

OCT 22 1997

INITIATION OF ARBITRATION

City of New Lisbon
Case 8 No. 52439
INT/ARB-7609
Decision No. 28981-A

When the parties to the arbitration were unable to reach agreement during the initial collective bargaining negotiation on the issues presented, a petition was filed with the Wisconsin Employment Relations Commission (WERC) requesting the Commission to initiate arbitration pursuant to Section 111.70(4) (c.m.) 6 & 7 of the Municipal Employment Relations Act. The issues were matters affecting wages, hours, and conditions of employment of all employees of the City of New Lisbon. William G. Callow was appointed as the arbitrator, after selection by the parties, to issue a final and binding award, pursuant to Section 111.70(4) (c.m.) 6 & 7. By mutual agreement the parties met with the Arbitrator Wednesday, June 4, 1997 at "Westland Savings" in the City of New Lisbon. A mutual understanding was reached concerning a briefing schedule. The parties waived the 30-day time limit for the Arbitration Decision. The final offers were filed. After the briefs were filed the Arbitrator observed an apparent mathematical error in the Union brief and notified the Union and City representatives of this problem. The City and the Union addressed this problem and exchanged letters copying the Arbitrator. The last correspondence on this issue was received by the Arbitrator October 13, 1997. The Arbitrator proceeded to determine which party's final offer will be incorporated into the agreement commencing January 1, 1995.

SPECIFIC ISSUES AT IMPASSE

The City and the Union recognize six issues in dispute and identifies them as follows.

1. Revision of Article 1, Paragraph B -- Bargaining Unit Work.

"Supervisory, managerial, executive, confidential, and professional employees shall not perform bargaining unit work except in an emergency or to train employees. Notwithstanding the foregoing, it is understood and agreed the City Supervisor, except in the event of layoff of a bargaining unit employee(s) may continue to work as in the past. There shall be no subcontracting of bargaining unit work that would result in the layoff or reduction of hours of any bargaining unit employee(s)."

The City proposes to eliminate the phrase "except in the event of layoff of any bargaining unit employee(s)." The Union offer submits no alternative to the existing language of the Collective Bargaining Agreement.

2. Elimination of the Job Title "Utility Clerk" from the Collective Bargaining

Agreement. The City's offer calls for elimination of this job title. The Union submits no alternative to the present language of the Collective Bargaining Agreement.

3. Wage Rate Increases for 1995, 1996, 1997. The City proposes across the

board wage rate increases of 3.5% for 1995, 3.75% for 1996, and 4.0% for 1997. This proposal produces a total wage increase over the three year period of 11.25%. The Union proposal calls for a wage increase of 4.0% for 1995, 4.0% for 1996, and no increase for 1997. This proposal produces a total wage increase of 8% over the three year period.

4. Revise the Language in Article 15 -- Holidays. The City proposes to

replace the half day holidays for Good Friday and Christmas Eve with a floating one day holiday. The Union submits no alternative to the present contract language.

5. Revision of Article 16, Paragraph B -- Vacation Schedule. The City

approves vacation schedules and requested changes to assure minimum acceptable staffing so that an acceptable number of employees are available to keep the City departments operational.

Requests must be made by March 1. Employees are permitted to schedule vacation time in day or half day increments. All vacation earned must be taken within the calendar year following the year in which it is earned. Employees shall be paid for vacation time not taken. The City proposes elimination of the last line dealing with vacation time not taken. The Union submits no proposal concerning the existing contract agreement.

6. Restructuring of Article 13 -- Retirement. The City proposes to maintain the language of the existing contract, modifying only the portion of the contract dealing with the amount of the City's contribution to the employees I.R.A. accounts. The City proposes having those contributions match the City's proposed percentage of employees wage increase. The City acknowledges the Union's proposal that contribution for I.R.A. be eliminated as soon as the City employees can be brought into the Wisconsin Retirement System (1998) by agreeing to apply for admission to the Wisconsin Retirement System if the cost to the City is no more than the City's proposed percentage wage increase and that the City would not be obliged to fund the costs of prior service credit.

The Union proposes an amendment to the Employment Contract that would result in the City's entry into the Wisconsin Retirement System in lieu of contributions to I.R.A. programs and that the City pay the employers share and all but 3% of the employees share of the current costs, with full prior service credits being paid for by the City.

