WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between)	
LOCAL 701 LABOR ASSOCIATION OF WISCONSIN,)	Case 25
INC., CLINTONVILLE UTILITY EMPLOYEES)	No. 53574
and)	INT/ARB-7846
CITY OF CLINTONVILLE)	Decision No. 2892
)	OPINION and AWARD

Appearances: For the Association, Thomas A. Bauer, Appleton.
For the City, Attorney James R. Korom, Milwaukee.

When Local 701, the Labor Association of Wisconsin, Inc., Clintonville Utility Employees (referred to as the Association) and the City of Clintonville (referred to as the City) were unable to resolve a negotiations impasse for a successor to their expired collective bargaining agreement, the Association filed a petition dated January 2, 1996 requesting that the Wisconsin Employment Relations Commission (WERC) initiate arbitration pursuant to section 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA). On December 2, 1996, the WERC determined that an impasse existed and that arbitration should be initiated. The parties notified the WERC that the undersigned had been selected from a list supplied to the parties by the WERC. By order dated January 2, 1997, the WERC appointed her as arbitrator to resolve the impasse.

By agreement of the parties, a hearing was held in Clintonville, Wisconsin, on February 17, 1996. The parties were given a full opportunity to present witnesses, documentary evidence, and arguments. The parties submitted post-hearing briefs.

ISSUES AT IMPASSE

As a result of negotiations between the parties, only two issues remain unresolved. They relate to: 1) wages for 1996 and 1997 and 2) the effective date for the agreed upon increase (from 9% to 10.5%) for the employee's share of health insurance premiums. See Exhibit A for the Association's final offer and Exhibit B for the City's final offer.

STATUTORY FACTORS

Section 111.70(4)(cm)7 states:

In making any decisions under the arbitration procedures authorized by this paragraph, the arbitrator shall consider and give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator...shall give an accounting of the consideration of this factor in the arbitrator's...decision.

Section 111.70(4)(cm)7g states:

In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator...shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

Section 111.70(4)(cm)7r states:

In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator...shall also 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 financial ability of the unit of government to meet the costs of any proposed settlement.

d. 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 performing similar services.

e. 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 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 employees 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 employees, including direct wage compensations, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, and 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.

POSITIONS OF THE PARTIES

The Association

After noting that neither party has raised any issue specified in sections 111.70(4)(cm)7 ("greatest weight") and 7g ("greater weight"), the Association directly proceeds to consider the relevant factors in 111.70(4)(cm)7r. For the Association, the sole factors which must be addressed are 111.70(4)(cm)7r subdivisions b, c, e (specifically internal comparability), and g. It first points out that the parties agreed to some "minor language changes" where there is no cost to the City or, in the case of the agreed upon increase of an employee's share of health insurance premium contribution from 9% to 10.5%, there is a savings to the City.

Turning to the factor relating to the "interests and welfare of the public," the Association emphasizes both the importance of the intangible factor of employee morale and the fact that the Association's offer provides a smaller average wage lift over the 1996-97 period than does the City's offer (8.49% versus 10.45%[1]) support the Association's offer. Translated into cost terms for the two year contract period, the City's final wage offer will cost almost $3000 more in wages alone than does the Association's offer. The Association concludes that when this savings is added to the savings generated by the agreed upon increase in employee

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[1]According to the Association, this unusual effect is produced because under the City's offer, one employee receives a total increase of 37.65% and another employee receives a total increase of 19.61%. Under the City's offer, the two year salary increases for bargaining unit members range from 6.33% to 37.65% while under the Association's offer, the range is from 6.57% to 9.85%.

contribution to health insurance premiums, the welfare of the public is enhanced under the Association's offer. The Association also notes that, due to the low cost resulting from the Association's offer and the agreed upon stipulations, there can be no argument that the City does not have the financial ability to meet the Association's offer.

Next the Association addresses the comparability factor under 111.70(4)(cm)7r.f. It notes that the City's police bargaining unit (which the Association also represents) successfully negotiated a 1996-1997 collective bargaining agreement which added a new 6 year wage step - thus providing an additional 3% above the old top step. The Association based its final offer for this unit upon a pattern already established with the police unit. The Association concludes its comparability argument by characterizing its offer as more equitable to bargaining unit members than is the City's offer because the latter heavily favors two employees to the detriment of the majority.

Finally, the Association contends that the arbitrator should not consider the cost-of-living factor as determinative. It notes that both parties are proposing the same basic wage increases: a 3% increase effective January 1, 1996 and a 3.5% increase effective January 1, 1997. Their offers differ in how additional money will be distributed with only five employees receiving the additional money under the City's offer while the additional money is distributed more equally to all employees under the Association's offer.

