials, and in my judgment, is therefore more comparable for purposes of applying the factors of the Municipal statute to resolution of the case. The retiree insurance benefits contained in the utility contract were a result of collective bargaining. The utility employees are, like employees of Local 130, subject to the same normal retirement practices. They, like Local 130 employees, are dissimilar from police and fire employees and their retirement practices or policies. It seems to me that the more appropriate comparison in this case is to the utility employees and their retiree insurance benefit.

It appears that the union proposal constitutes a major and potentially costly improvement in one "giant step", without there being present any recognizable "quid pro quo" for such item. The city offer, on the other hand, does take a "step" forward and improves the retiree insurance benefit.

In the final analysis, comparison to the police and fire is really not appropriate. It is an apples to oranges type comparison. A comparison to the utility employees and their contract benefit, it seems to me, is more appropriate. When one then considers such comparison along with the major improvement contained in the union offer without the presence of some offsetting quid pro quo, it follows that the city final offer concerning the insurance issue is the one most supportable by application of the statutory factors. The insurance issue is also the controlling issue

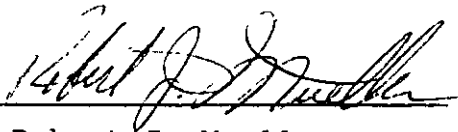
as to the total final offer inasmuch as the wage issue is only slightly weighted in favor of the union's offer.

It therefore follows from the above facts and discussion thereon that the undersigned issues the following decision and,

AWARD:

The final offer of the City of Kaukauna is selected as the one to be incorporated into the 1991-92 collective bargaining agreement.

Dated June 18, 1992.


Robert J. Mueller