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EDWARD B. KRINSKY, ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
TEAMSTERS "GENERAL" LOCAL UNION	:	
NO. 200	:	Case 70
	:	No. 46000
To Initiate Arbitration	:	INT/ARB-6086
Between Said Petitioner and	:	Decision No. 27293-B
	:	
CITY OF NEW BERLIN	:	
	:	

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman,
Attorneys at Law, by Ms. Naomi E. Eisman, for the
Union.

Davis & Kuelthau, Attorneys at Law, by Mr. Roger E.
Walsh, for the City.

On September 9, 1992, the Wisconsin Employment Relations
Commission appointed the undersigned as arbitrator for the above-
captioned matter, ". . . to issue a final and binding award,
pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal
Employment Relations Act."

A hearing was held at New Berlin, Wisconsin, on October 27,
1992. No transcript of the proceeding was made. At the hearing
the parties had the opportunity to present evidence, testimony
and arguments. Thereafter both parties submitted briefs, and the
City submitted a reply brief. On January 27, 1993, the record
was completed when Counsel for the Union informed the arbitrator
that the Union would not submit a reply brief.

There is only one issue in dispute: wages. The Union's
final offer is as follows:

- Effective April 1, 1991 - 5% across-the-board
- Effective April 1, 1992 - 4% across-the-board
- Effective October 1, 1992 - 1% across-the-board

The City's final offer is for across-the-board wage
increases to be effective on the same dates as in the Union's
proposal. The City's proposed percentage increases are 4.0%,
3.0% and 2.0%.

In making his decision, the arbitrator is required by statute to select one final offer or the other in its entirety. The arbitrator must also weigh the factors specified in the statute.

In the present case there is no dispute and/or no argument made about the following statutory factors: a) lawful authority of the employer; b) stipulations of the parties; c) interests and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed settlement; f) comparisons with wages of employees in the private sector; h) the overall compensation presently received by the employees; i) changes in circumstances during the pendency of the arbitration; j) other factors normally or traditionally taken into consideration in arbitration.

The remaining factors are discussed below:

Factor (d) pertains to comparisons ". . . with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities."

With respect to public employees employed by the City of New Berlin, the Union represents employees in one of three bargaining units. The other two bargaining units settled their contracts voluntarily with the City for three years: calendar years 1991, 1992 and 1993. The wage increases agreed upon in both contracts are as follows:

January 1, 1991	-	4.0%
January 1, 1992	-	3.0%
July 1, 1992	-	2.0%
January 1, 1993	-	4.0%

These contracts were made with the New Berlin Professional Police Association, covering 53 employees, and with AFSCME Local 1676 covering 44 employees.

At the hearing the parties stipulated that during bargaining the City offered the Union a three-year contract with wage increases identical to those which were accepted by the other two bargaining units. The Union rejected the offer.

Cost figures prepared by the City show that over the term of the two-year contract which will result from this arbitration, the Union's final offer, if implemented, will cost \$32,694 more than the City's final offer. The analysis is based upon a bargaining unit size of 43 employees, utilizing the average wage rate of \$12.21 as of October 20, 1991.

It is clear from the facts described above that a pattern of wage increases was established by the City with its other two bargaining units. They agreed upon identical wage increases for three years. The wage increases offered by the City in the current proceeding for two years are identical to the agreed-upon settlements during the first two years of those agreements. The proposal by the Union is different and higher than what was agreed upon by the other bargaining units for the first two years of their agreements.

The fact that other bargaining units have agreed to a pattern does not require that this bargaining unit accept it, too. However, arbitrators normally accord such patterns great weight, since granting a final offer greater than the pattern creates instability in the municipality's bargaining processes and discourages voluntary settlements. If arbitrators break patterns, why then should bargaining units voluntarily agree to terms if they have reason to think that by holding out until after other bargains have been reached, they will obtain more favorable settlements from an arbitrator?

In the arbitrator's opinion the comparability factor with the other bargaining units of the City strongly favors the City's final offer. Moreover, there is no rationale offered by the Union for granting it more favorable wage increases than the other bargaining units received.