STATUTORY CRITERIA

This interest arbitration was requested prior to July 29, 1995 and therefore the provisions of the 1995 Wisconsin Act 27 do not apply. The factors or criteria to be considered by the Arbitrator are as follows:

- (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 wage, hours, and conditions of employment of the Municipal employees involved in the arbitration proceedings with wages, hours, and conditions of employment of employees performing similar services.
- (e) Comparison of wage, hours, and conditions of employment of Municipal employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- (f) 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 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 compensation, vacation, holidays and excused time, insurance and pensions, medical and hospital 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.

It is noted that no changes in circumstances during the pendency of these proceeds has been alleged to exist by either party. It is also noted 5 employees are in the bargaining unit.

PETITIONER UNION: ARGUMENT

The Union urges the Arbitrator to limit the comparable communities to those

communities that have negotiated an employment contract with a Union representing Municipal employees.

Therefore the Union has limited its comparables to such communities. The Union lists communities located in central Wisconsin that are in Juneau County or in a county contiguous to Juneau County. New Lisbon is in Juneau County. The Union argues far-flung communities are not relevant comparables; that geographic proximity is reflective of the existence of a common labor market. The Union also challenges the reliability of the City's data because it is not the best evidence in the absence of the actual labor agreement. The Union has provided copies of labor agreements reached by their comparable communities. The Union argues the size of the municipalities used as comparables are more like New Lisbon than those cities identified as comparables by the City. This disparity is also noticeable when comparing full value and taxes paid, argues the Union. When comparing cities the Union argues that New Lisbon lags "far behind" their comparables in wages paid. The Union notes this is particularly obvious when comparing the wages of street workers. The same result is shown when comparing the one New Lisbon Lineman to the lineworkers in the comparable communities. The Union acknowledges the Sewer/Water employee is paid comparable with employees similarly designated but argues that the New Lisbon employee has greater responsibility. The Union argues in summary that New Lisbon workers receive significantly less money than their chosen comparables.

The Union urges the Arbitrator to recognize that in other arbitrations it is well recognized that a significant wage increase is warranted to accommodate the necessary catch up in wages. The Union recognizes the catch up requested only applies to 1995 and 1996 wages. (A trade off is submitted for 1997 as it involves the expense of entry into the Wisconsin Retirement System and significantly alters the long existing "status quo" concerning retirement

benefits. Entry in the Wisconsin Retirement System is not available to New Lisbon for 1997.) It appears the Union does not ask for a wage increase in 1997 as an inducement to move the City to join the Wisconsin Retirement System which will involve great expense to the City for to join will require all City employees be funded by New Lisbon.

The Union appears to recognize that the most significant difference between the Union's proposal and the City's proposal is the issue of a change from an I.R.A. contribution to entry into the Wisconsin Retirement System (WRS) while both parties recognize the desirability of entering the WRS, the economics of the change are expensive.

The Union argues the I.R.A. program is only ten years old and has not developed a very significant pension. Many of the City's employed persons have been with the City many years -- one as much as 44 years. While entry into the WRS will improve the pension program, it is necessary to acquire prior service credits to effectively benefit the long term employees. The purchase of prior service credits must under the rules of the WRS be paid by the municipality. The Union also argues the WRS provides disability benefits in the sense that a disabled worker can receive benefits even though the worker has not reached age 65. Generally WRS only pays pension benefits to retirees who have reached the age of 65 years. Also an employee must be in the WRS for 5 years before the disability provision is activated. Recognizing the urgency of entry into the WRS the Union forgoes the 4% increase in wages for 1997 and this waiver of wages induces a corresponding savings of social security payment. All together this produces a savings to the City of \$5,149.98 per year assuming the employees never "catch up" this lost 1997 wage increase. Since the I.R.A. payment would no longer be a cost to the City, that sum of money, approximately \$11,000 would be available for WRS premiums. Thus one wage savings, the social security savings, and the absence of the payment into an I.R.A. account would total \$21,274.46. The Union argues this is a generous employee

contribution to the annual cost of the City for WRS premiums. While the Union recognizes their bargaining unit has only 5 employees, New Lisbon's entry into the WRS requires all employees be brought into the program and the non-union employees would involve the City in expense that only indirectly involves the Union. The Union recognizes that only 59.5% of the cost of the prior service credits will be chargeable to members of the bargaining unit. The Union argues that 59.5% of the \$36,519.72 annual cost of prior service credit is only \$21,729.23. Thus the Union argues the City's annual additional expense for the bargaining units prior service credit is \$9,851.27. Since wages have been low the Union says this is a fair expense to affect a "catch up".