For all these reasons, the Association believes its offer is more reasonable under MERA's statutory criteria and, therefore, its final offer should be selected.

The City

The City argues that the Association's final offer requires comparatively high wage increases which will be extremely costly for the City without providing any internal or external comparability data to support its position. In contrast to the Association's offer which is "unacceptably ambiguous," the City contends that its offer[2] is supported by external, internal, and private sector comparables as well as cost-of-living data. The City views its wage offer as clearcut and in line with the

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[2]The City's final wage offer consists of two parts, Option 1 and Option 2. Option 2 is available to the Association, at its option, within 10 calendar days of the issuance of the arbitration award in this matter. (See Exhibit B.) The arbitrator believes that, for purposes of this proceeding, that she is limited to consideration of the City's Option 1 final offer.

structure and format of previous agreements covering this bargaining unit. In addition to wage rates for apprentice utility linemen upon completion of each year of the four year Apprentice School and already agreed upon "catch-up" increases for two members of the bargaining unit, the City proposes a straight 3% increase for 1996 and a 3.5% increase in 1997.

Addressing specifically the statutory factors, the City calculates that the cost of its final wage offer (with catch-up increases included) is 3.93% for 1996 and 4.84% for 1997 while it calculates that the Associations's final wage offer (implementing its "lockstep" proposal) is 5.39% for 1996 and 5.53% for 1997. Taking into account the increased costs for health insurance in 1996 and 1997, the economic spread between the City's reasonable offer and the Association's "very rich proposal" is great and unjustified, according to the City. Therefore, the City's offer is to be preferred under 111.70(4)(cm)7r.c.

Turning to external comparability, the City notes that the Association failed to provide **any** evidence to support its wage position. In contrast, the City acknowledges the difficulties in making any valid comparisons but contends that its array of external comparables demonstrate that there is **no** evidence justifying the Association's wage offer. It further believes that its wage offer is supported by the vast majority of 1996 settlements covering utility employee bargaining units which range from 3% to 3.5%. As for internal comparability, the City argues that the parties' agreed-upon raises for Clintonville police reflect a need for "catch-up" for police; no such evidence was presented in this proceeding to justify similar "catch-up" for most utility employees. In addition, the City believes that it is very relevant to point out that both the police and street employees bargaining units already agreed to - and implemented - the increase from 9% to 10.5% employee health insurance premium contribution. The City maintains that there is a pattern of internal consistency for health insurance contributions and it should be followed in this case, particularly when he Association has not provided any evidence to justify more favorable treatment for utility employees than that received by other City employees.

Next, the City argues that both private sector comparability (where there is no evidence of local wage increases of 5% or more) and the CPI (the average annual increase has been consistently under 3%) support its final offer.

Finally, the City contrasts its own wage offer regarding lineman apprentices which continues compensation incentives for each year of certification completed plus completion of Apprentice School with the Association's offer which the City concludes does not incorporate these existing reasonable limitations. The City also points to "ambiguities" in the language of the Association's final offer which it concludes are

fatal to the Association's case. Specifically, it notes that a literal application of the Association's final offer wage language would mean that employees with fewer than three years will take a wage cut of up to 15% of the 1995 wage even though the Association stated at the arbitration hearing that it intended for these employees to maintain their current wages and also benefit from the 3% increase in 1996 and the 3.5% increase in 1997. The City believes that the lack of Association final offer language supporting its interpretation will present serious problems for both parties if the Association's offer is selected. It further believes that the Association's wage offer is not viable because it fails to deal with the situation of employees hired after 12/31/95.

Based upon all the above, the City concludes that its final offer should be selected by the arbitrator.

DISCUSSION

No issues relating to the new factors under 111.70(4)(cm)7 and 7g have been raised in this proceeding. In fact, the parties generally agree that the factors which the undersigned must consider are 111.70(4)(cm)7r subdivisions c, d, e (relating to internal comparability), and g. In addition, the City also relies upon external comparability, private sector comparability, and challenges to various ambiguities or omissions in the Association's final offer (which the City raises under 111.70(4)(cm)7r.j ("other factors").

