

RECEIVED
NOV 22 1994
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Petition of:

Case 242 No. 50368
INT/ARB-7150

TEAMSTERS LOCAL UNION NO. 75

Decision No. 28070-A

To Initiate Arbitration
Between Said Petitioner and

CITY OF GREEN BAY WATER UTILITY

Sherwood Malamud
Arbitrator

APPEARANCES:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Marianne Goldstein Robbins, 1555 N. River Center Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of the Union.

Warpinski & Vande Castle, S.C., Attorneys at Law, by Mark A. Warpinski, 303 S. Jefferson Street, P.O. Box 993, Green Bay, Wisconsin 54305-0993, appearing on behalf of the Water Utility.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On June 22, 1994, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., with regard to an interest dispute between Teamsters Local Union No. 75, hereinafter the Union, and City of Green Bay Water Utility¹, hereinafter the Employer or the Utility. An evidentiary hearing in the matter was held at the administrative offices of the City of Green Bay Water Utility in Green Bay, Wisconsin, on August 16, 1994. Briefs and reply briefs were received by the Arbitrator by October 28, 1994, at which time the record in the matter was closed. Based upon a review of the evidence, testimony, and arguments presented by the parties, and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

¹The WERC captioned the Employer as "City of Green Bay (Water Department)." There is no Water Department in the City of Green Bay. The organizational entity charged with the duty to provide water to the citizens of the City of Green Bay is the City Of Green Bay Water Commission, which is commonly referred to as the Water Utility (Expired Agreement, Union Exhibit #4).

SUMMARY OF THE ISSUE IN DISPUTE

The wage rates for calendar year 1994 and 1995 for the employees of the City of Green Bay Water Utility are the sole issues remaining in negotiations between these parties for a successor two year agreement covering calendar years 1994 and 1995.

At the hearing, the parties stipulated that:

The results of the "outside unit" interest arbitration will control the wages and pension outcome for the "inside unit."

The Union Offer

The Union proposes that the wage rates for the outside unit increase by 3% effective January 1, 1994. The rates generated increase by an additional 3% effective January 1, 1995.

The Employer Offer

The Employer proposes that the wage rates for the "outside unit" increase by 2.35% effective January 1, 1994. The rates generated increase by an additional 2.4% effective January 1, 1995.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are contained in Sec. 111.70(4)(cm)7, Wis. Stats. Those criteria are:

7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours

and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

BACKGROUND

The City of Green Bay Water Commission, the Utility, was established by the City of Green Bay under Sec. 66.068 of the Wisconsin Statutes. The members of the Water Commission are appointed by the Mayor and subject to confirmation by the Common Council of the City of Green Bay. The Utility provides water solely to the residents of the City of Green Bay.

The Water Commission determines the policies governing the operation of the Utility. However, the Commission lacks the authority to purchase or sell real estate. It may not issue bonds in the name of the Utility. The City of Green Bay must perform these functions on behalf of the Utility.

The Manager of the Utility, William Nabak, negotiates the collective bargaining agreement with the Union. The collective bargaining agreements between the City of Green Bay and the Unions representing its employees are negotiated by Personnel Director Jadin. However, Manager Nabak confers with Personnel Director Jadin during the course of negotiations

between the Utility and Teamsters Local No. 75, which represents both the outside and the inside employees of the Utility.

In the many Agreements negotiated by these parties over the years, the Utility and the Union established conditions of employment, such as vacation amounts and holidays, which differ from those enjoyed by City of Green Bay employees. For example, the Utility's employees enjoy the day after Thanksgiving as a holiday. It is not celebrated as a holiday under the City Collective Bargaining Agreements.

The Utility's employees are governed by the City of Green Bay residency ordinance. Applications for exceptions or extensions under the ordinance are made by Utility employees to the Utility Manager. However, his decision is appealable to the Personnel Committee of the Common Council of the City of Green Bay. Manager Nabak participates in the weekly departmental meetings between the Mayor and the various department heads of the City of Green Bay. There are elements which suggest that the Utility is a department of the City of Green Bay. There are other elements in the organization and operation of the City of Green Bay Water Utility which suggest that it is an independent employer.