The Union recognizes the City agrees to join the WRS but will only pay the City's (employers) share of the premium. The Union argues the waiver of the I.R.A. payment for 1998 of 7.7% of wages and if the City only pays 4.8% of wages to WRS; this would amount to a 2.9% reduction in benefits to the employee members of the bargaining unit.

UNION'S COMMENTS REGARDING OTHER ISSUES

The Union argues that it is inappropriate for the City to eliminate the Utility Clerk position. The Union argues that this involves removal of a position from the bargaining unit and is exclusively within the jurisdiction of the WERC. The Union questions the propriety of the City raising the issue of "use it or lose it" regarding the half day holiday vacation time. The Union argues this is inappropriate for an interest arbitration and should be resolved by voluntary negotiation.

In summary the Union recognizes the "key" issue is the matter of retirement and the entry into the WRA along with the funding of the cost of entry and the cost of funding prior service credit.

The Union concludes its final offer more closely adheres to the statutory criteria contained in Section 111.70(4) (c.m.) 7 Wis. Stat. and requests the Arbitrator order the inclusion of the Union's final offer in the 1995-1997 labor contract.

THE CITY'S ARGUMENT

The City's external comparable communities are a mixture of represented and non-represented employees. The City acknowledges that the City and the Union have presented comparables with significant disparity in population comparability. The City notes the average population of their comparables is 1290 persons and the Union's comparables 4142 persons. New Lisbon's population is 1499. The City notes the Union comparables are more urban than New Lisbon. The City elects to compare the member communities of the Western Wisconsin Municipal Power Group created by Wis. Stat. 66.073. The communities share a common interest by providing utility service to their individual communities as does New Lisbon. The communities, the City argues, don't have extensive public works departments.

The City argues its goal in eliminating the contract phrase "except in the event of layoff of any bargaining unit employee(s)" is to eliminate friction that developed in the past when a supervisor performed a 10 minute clean up of the power station lavatory. The City notes it has but 5 employees in the bargaining unit and none are or are expected to be laid off because there are so few employees.

The City argues that the elimination of the "Utility Clerk" from the Collective Bargaining Agreement is simply a recognition that this position will never be filled because the duties originally performed by this position are now merged into the duties of the Administrative Assistant.

The City argues their proposed wage offer for 1995 of 3.5%, 3.75% for 1996,

and 4.0% for 1997 for a combined wage increase of 11.25% for the 3 year period is a fair and comparable wage increase. It notes that their total increase is substantially more than the 4.0% for 1995, 4.0% for 1996, and 0% for 1997 proposed by the Union.

The City argues that giving a "floating" holiday in lieu of two scheduled half day holidays (Good Friday and Christmas Eve) would give the employees more flexibility in scheduling time off and would avoid a potential problem of religious issues. Six of the City's comparables have a similar provision. The issue of whether the employee compensation for unused vacation would be paid is fuzzy. There appears to be some indication that the City has changed its position concerning compensation for unused vacation. While the "use it or lose it" provision is clear; the issue of payment for any unused vacation time appears to be unspecified in the City's final proposal. However the City's brief clearly indicates the City declines to pay compensation in lieu of unused vacation time. There is no recorded transcript of the hearing for guidance on this issue. Thus, this arbitrator can reach no definitive decision on this issue of compensation.

The retirement issue is the most significant from a cost point of view. The City has indicated a willingness to take all of the New Lisbon employees into the WRS but set conditions that are unacceptable to the Union. The Union proposal calls for the City to pay all but 3% of the employees share. This amount together with the City's share of the current WRS premium would be 8% of wages.

At the hearing the City said it would not pay the premium for prior service credits and would not pay the employees share of the premium. The statute governing the WRS requires that all prior service credit premiums must be paid for by the municipality. Since the City refuses to pay for prior service credits the breach between the parties is very substantive. The City also refuses to pay the employees current premiums. The City declares it will not pay

WRS current premiums that exceed the offered wage increase for 1995, 1996, 1997. (It is doubtful that this position is significant because the earliest the City could enter WRS would be 1998 and that application would have to occur by November 15, 1997.)

