STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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In the Matter of Interest Arbitration
Between

OPINION AND AWARD

CITY OF SHELL LAKE

Case No. 3
No. 52047
INT/ARB-7516
Decision No. 28486-A

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL, 139, AFL-CIO (DEPARTMENT OF PUBLIC WORKS)

Gil Vernon, Arbitrator

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APPEARANCES:

On Behalf of the Employer: Stephen L. Weld, Attorney - Weld, Riley, Prenn & Ricci, S.C.

On Behalf of the Union: Dewey Wegner, Vice President - Local 139

I. BACKGROUND

On March 16, 1994, the Parties exchanged their initial proposal on matters to be included in a new collective bargaining agreement. Thereafter the Parties met on three occasions in efforts to reach an accord on a new collective bargaining agreement. On January 5, 1994, the Union filed a petition requesting that the Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On April 11, 1995, and thereafter by mail, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and by July 13, 1995, the Parties submitted to the Investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the

Commission. On July 19, 1995, the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remain at impasse.

On August 7, 1995, the Commission ordered the Parties to select an arbitrator. The undersigned was selected by the Parties and appointed by the Commission on August 7, 1995.

A hearing was held on November 27, 1995. The Employer submitted a post-hearing brief which was received by the Arbitrator on December 30, 1995.

II. FINAL OFFERS AND ISSUES

There were two issues left unresolved by the Parties in the negotiations for their first collective bargaining agreement. They were the language concerning the Employer's contribution to the Wisconsin Retirement Fund and the amount of wage increase in 1994 and 1995. More specifically, regarding the retirement issue, there is no issue over the amount the Employer will pay. The dispute is over how this obligation is expressed. Currently the employee share is 6.5 percent of gross wages. The Employer offers to pay this amount. The Union offer says the Employer shall pay the "employee portion." The practical difference relates to the future in the event there are any increases in the employee share. Under the Union's offer, the Employer contribution would automatically increase. Under the Employer's offer, the Union would have to go to the bargaining table to secure an increase in the Employer's payment toward the employee share. The City's offer reads as follows:

> "City employees who work 600 hours or more per year are covered under the Wisconsin Retirement Fund. The City pays the employer portion to the retirement fund for all covered employees. In addition, the City agrees to pay up to 6.5% of the employees' gross income as part of the employees' contribution to the WRS."

The Union's offer reads as follows:

> "City employees who work 600 hours or more per year are covered under the Wisconsin Retirement Fund. The City pays the employer and employee portion to the retirement fund for all covered employees."

Regarding the wage increase, the following reflects the Parties' respective proposals:

	1/1/94	1/1/95
City Offer	$.35 per hour	$.35 per hour
Union Offer	$.40 per hour	$.50 per hour

III. OPINION AND DISCUSSION

The Employer has put forth a reasonable group of comparable employers to help give the Arbitrator guidance in evaluating the final offers. Some of these include non-collectively bargained wage rates and working conditions. While these deserve some weight as they are reflective of the labor market, they are not as deserving of consideration as collectively bargained contracts. The latter group is more relevant because as an impasse procedure arbitration is designed to best approximate the results of free collective bargaining. Unorganized units simply have little bargaining power because they have no impasse procedure available and thus this situation could skew the wage rates. So it is with caution that such employers are considered.

In looking at the retirement issue, it is noted that there is some intrinsic appeal to the Employer's proposal. It is reasonable to argue that items of significance should be bargained. Automatic increases in benefits, which translates to higher employer costs, can get lost in the shuffle or at least under-appreciated. On the other hand, most of the comparables favor the Employer paying "100%," the "full cost" of the employee share or flatly the employee share. This tends to favor the Union offer when viewed in isolation from the wage issue and the total bargain.

There are two ways to look at most wage issues. The Arbitrator must look at the wage levels, as well as the wage increases. In this case, it is difficult to get a firm grasp on the wage levels for comparable positions in comparable communities. This is because there are a wide variety of positions with a wide variety of duties. The instant bargaining unit has two classifications: (1) Sewer and Water and (2) Streets and Maintenance. There are one and three employees in these classifications respectively. In other municipalities there are combination Street and Water employees, Sewer Technicians, Sewer Laborers, Working Foreman, Water Plant Operator 2,

Water Plant Operator 3, Maintenance employees, etc. It is difficult, as a result, to tell precisely what the duties of these various employees are. Thus, strong comparisons are not entirely possible. To the extent that the data/evidence lends itself to comparisons, it appears that the wage levels in Shell Lake are below average.

This is offset, however, by the fact the wage increases, under the Employer offer, slightly exceeds all other cities and villages. While wage comparisons are difficult, it is easier to gauge a wage increase. Even wage increases in slightly dissimilar positions tend to track each other. Nonetheless, this data is difficult to interpret as well. About half the comparables express their increases in terms of cents per hour and half express their increases on a percentage basis. On the basis of cents per hour, the Union's offer is closer to the trend for 1994, and the City's offer is closer to the trend for 1995. Converting the offers to a percentage and calculating a weighted average of the Employer increases, a comparison of the offers show the Employer's offer exceeds the average increase in 1994 by a half a percent and is just a fraction under the average increase in 1995. The settlements in area county highway departments averaged 3.6 percent for 1994 and 3.2 percent for 1995. This compares favorable to the Employer offer. Yet it must be kept in mind that the wage base is below average.

It is difficult to say when analyzing the offers in the context of Criteria D and E that there is a strong preference for either offer. However, when considering Criteria J, the balance tips in favor of the Employer's offer. The fact this is a first contract falls under Criteria J. Typically in free collective bargaining, the best of contracts were not achieved overnight. Competitive wages, benefits, and working conditions are generally achieved over time. This fact has been recognized and applied under Criteria J. For instance, Arbitrator Steven Briggs, in Butternut School District (Support Staff), Dec. No. 27313-A (3/16/93) stated:

> "Conventionally, unions obtain advances for employees in piecemeal fashion, making modest wage and benefit gains in successive rounds of bargaining. It is extremely rare for a union in bargaining a first contract for employees whose wages have been at the bottom historically to achieve complete wage parity in one round of bargaining. Accordingly, since interest arbitration is intended to approximate the outcome of free collective bargaining, the Arbitrator favors adoption of the Employer's wage offer in the instant case."

As a first-time contract, the bargaining unit has done pretty well. Criteria B requires the Arbitrator to look at the stipulations or tentative

agreements, and Criteria H requires him to look at the total package. In other words, the Arbitrator must look at the whole picture. When he does, this is not an ideal contract, particularly in terms of wage levels, but it is a reasonably competitive contract for the first "go-round."

Another factor to be considered under Criteria J was raised by the Employer. The fact is their final offer represents a substantial improvement over a tentative agreement by the Parties which was ultimately rejected by the membership. There was a tentative agreement at $.35 per hour in each year and no Employer contribution for the employee's share of WRS. The reason for the rejection was thought to be the lack of payments by the Employer of the employee share. The Employer then increased its retirement offer to pay up to 6.5 percent which, as noted, is the current employee share. In line with established arbitral precedent, the fact the Employer offer is at least as good (indeed better) than the rejected tentative agreement is an indication of reasonableness, see Douglas County (Highway Dept.), Dec. No. 28215-A (3/19/95).

Looking at the offers in the context of the bargain as a whole and in the context of all statutory criteria, the Employer offer is more appropriate.

AWARD

The Employer offer is selected.

Gil Vernon, Arbitrator

Dated this 9th day of February 1996.