

STATE OF WISCONSIN  
ARBITRATION AWARD

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In the Matter of the Arbitration between :

THE CITY OF RHINELANDER :

and :

AFSCME LOCAL 1226  
CITY OF RHINELANDER EMPLOYEES (DPW) :

Re: Case 68  
No. 48569 INT/ARB-6741  
Decision No. 27830-A

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APPEARANCES: For the City of Rhinelander: Philip L. Parkinson, Esq., City Attorney, City Hall, 135 South Stevens Street, P.O. Box 658, Rhinelander, Wisconsin 54501.

For the Union, AFSCME Local 1226: David Ofria, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2906 West Point Road, Green Bay, Wisconsin 54313-5440.

The Union represents a collective bargaining unit of City of Rhinelander public works employees. In October, 1992, the parties initiated bargaining on a renewal of their labor agreement. That agreement expired by its terms on December 31, 1992. When they had failed to reach agreement, the Union filed a petition, dated December 30, 1992, with the Wisconsin Employment Relations Commission, to initiate arbitration. Following mediation the Commission determined that the parties were deadlocked. Final offers were submitted to the Commission on September 23, 1993. The undersigned was notified of his appointment as arbitrator on October 7, 1993. On February 11, 1994 a hearing was held in Rhinelander. The parties presented evidence to support their respective positions and at the conclusion of the hearing agreed to exchange written briefs. The exchange took place on March 18. A reply brief was filed by the Union on March 23. The City did not file a reply brief. The proceeding was considered closed as of March 23, 1994.

THE ISSUE

This is a proceeding under the provisions of Section 111.70(4) (cm) 6 of the Municipal Employment Relations Act. The arbitrator is required by the statute to choose one or the other of the final offers of the parties.

The Union proposes in its final offer to increase all rates in the salary schedule by three per cent effective January 1, 1993; by two per cent effective July 1, 1993; and by four per cent on January 1, 1994. In addition, the Union would increase the hourly rates of the following classifications by the amounts indicated in the following table and on the dates indicated at the heads of each column:

	July 1, 1993	July 1, 1994
Wastewater Operator	\$.52	\$.52
Leadman (Water)	.45	.45
Heavy Equipment Operator	.21	.21
System Maintenance (Water)	.25	.25
Meterman (Water)	.43	.43
Sewer Leadman	.35	.35
Sewer Maintenance	.30	.30
Equipment Operator I	.11	.11
Laborer	.05	.05
Mechanic	.18	.18
Sexton	.18	.18

The Union proposes to apply the July 1, 1993, upgrade adjustments to the rates that would be made effective on January 1, 1993, prior to the two per cent increase to be made effective on July 1, 1993.

The City proposes to increase all wage rates in the salary schedule by three per cent effective on January 1, 1993; by two per cent effective July 1, 1993; and by three and three-quarters per cent effective January 1, 1994. The City would make the same adjustments as those proposed by the Union effective on July 1, 1994, for all classifications except Meterman (Water) and Laborer. The City would make no adjustments for those two classifications and would not make the adjustments proposed by the Union for July 1, 1993.

Although both original final offers had contained two classifications of Heavy Equipment Operator, one for Water and one for DPW, the parties agreed at the hearing to combine the two classifications and assign the cents-per-hour adjustment that had been applied to the Water classification.

The difference between the two offers is that the Union proposes a general increase of four per cent effective on January 1, 1994, while the City proposes a general increase of three and three-quarters per cent on that date. In addition, the City proposes wage adjustments for only nine of the eleven classifications for which adjustments are proposed by the Union and would not make any adjustments to these classifications on July 1, 1993.

#### UNION SUPPORT FOR ITS PROPOSALS

The Union bases its proposals on comparisons it has made to rates that are paid to other employees performing similar services in twelve communities that the Union considers comparable: Antigo, Ashland, Marinette, Merrill, Minocqua,

Oconto, Park Falls, Peshtigo, Rice Lake, Shawano, Tomahawk, and Oneida County, wherein Rhinelander is the county seat. The Union argues that these comparables are appropriate because they have been used and accepted by arbitrators in two previous cases, the most recent being a case involving the Rhinelander police force (MIA-1698, John C. Oestreicher, February 1, 1993).