While the Union identifies the cost to the City for entry into WRS without prior service credits as a relatively modest sum, the City notes that entry into the WRS requires that all employees be brought into the system. The City argues the Union's final offer functionally requires the City to fund all of the New Lisbon employees prior service credits and all but 3% of the bargaining unit employees annual current premiums. The City presumes inferentially that unrepresented employees would have to be treated the same way. The City acknowledges it would have 40 years to pay for the prior service credits and would retire that obligation by making annual principal payments and paying 8% annual interest on the unpaid balance. An actuarial study in 1994 showed the City would have to pay \$437,690 to fund prior credits. The monthly payment on the WRS obligation would be \$3,038.51. The annual premium totals \$36,462.12. By the year 2037 the City would have paid \$436,999.97 in principal and \$1,021,492.38 in interest on the loan funding past service credits. Thus, funding past service credits for the 10 employees would be \$1,458,492.35. In addition to the annual prior service costs the City would be obliged to pay 5% of payroll for current premiums plus all but 3% of the employees cost. Since total employee wages are projected to be \$137,051.53, and the City's portion is 5%, the premium for the City would be \$6,852.58 and assuming an employees contribution required by WRS to be 5% of wages with any amount over 3% being paid by the City, the City's portion of the employees premium being 3.4% or \$4,659.75. Thus, the City argues, it would be required to assume an annual expense of \$47,974.45 and the City notes the Union's claim to be giving up \$27,431.06 in wages and benefits is not a "wash" as claimed by the Union. The City's proposal would cost the City \$10,950.86 in WRS premiums. The City

notes the rules of the WRS do not require the purchase of prior service credits.

The statutory consideration concerning the consumer prices for goods and services appears to be more in line with the City's proposal, argues the City, but the City also notes the CPI has been very stable and is of little importance.

UNION'S REBUTTLE

The issue of comparables prompts the Union to argue that it is not absolute size but is relative size that is more determinative of appropriateness of comparison. Thus the Union concludes recognition of this standard and the reliability of the evidence warrant the arbitrator giving greater weight to the Union's comparables.

The issue of modification of the language in the contract dealing with bargaining unit work prompt the Union to note that this language has not created any significant problem, and that the retention of the language is an important protection against erosion of the bargaining unit. The Union reminds the Arbitrator the existing language came from voluntary negotiations.

The Union rejects the City's conclusion the employees would still be able to negotiate Christmas Eve and Good Friday time off because the City would limit the number of employees who could take this time off because of the need to cover the days work. The Union notes the religious holiday provision is not a religious problem because the time off is not specified as religious time off.

The Union again insists the City's final offer doesn't eliminate payment for unused vacation even though the City argues it does. The Union argues the City could effectively eliminate reasonably selected vacation time by claiming the employee's presence was essential to the City's services.

On the issue of retirement the Union again urges the Arbitrator to ignore the

City's costs in petitioning for admission to the WRS that involve employees other than those in the bargaining unit. The Union argues "the City has a completely free hand to determine if and how to structure wages and benefits for the 5 non-bargaining unit employees who will benefit from entrance into the WRS and the inclusion of prior service credits costs." The Union recognizes some increased cost to the City for WRS premiums but justifies this as "catch up" compensation.

CITY'S REPLY BRIEF

The City repeats the argument that the costs to the City for the coverage in WRS demanded by the Union are unbearable and amount to double retirement benefits because of the I.R.A. program in existence since 1988. The City says that some employees have worked more than 40 years, 20 years, and 18 years and have negotiated reasonable compensation for those years. The City says it is unconscionable to require the City to buy a retirement program that covers such an extensive period of time on the eve of the employees retirement since at least one of the employees is eligible to retire immediately.

The City notes again that the City's wage offer is better than that proposed by the Union.

The City analyzes the Union's cost to the City figures and the Union's reduced demands to accommodate the employees surrender of benefits to justify the burden placed on the City incident to entry into the WRS. The City notes the wage savings to the City but the Union's willingness to forego a wage increase in 1997 is only a one year surrender of wage increase. (The Union has argued that there would probably be no catch up for this wage waiver and therefore the savings would carry forward for the 40 year period). The City also emphasizes that the Union's argument that the increase in the City's costs is only 59.5% allocated to the bargaining employees is unrealistic because the WRS requires all employees to

be covered and entry into WRS simply adds to the costs already identified.

The City urges the Arbitrator to recognize there is no statutory direction to the Arbitrator limiting the comparables to organized employees.