POSITIONS OF THE PARTIES

The Union Argument

The Union argues that the Utility is a separate and independent municipal employer from the City of Green Bay. The wage rates paid by the external comparables suggested by the Union, should determine the percentage increase paid to the employees in the "outside unit," (by stipulation the wage increase for the "inside unit", as well) for calendar years 1994 and 1995. The City of Green Bay is the third largest community in the state. The Union suggests that the cities it suggests as comparables are smaller than Green Bay serve as comparables to the Utility. Some of the municipalities provide water service to their residents through a separate and independent utility. Others provide that service through a water department or unit of the particular Municipal Employer's Department of Public Works. The Union suggests the following external comparables: the City of Racine Water Utility, the City of Kenosha Water and Wastewater Utility, the City of Eau Claire, the City of Fond du Lac, the City of Sheboygan Water Utility, the City of Appleton Water Utility, and the City of Oshkosh. Inasmuch as negotiations in the City of Oshkosh for calendar years 1994 and 1995 had not concluded as of the hearing in this matter, the Union presents no data concerning that unit. However, it suggests that Oshkosh is an appropriate comparable.

The Union notes that in all the comparables with settled agreements for calendar year 1994, none provides an increase in calendar year 1994

any less than 3%.² The Union concludes that the comparability criterion supports the adoption of its final offer.

The Union meets the City's argument that the Utility is, in reality, a department of the City of Green Bay. The Union notes that the collective bargaining agreement between the Union and the Utility is signed by the President of the Water Commission. It is not signed by the Mayor of Green Bay. The Union points to the differences in the fringe package between the City and the Utility. The Utility has a budget independent of the City of Green Bay. Its funding is independent of and different from the City. The Utility operations are funded through the water charges established by the Water Commission which are subject to the approval of the Wisconsin Public Service Commission. The Utility is not subject to the fiscal constraints imposed by the state on local municipalities. It has a reserve of \$2 million.

The Union notes that the settlement agreed to by the Union in the units which it represents in the City of Green Bay include a guarantee by the City that there will be no layoffs in 1994 and 1995. No such assurance was provided to the employees of the Utility.

The Union emphasizes that in the last round of negotiations, employees of the City Department of Public Works, which contains classifications similar to those employed in the Utility, received a 4% increase while Utility employees received only a 3.5% increase. The higher Union offer, in this case, simply makes up for the lower Utility settlement in 1993. In 1990, City employees received a \$50 bonus in addition to the 3.3% increase they received. Utility employees received no bonus but a 3.4% increase.

The Union argues that the cost-of-living criterion supports its position. The national CPI for the year June '93 through June '94 increased by 2.4%. However, the increase in the cost of living in Milwaukee was 3.7% during the same period. The Union's 3% proposal more closely approximates the cost of living increase experienced in Wisconsin.

Most importantly, the Union argues that the increase in rates agreed to by employers and unions is the best indicator of the cost of living, citing St. Croix Falls School District, Dec. No. 22307-A (Fogelberg); Rock County (Youth Home), Dec. No. 22580-A (Vernon, 1986); Weston School District, Dec. No. 21307-A (Kerkman). The size of that increase is no less than 3%.

²The City of Eau Claire operates under a July 1 fiscal calendar. Consequently, employees of the City of Eau Claire receive a 2% increase effective July 1, 1993, and an additional 2% effective January 1, 1994. Effective July 1, 1994, those same employees receive a 3% increase. Wage rates which are to go into effect July 1, 1995, are subject to a reopener.

The Union concludes that the comparability and cost of living criteria, the two criteria determinative of this dispute, support the selection of its final offer for inclusion in the successor Agreement.

In its reply brief, the Union argues that the half of one-percent percent difference between the wage increases received by Utility employees in 1993 and the higher 4% increase received by City employees cannot be explained through the acceptance by City employees of a different sick leave program. The Union emphasizes that Utility employees do not have the layoff guarantee provided to City employees in exchange for their acceptance of this low settlement. The Union emphasizes the wages of City and Utilities are financed by different sources. The Utility receives the funds for its operations from the charges it imposes on City residents/consumers of water. The Union concludes that its offer is supported by the comparables; it be selected for inclusion in the successor Agreement.

The Employer Argument

The Employer argues that the Water Utility is, and should be treated as, a department of the City of Green Bay. The City emphasizes that there exists a settlement pattern in the City. City Exhibit 3 demonstrates that 14 of the 18 collective bargaining units (inclusive of the two water utility units) have settled at percentage increases of 2.35% for calendar year 1994 and an additional 2.40% for calendar year 1995. The increase in the Department of Public Works is at 2.39% for calendar year 1994 due to a wage bump for one classification of employees in that unit.