The core of the Union case is its proposal for upgrades in the eleven classifications listed above. It produced an elaborate series of exhibits at the hearing showing individual rates and averages of these rates in the twelve comparable communities for 1992, 1993, and 1994. These averages were contrasted with the Rhinelander rates for the eleven classifications. From these data the Union reached the conclusion that Rhinelander rates in these classifications were substantially lower than the rates in the comparable communities. The amounts of the upgrades were based on the Union's theory that by July 1, 1994, these rates should be at a level where two-thirds of the differential would be eliminated. The Union stresses that it was not possible to reach these precise outcomes for the reason that a variety of increases were implemented in the other communities. Thus the Union's objective was said to have been aimed at a moving target.

The Union calculates that in four classifications (Waste Plant Operator, Water System Leadman, Heavy Equipment Operator, and Meter Reader/Maintenance) the cumulative reductions of the differentials were more than two-thirds (in the case of the Meter Reader/Maintenance, 101 per cent). In the other seven classifications reduction of the differentials ranged from a high of 63 per cent for the Water System Maintenance classification to a low of 15 per cent for Common Laborer. The Union points out that in contrast the biggest reduction in differential in the City upgrade proposal is 39 per cent for Water System Leadman. In the other eight rate increases proposed by the City the effective reductions in the differentials range from a high of 34 per cent for the Waste Plant Operator to a low of 16 per cent for the Cemetery Sexton.

According to its own data the overall reduction that would result from the Union upgrade proposal is somewhat more than one-half of the overall differentials while the overall reduction proposed by the City is a bit more than one-quarter.

The Union agrees that its four per cent general increase proposal for January 1, 1994, is slightly greater than the 3.75 pattern established by settlements for 1994 in the City's other bargaining units.

#### CITY'S SUPPORT FOR ITS PROPOSAL

The City makes several arguments. Its policy is to treat all bargaining units equally with reference to general increases. The other units have settled for 3.75 per cent general wage increases. Awarding a four per cent increase for this unit would create a disparity in favor of these employees and injure the City's relations with its other unions. In addition, even using the Union's figures as to settlements in the Union's twelve comparable communities (and the

City disputes the inclusion of three of those cities), the overall average percentage of 3.84 is closer to the City's offer of 3.75 than it is to the 4.0 proposed by the Union.

Although the City does not argue inability to pay, it asserts that its own offer is fair and equitable. The Unions proposal would result in an increased cost to the City of \$19,000 in 1994. Several of the communities used for comparison (Antigo, Ashland, Oneida County, and Rice Lake) require employee contributions for health insurance. The fact that the City pays one hundred per cent of the cost of health insurance for its employees and had the premiums per employee increased \$60 in 1993 and \$30 in 1994 is a further reason for not imposing on Rhinelander taxpayers extra costs in the Union's proposal.

The City recognizes the need to upgrade the wages of nine of the classifications in the bargaining unit. Overall, the one-time increases proposed by the City during the period of this labor agreement are a reasonable step toward closing the existing differentials. The Union's proposal would attempt to catch up in too short a period of time. Further, the City has disputed the necessity of upgrading the Meter Reader/Maintenance and the Laborer classifications and points out that the Union proposal includes an inordinately large increase for the former classification. This would necessitate red-circling the rate in future negotiations, which would put the City in a difficult bargaining position.

In addition, the City points out that the Consumer Price Index for non-metropolitan areas increased at a rate of about 2.7 per cent in 1993 and that both final proposals exceed published increases in the cost-of-living for 1992 and 1993. The Union's proposal exceeds them more.