Effective Date - Increase in Employee Contribution to Health Insurance Premiums:

The parties have agreed to increase the employee contribution for health insurance premiums from 9% to 10.5%, but they have failed to reach an agreement as to the effective date for this increase. Although the Association filed its petition to initiate arbitration on January 2, 1996, for various reasons (not explained in this proceeding) the parties did not submit their final offers to the investigator appointed by the WERC until November 22, 1996. Although each month of delay increases the economic consequences resulting from this aspect of this case for either employees or the City , the parties have concentrated their evidence and arguments on their wage offer dispute and have paid little attention to this issue. The major exception is the City's argument that the increase in employee contribution for health insurance premiums for both Clintonville's police bargaining unit and its Street Department employees bargaining unit took place in 1996 and health insurance coverage parity suggests that this unit should be treated similarly. In contrast, the earliest the Association's effective date offer would take effect will be well into 1997. Neither party introduced any other

comparables or arguments to assist in resolving this aspect of the parties' impasse dispute.

The sparse record on this issue makes it difficult to resolve although it is clear that internal comparability favors the City's final offer. In addition, since both parties' final wage offers include 1996 wage increases which are retroactive to the beginning of 1996, the City's April 1, 1996 effective date appears more reasonable than the Association's effective date which is based upon the date the parties sign their 1996-1997 successor agreement.

However, this controversy is not the sole issue in dispute in this proceeding. Both parties appear to agree implicitly that the resolution of the wage issue - and not this issue - will determine the ultimate outcome of this final offer whole package arbitration proceeding. The undersigned, therefore, next addresses the wage issue which she too believes should - and will - be determinative in this proceeding.

1996 and 1997 Wages

Despite the fact that this impasse covers only a relatively small number of bargaining unit members and both parties have agreed to incorporate a pay raise of 3% for 1996 and 3.5% for 1997, there remain a number of differences between the parties on additional specifics of their wage offers.[3] The Association has proposed a new five step salary schedule based upon the "7/1/95 rate of pay." It results in 2 year pay increases ranging (according to Association calculations) from 6.5% to 9.64% - with higher percentage increases going to employees with at least four years of service while the lowest percentage increases cover employees with less seniority. The City's wage proposal incorporates "previously agreed upon raises" for two members of the bargaining unit plus increases for apprentice utility linemen and WWTF operators - generally providing the lowest percentage increases to those with the greatest amount of seniority.

Since the Association is proposing to change the parties' salary schedule structure in a significant way and since the Association's proposal also rejects some prior agreements between the parties concerning $.50 raises for two bargaining unit members (see Exhibit B Option 1 Note 1), the Association has the burden to justify these changes. Its exclusive justification is that the City agreed in 1996 to create a new 6 year step salary schedule for the police bargaining unit. However, according to the City, this was a result of an agreement with the Association

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[3]As is true in a number of other impasse arbitration cases, the parties have presented various - and seemingly inconsistent - costing figures.

(as exclusive bargaining representative for the police) on the need for "catch-up" based upon external comparability. The Association has not disputed this - and it has failed to produce any external comparables as justification for its five step salary schedule for this bargaining unit.[4] In addition, the cost-of-living factor in 111.70(4)(cm)7r while not determinative must be considered; it supports the City's position in the absence of evidence establishing a "catch-up" need. Finally, the City has some valid technical criticisms of the Association's wage proposal language as it relates to current bargaining unit members who were not employed as of 7/1/95 or have less than three years of utility employment.[5] These are confusing aspects of the Association's wage offer.

While the Association may be able to establish that a multi-step salary schedule proposal which favors the more senior members of the bargaining unit - along the lines of Exhibit A - is more reasonable and equitable, the arbitrator concludes that the Association has failed to provide sufficient justification for its salary schedule changes in the record of this proceeding.

For the above reasons, the undersigned determines that the City's final wage offer as well as its effective date offer are more reasonable under the statutory factors set forth in 111.70(4)(cm)7r.

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[4]While the City did produce external comparables to challenge the Association's wage position, it acknowledges that its comparability data are "all over the board," and that "there is no information about duties, terms and conditions of employment, etc." Thus it is very difficult to make public sector - or private sector - comparisons.

[5]In contrast, the undersigned does not agree with the City's argument that the Association's proposal for apprentice linemen does not include the requirement of successful completion of each school year and successful completion of the full program. She believes that there is no affirmative indication that the Association intended to drop these requirements which were included explicitly in the parties' 1994 - 1995 collective bargaining agreement.

AWARD

Based upon the record in this proceeding, including testimony, exhibits and arguments of the parties, the statutory factors set forth in Section 111.70(4)(cm)7, 7g, and 7r of MERA, and for the reasons discussed above, the arbitrator selects the final offer of the City and directs that it be incorporated without modification together with all the stipulations of the parties into the parties January 1, 1996 through December 31, 1997 collective bargaining agreement.

Madison, Wisconsin
May 21, 1997

S/ JUNE MILLER WEISBERGER
June Miller Weisberger
Arbitrator