The Employer points to the strong organizational ties between the City and the Utility. The Commissioners of the Utility are appointed by the Mayor and confirmed by the Common Council. The Commission cannot purchase realty in its own name, nor can it issue bonds without City approval. The personnel function at the Utility is conducted in close cooperation with the Personnel Director and the Personnel Committee of the City. The Utility follows the City's lead in labor negotiations.

If the Utility is treated by the Arbitrator as an entity independent of the City, then the employees of the City of Green Bay should serve as the determinative comparable. Some employees employed by the Department of Public Works of the City of Green Bay perform similar work to that of Utility employees. The City of Green Bay serves as the most appropriate external comparable. The percentage increases provided by the City to its employees should govern the increase in wage rates paid by the Utility to its employees.

Again, the Employer emphasizes that the Utility sells water to residents of the City of Green Bay; it does not sell water to residents of any surrounding municipality. The Utility is an integral department of the City of Green Bay, and it should be treated as such by the Arbitrator.

In its reply brief, the Employer emphasizes that although the City's offer is less than that provided to employees of the City of Eau Claire, yet, the City's offer does not change the ranking of employees of the City of Green Bay relative to the rates paid by the comparable employers identified by the Union. Again, the Employer emphasizes that a pattern of settlement has been established and accepted by the City and the units listed in its Exhibit #3. Any break with that pattern will only cause labor unrest. The Utility concludes that its final offer should be selected for inclusion in the successor Agreement.

DISCUSSION

Introduction

The parties refer to three statutory criteria in their arguments which serve to distinguish between their final offers; comparability, cost of living, and "such other factors. . ." (internal comparability).

At the outset of this discussion, it is apparent that the final offers of both the Utility and the Union are reasonable. The Arbitrator is charged with the difficult task of selecting the most reasonable offer for inclusion in the successor Agreement.

Comparability

The Employer does not dispute the composition of the Union's suggested pool of external comparables. Rather, it argues that internal rather than external comparability should determine the outcome of this dispute.

Comparability is a factor which must be considered in the analysis of the parties' positions. The Arbitrator bases his analysis of the comparability criterion on the Union's pool of suggested comparables. However, it is necessary to clarify the composition of the comparability pool.

The City of Appleton agreement covers mechanics and operators. Meter readers and other classifications employed in the City of Green Bay Water Utility are not covered in the Appleton Water agreement. Again, Oshkosh is an appropriate comparable. However, there is no data for the years in question in this dispute. Consequently, reference is not made to Oshkosh in the discussion which follows.

Of the comparables, only Kenosha has settled for 1995. The Arbitrator focuses the comparability analysis on calendar year 1994.

Application of the Three Criteria

None of the external comparables provided their employees with an increase of less than 3% during calendar year 1994. Only the City of Kenosha has settled for calendar year 1995. The employees in that unit will receive a 3% increase above the three-quarters of 1% reduction of the 1994 rates. Union Exhibit #7³ provides compelling evidence in support of the adoption of the Union's final offer. All of the external comparables increase the wage rates of their employees by at least 3%.

The increase in the cost of living during calendar year 1993 was 2.5% for urban wage earners and clerical workers under the U.S. index. The small metro area index increased 2.1%. However, the Milwaukee area index indicates a 3.5% increase in the Consumer Price Index. Although Milwaukee is the only metropolitan area in Wisconsin surveyed by the CPI, nonetheless the small metro area describes the Green Bay metropolitan area. This data tends to support the Employer's final offer.

The Union correctly notes that arbitrators look to the pattern of settlements as the better indicator of the change in wage levels necessary to adjust to the annual change in the cost of living. This Arbitrator considers this evidence in weighing the comparability criterion.

This case turns on whether internal comparability is an appropriate concern in this case. This issue is tied to the question whether the Water Utility is an independent employer or a department of the City of Green Bay? Certainly, there are elements in the evidentiary record described above which would support either finding.