#### DISCUSSION

There are ten factors listed in the statute that are to be considered in making a decision in a case like this. Neither the parties nor the arbitrator think that factors a. (lawful authority of the municipal employer), f. (comparison of the wages with those of employees in private employment), i. (changes during pendency of the proceeding), or j. (other factors normally or traditionally taken into consideration) need to be considered. As to factor b. (stipulations of the parties) I have noted above that a stipulation of the parties regarding combining two classifications of heavy equipment operator into one has been adopted. This leaves factors c. (interests and welfare of the public), d. (comparison of wages, hours and conditions of employment of these employees with those conditions of other employees performing similar services), e. (comparison of wages, hours and conditions of employment of these employees with those conditions of other employees generally in public employment in comparable communities), g. (cost-of-living), and h. (overall compensation).

The City makes two good arguments with reference to factor c., the interests and welfare of the public in Rhinelander, and factor d., comparison of wage, hours and conditions of employment with those of other employees

performing similar services. These two factors are linked in the City's argument. Unquestionably the interest and welfare of most taxpayers would benefit if \$19,000 were not added to the City's annual outlays. The City interprets factor d. as having its application within the Rhinelander community.

There is a valid presumption that, other things being equal, it is desirable that there be uniformity in collective bargaining settlements with various unions representing employees of the City. The Union does not disagree that adoption of its across-the-board percentage proposal would create a disparity of a quarter of one per cent between this settlement and the previous settlements involving other bargaining units. It seems to argue that this small discrepancy is overshadowed by the necessity of adopting the upgrades that it has proposed for the eleven classifications listed above. Although the City's position on factors c. and d. is attractive, it must be judged against the Union's position on factors d. and e.

Although the Union does not specifically address the individual factors in its brief, it seems to consider factors d. and e. together. The Union places a very heavy emphasis on adopting the same twelve comparable communities that have been accepted by arbitrators in previous cases involving Rhinelander and its unions. The City makes an ambiguous argument on this issue. It would exclude Peshtigo, Shawano, and Tomahawk, reducing the number of agreed comparable communities to nine. Except for listing their populations (Peshtigo 3,175; Shawano, 7,630; Tomahawk, 3,350) the City gives no reasons for the exclusion of these cities. It is true that Peshtigo and Shawano are rather distant from Rhinelander but they are not as far away as Rice Lake and Ashland. Peshtigo is about the same distance from Rhinelander as Oconto, which the City accepts. Shawano is closer than either Peshtigo or Oconto and has about the same population as Rhinelander. Tomahawk has a lower population figure, but it is larger than Park Falls, which is farther away. Tomahawk has about the same population as the Town of Minoqua and is about the same distance from Rhinelander. Although the City included Marinette in its exhibits at the hearing, it states in its brief: "The City of Marinette has a population 60% greater than that of the City of Rhinelander, . . .is 127 miles distant. . . (and) the City of Rhinelander has not included Marinette in its averages. . ."

Since the City has not made a persuasive case for changing the comparable communities that have been used in previous cases, those comparables are adopted for this proceeding.

Exhibit 9 presented at the hearing by the City showed rate comparisons from its nine comparable communities for twelve classifications. (As explained above, the parties agreed at the hearing to eliminate the classification of Heavy Equipment Operator (DPW), which reduced the number of classifications to eleven. Although the City did not include the classifications of Meter Reader/Maintenance and Laborer in its upgrade proposals, it presented comparable wage figures for them.) In its brief the City states the following:

The averages the City has computed are listed as follows. The City has averaged the wages as they would appear on December 31, 1994, the last day of the contract. We have then shown the impact of implementation of the City's final offer versus Local 1226's final offer. The averages and City's offers are listed below:

Position	Avg.	City	Local 1226
Wastewater Operator	12.90	11.91	12.49
Leadman (Water)	12.88	11.88	12.39
Heavy Equip. Op.	12.07	11.64	11.89
Water Maintenance	11.78	11.50	11.79
Meter Reader/Maint.	11.70	11.25	12.16
Leadman (Sewer)	12.67	12.15	12.55
Sewer Maintenance	12.25	11.13	11.67
Equipment Operator I	11.89	11.36	11.50
Laborer	11.09	10.80	10.93
Mechanic	12.43	12.03	12.27
Cemetery Sexton	11.75	11.77	11.98*

\* Only three comparables available for Cemetery Sexton, versus ten or eleven for all other positions.