The remainder of factor (d) and factor (e) relate to external comparisons. Factor (d) pertains to comparisons with ". . . other employes . . . in comparable communities." Factor (e) pertains to comparisons with ". . . other employes performing similar services."

The parties disagree about which communities are comparable. The Union views the following cities as appropriate comparables based upon geography and size: Greenfield, Franklin, Muskego, Waukesha and Brookfield.

The City has used as a basis for comparison, twenty-five Milwaukee area municipalities: Bayside, Brookfield, Brown Deer, Butler, Cudahy, Elm Grove, Fox Point, Franklin, Germantown, Glendale, Greendale, Greenfield, Hales Corners, Menomonee Falls, Mequon, Muskego, Oak Creek, River Hills, Shorewood, St. Francis, Waukesha, Wauwatosa, West Allis, West Milwaukee and Whitefish Bay.

The City's rationale for using these comparables is as follows:

. . . in cases where the only issue is the amount of the wage increase, a broad spectrum of comparable communities gives a better picture of what is happening in the area.

The record indicates that there have been four prior interest arbitration awards involving the City and its bargaining units. Two have involved this bargaining unit. In the first one, in 1982, the Union used seven comparables: Brookfield, Germantown, Grafton, Greenfield, Hartford, Menomonee Falls and Muskego. In the second case, in 1990, the Union used the same comparables which it is using in the present case. The City, in the first case, used: Franklin, Greendale, Hales Corners, Waukesha and Waukesha County. In the second case it used the twenty-five jurisdictions which it is using in the present case.

In the first case, Arbitrator Grenig accepted all of the parties' comparables except Grafton (Grafton is no longer being used by either party). In the second case, Arbitrator McAlpin accepted all of the parties' comparables.

In its 1988 case with the police, the City used as comparables the same twenty-five municipalities. It did so also in the 1988 case involving AFSCME. In those cases, Arbitrators Michelstetter and Kerkman accepted the twenty-five municipalities as comparables.

Given this history, the arbitrator is not persuaded that he should restrict the list of comparables to the five communities selected by the Union. Thus, he will consider the municipalities utilized by the City.

The City's final offer for 1991 is a 4% increase. The City's data show that for the twenty-five municipalities the average cost increase for 1991 for public works employees is 3.91% and the average lift is 4.12%. The Union's offer for 1991 is a 5.0% increase. The City's data show that only one municipality increased wages by 5.0%, one other gave a 4.5% increase, and two others gave increases in excess of 4.0%. The rest gave lower increases. Thus, the 1991 external comparisons with the twenty-five municipalities clearly favor the City's final offer with respect to percentage wage increases.

The City's final offer for 1992 is a 4% cost increase, and a 5% lift. For the twenty-two municipalities for which data are available, the average cost increase for 1992 is 3.68% and the average lift is 3.92%. The Union's offer for 1992 is a 4.5% cost increase and a 5.0% lift. Only four of the municipalities increased wages by 4.5% or greater in terms of cost in 1992, and five municipalities had a lift increase of 5.0% or greater. Thus, the 1992 external comparisons clearly favor the City's final offer with respect to percentage wage increases.

The arbitrator has done the same analysis using only the five comparison municipalities suggested by the Union. For 1991, the average cost increase is 3.72% and the average lift is 4.05%. In the four of those municipalities for which there have been

1992 settlements, the average cost increase is 4.03% and the average lift is 4.33%. These figures, too, are more supportive of the City's final offer than the Union's for both years.

It should be noted that the contract year used by the comparable municipalities is the calendar year, unlike New Berlin which uses April - March. Thus, the comparisons utilize calendar year figures for the comparables, and April through March for New Berlin.