The Arbitrator concludes that the Utility is not a department of the City of Green Bay as, for example, the Department of Public Works. Its source of funding and policy making body are independent of the City. However, the evidence is clear that the employment policies and bargaining tactics of the Utility are greatly influenced by the City of Green Bay. In this regard, the well-established pattern of settlement in the City of Green Bay at 2.35% and 2.4% for 1994 and 1995, respectively, provides substantial support to the Employer's position.

Patterns of settlement are difficult to achieve. Where they are achieved, this Arbitrator finds such patterns persuasive, if not determinative, of the dispute. Arbitrators may refrain from following a settlement pattern pegged to a certain percentage increase, where it is demonstrated by compelling evidence that the wage rates of a particular classification(s) of employees are substantially above or below the rates paid by comparable employers to employees in similar classifications. The wage

³Union Exhibit #7 presents a comparison of 1993-95 percentage wage increase for 6 comparable water utilities.

levels of a particular group or classification of employees may be analyzed to determine the relationship between the market wage rate for the particular classification of employees and the wages rates which are the subject of the arbitration proceeding. The question then for the Arbitrator to determine: are the wage rates for the classifications of employees, which are the subject of the interest arbitration proceeding, substantially less, less, equal to, greater or substantially greater than the rates paid to employees in identical or similar classifications employed by comparable employers?

In this case, the comparability pool includes a range of employers with wage levels in the 1993 base year which are above and below the wage levels paid by the Green Bay Water Utility. From the data submitted by the Union, the Arbitrator calculates the average rate for the meter reader and operator classifications. For calendar year 1994, the average hourly rate paid to the Meter Reader classification by the comparables is \$14.02. The average hourly rate paid by the comparables to the Operator⁴ classification is \$14.77. The City offer would place these rates in 1994 at \$14.24 and \$14.86 respectively. The Union's offer would set the rates at \$14.33 for the Meter Reader and \$14.96 for the Plant Operator. The Arbitrator concludes from this data that there is no compelling need to ignore the pattern of settlement in order to adjust the rates of employees in the Utility's "Outside Unit."

SELECTION OF THE FINAL OFFER

The external comparables provide strong support for the adoption of the Union's final offer, and its inclusion in the successor Agreement. Although the Utility is a separate employer from the City of Green Bay, its employment policies and negotiating positions are strongly affected by the pattern of settlements in the City of Green Bay. City Exhibit #2 suggests an almost identical pattern of percentage settlements in the years 1989 through 1993 for City and Utility employees. The variation in 1990, a 3.3% increase with a \$50 bonus for City employees, as contrasted to a 3.4% increase for Utility employees is but a slight variance in what otherwise appears as an identical settlement pattern for City and Utility employees. In 1993, the Employer suggests that the substantial deviation from the pattern of percentage increases among City and Utility employees is attributable to

⁴ The classification contrasted is the "Plant" Operator rather than the Equipment Operator classification.

The Arbitrator includes the Appleton operator at the \$14.19 rate. The Arbitrator assumed that the plant operator in Fond du Lac possessed the highest certification and considered a \$14.05 rate for that municipality in calculating the average of \$14.77 average. Since the Appleton Agreement does not contain the Meter Reader classification, Appleton was not included in the calculation of the average rate for that classification.

the rejection by Utility employees of a new sick leave policy. The Union argues there is no relationship between the 3.5% settlement in the Utility units and the 4% settlement in the City units. However, these exceptions do not serve to destroy or undermine the strong relationship between the pattern of settlement in the City of Green Bay and the percentage increases for Utility employees.


As noted above, there is no substantial deviation in the wage levels of the employees in the "Outside Unit" which need be addressed by ignoring the clear settlement pattern among City units. The Arbitrator provides greater weight to the "Such other factors. . ." the internal comparability criterion in the determination of this case. The pattern of settlement achieved by the City of Green Bay in the multiplicity of units of that Employer, not only provides strong evidence to support the Employer's position, but it is determinative of this dispute. Accordingly, in the Award which follows, the Arbitrator selects the Utility's final offer for inclusion in the successor Agreement.

On the basis of the above Discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of the City of Green Bay Water Commission (Water Utility), which together with the stipulations of the parties, are to be included in the collective bargaining agreement between the City of Green Bay Water Commission (Water Utility) and Teamsters Local No. 75, for calendar years 1994 and 1995.

Dated at Madison, Wisconsin, this 21st day of November, 1994.


Sherwood Malamud
Arbitrator