The most notable feature of this table is that eight of the eleven averages computed by the City from its own comparable communities are higher than rates that would result from adopting the Union's final offer. One (Meter Reader/Maintenance) is \$.46 lower. One (Water Maintenance) is one cent per hour lower. One (Cemetery Sexton) is \$.23 lower but is noted as perhaps not representative.

Making wage rate comparisons is an inexact procedure. In analyzing the data presented at the hearing by both parties I have found numerous discrepancies. In several cases the parties chose different classifications from one or more of the comparable communities to compare with a Rhinelander classification. In other cases they chose different effective dates within a calendar year to compare with Rhinelander classifications for that calendar year. There were other discrepancies in the comparisons.

In these circumstances there is little an arbitrator can do, in the absence

of any enlightenment from the parties as to the accuracy or inaccuracy of each other's data, but accept the figures that have been provided.

Since I have reproduced the table the City uses for comparisons in its brief, I will also reproduce the essential elements of the principal table the Union presented in its brief. As discussed above on page 3, the Union states that its objective in its upgrade proposal was to eliminate two-thirds of what it conceived to be the differentials between lower Rhinelander classification rates and the higher averages of those rates in the twelve comparable communities.

Upgrades as Percentages of Differences  
Between Rhinelander and Comparable Average Wages  
for 1992-1994 (Union Offer)

Position	Starting	Cumulative	Cumulative
	% 12/31/92	% 12/31/93	% 12/31/94
Waste Plant Operator	36.62	38.28	69.42
Water System Leadman	24.05	23.66	79.94
Heavy Equipment Operator	25.67	27.69	75.22
Water System Maintenance	22.75	22.90	62.70
Meter Reader/Maintenance	40.49	40.84	100.69
Sewer System Leadman	19.28	18.22	42.01
Equipment Operator I	16.44	18.43	35.18
Common Laborer	11.61	13.63	15.45
Mechanic A	25.26	28.99	51.20
Cemetery Sexton	17.22	17.03	33.63
Sewer System Maintenance	24.49	23.52	52.51

Column One can be ignored. It attempts to show the percentage by which the differential would have been reduced by the initial upgrade before the rates in the comparable communities began to change (what the Union characterizes as "moving targets"). Columns Two and Three purport to show the percentage reductions of the differentials that would be made by adopting the Union's final proposal.

The decision in this arbitration depends on balancing the City's argument in favor of uniformity in settlements among the bargaining units against the Union's evidence purporting to show that there are large adverse differentials between the City rates in these classifications and the rates for these classifications in the comparables, differentials so large that except in one classification neither the Union's two step upgrade proposal nor its extra quarter of one per cent proposal would eliminate the differentials.

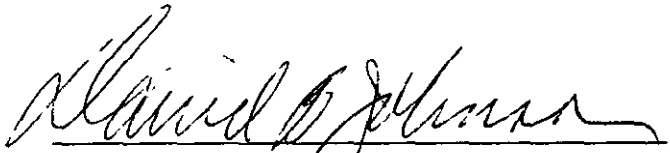
The Union makes a persuasive case with reference to factors d. and e., convincing enough so as justify an extra quarter of one per cent general increase and to overcome reservations about lack of uniformity in settlements with unions representing other units.

This leaves consideration of the cost-of-living and overall compensation factors. The upgrade proposals of the two parties are not relevant in any consideration of cost-of-living. The difference between the two proposals with reference to this factor is one quarter of one per cent for the year 1994. I do not think this has sufficient significance to prevail over the comparability factor. As to the overall compensation issue, the City's argument is that four of the comparable communities require some contributions from employees for health insurance. While this has importance in any consideration of overall compensation of the employees, the majority of the comparable communities appear not to require employee contributions for health insurance, which supports the Union position.

AWARD

After careful consideration of all the evidence and arguments of the parties with reference to the factors in the statute that I am required to consider, the final offer of the Union is adopted and will be incorporated into the parties 1993-1994 agreement.

Dated: April 20, 1994  
at Madison, Wisconsin

  
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David B. Johnson, Arbitrator