Union Business Representative Wenker testified that the pay given to classifications in the bargaining unit is below the pay given to employees in comparable classifications in comparable communities. He gave the following examples:

- Sewer/Water Operator after 6 months has a top rate in the unit of \$14.01 in 1992 compared to the top Operator rate in Brookfield of \$14.51.
- Laborer after one year in the unit has a top rate in 1992 of \$12.96 compared with the top Operator Laborer in Brookfield which has a rate of \$14.25.
- The Assistant Mechanic in the unit has a top rate in 1992 of \$12.84 compared to the Mechanics Helper top rate in Waukesha of \$12.97.
- The Parks Worker after one year in the unit has a top 1991 rate of \$12.34 compared to the top rate for General Laborer in the Parks Department in Waukesha of \$12.89.
- The Sewer/Water Operator after 6 months has a top rate in the unit of \$14.01 in 1992 compared to the top rate of the Sewer & Water Operator II in Franklin of \$14.79.
- The Assistant Mechanic in the unit has a top rate in 1992 of \$13.48 compared to the top rate for a Mechanic I in Franklin of \$14.48.

Wenker made similar types of comparisons for classifications in Muskego and Greenfield. They are not described in detail here, for sake of brevity. In every case about which Wenker testified, the rates for the classifications in the unit are below those for comparable classifications in the other municipalities.

The City did not contest the Union's wage data, nor did it contest the Union's assertions about which classifications in the unit were comparable to which other classifications in other units.

It is clear from the Union's data, accepting the validity of the classification comparisons, that wage rates in the bargaining

unit (as opposed to percentage increases) are below wage rates paid in the Union's comparable bargaining units for comparable classifications. This argument does not persuade the arbitrator that the Union's final offer should be selected, however. First, as indicated above, the arbitrator has no reason to limit the comparison communities to those selected by the Union, and there has been no similar classification comparison done in the twenty-five municipalities utilized by the City. Even if, for the sake of argument, it is true that the wage rates paid by the City in the various classifications rank relatively low in relationship to the twenty-five municipalities, the arbitrator has not been persuaded that there is a demonstrated need for catch-up in this arbitration. There is no data presented showing what the relative ranking of the bargaining unit's wage rates have been historically in relationship to wage rates in the comparable municipalities. Thus, the arbitrator does not know, for example, whether the relatively low wage rates are a recent development or whether the situation has existed for a long period of time and has resulted from years of voluntary collective bargaining. There is also no information provided about what efforts, if any, the parties have made in the past in their bargaining to address these disparities. Without knowledge of this type, the arbitrator does not view it as appropriate for him to reduce the wage rate disparities through this arbitration, and especially where it appears, based upon consideration of the statutory factors, that the City's final offer is supported more than the Union's.

Factor (g) is the cost-of-living factor. The index for All U.S. Cities, for All Urban Consumers, shows an average monthly increase of 3.65% from April, 1991 through March, 1992, in comparison to the equivalent months in the April, 1990 through March, 1991 period. For All U.S. Cities, Urban Wage Earners and Clerical Workers, the increase was 3.4%. The index figures for the Milwaukee Area are provided only on a semi-annual basis. The Milwaukee All Urban Consumers index showed an annual increase of 5.7% for the first half of 1991 in comparison to the same period in 1990. The second half increase was 3.8%, and the increase for the first half of 1992 (in comparison to the first half of 1991) was 3.7%. For the Milwaukee Urban Wage Earners and Clerical Workers index, the increases for these three periods were 5.8%, 3.6% and 3.6%, respectively. Adjusting these Milwaukee figures to the April through March contract year, the annual increase in the index above the period April, 1990 through March, 1991, produces an increase of 4.25% or 4.15%, depending upon which index is used.

The national figures and the Milwaukee figures for 1991 support the City's final offer more than the Union's final offer. For 1992, the data provided by the City beginning in April, through September, 1992, suggest that the annual increase above 1991 is on the order of 3.1%, which is much closer to the City's final offer for 1992 than to the Union's final offer.

Conclusion


As previously stated, the arbitrator is required to select one final offer in its entirety. It is the arbitrator's opinion, based upon the evidence presented to him, that there is more reason for him to select the City's final offer than the Union's final offer.

Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD

The City's final offer is selected.

Dated at Madison, Wisconsin, this 12th day of February, 1993.



Edward B. Krinsky
Arbitrator