Regarding the other issue the City simply repeats the arguments raised in their original brief.

AWARD

This arbitrator agrees with the parties that the principal issue presented is the issue of the entry into the Wisconsin Retirement System. While both parties recognize the desirability of the City joining the WRS the terms upon which entry would occur frustrate an agreement and produces this interest arbitration.

While the comparables selected by the parties are informative concerning the issues other than entry into the WRS, the comparables offer little guidance in this primary and difficult issue. The comparables tend to show that New Lisbon wages are generally lower than other cities. However the services rendered in this small city exceed those offered by other cities. The small work force makes each employee singularly valuable to the functioning of the City. The wages issue presents difficulties because the 4% Union offer, while higher for 1995 and 1996, provides for no wage increase in 1997. It would appear to this arbitrator that the Union's wage proposal for 1995 and 1996 would have been appropriate. I would also conclude the City's proposal of 4% for 1997 was appropriate. However I am unable to select a portion of each final offer. Therefore the comparables are persuasive of a conclusion not available to the arbitrator.

The lesser issues also have mixed merits. While the removal of the Utility Clerk

from the bargaining unit may be appropriate for WERC consideration I must comment on this raised issue. I conclude that the City's desire to eliminate the position is reasonable if it never intends to fill the position, however my comment is only to suggest that I don't find this item of dispute to have much weight in my choice of a final offer.

The holiday issue is also of little weight. It seems the present holiday arrangement has worked well since I've heard no argument that the Good Friday and Christmas Eve days holiday provision have produced difficulties in the operation of the City. Since the present contract was negotiated I would be disinclined to give much weight to the City's request for a change.

The vacation issue was negotiated at earlier contract considerations and I have noted that the matter of compensation for unused vacation appears to be undefined. I do not give much weight to this issue in the ultimate decision on choice of final offers.

The I.R.A. issue follows the wage issue and therefore there is little difference between the City and Union position, other than their differences in the wage proposal. Thus, little weight is given to this issue.

The compelling issue is the terms of the proposed entry into the WRS.

It is obvious that during the many years since members of the Union have been City employees little consideration was given to the issue of retirement benefits. Approximately 10 years ago pension retirement benefits were considered. A program was put in place providing I.R.A. contributions by the City. Wages were negotiated during these ten years and the parties informed me that this is the first interest arbitration. Accordingly I conclude there was a meeting of the minds of the City representatives and its employees.

The parties appear to agree that the City of New Lisbon should join the WRS. Because of the great many years of service of at least 3 of the employees the financial burden

of prior service credits is significant.

Because the City must pay for prior service credits and all employees must be included, it appears the interest and welfare of the public and the financial ability of the City to meet the costs must be carefully analyzed. If the City had employees with relatively low years of employment the problem would be minimized. However, 3 out of the 5 employees have exceedingly long terms of employment. One may be on the threshold of eligibility for retirement. The fact that an I.R.A. program has been put in place and has existed for ten years results in a significant duplication of retirement benefits if prior service credits are bought by the City. While it may be argued that wages were at the low end of the comparables, it doesn't justify a conclusion the City has so under compensated its employees over the years that it should be burdened for the next 40 years paying for future pension compensation for past work.

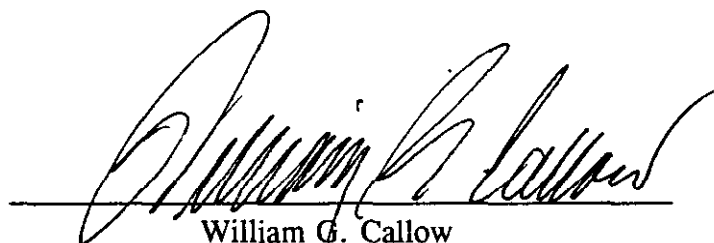
While it is troubling that choosing the City's final offer would deny pension benefits that could have been earned during the life of the WRS, which is longer than the employment service of the oldest City employee, it is more troubling that failure to enter the WRS at this time denies the newer employees the opportunity to build a retirement program.

New Lisbon is a rural city with a population of 1499. The financial statement of the City shows its revenues are modest and those revenues are consumed by the expenditures necessary to the operation of the City. The City and its employees have addressed the issues of wages and pensions. An agreement on compensation has been reached over the years. The issue of retirement pension funds was considered 10 years ago and the City agreed to contribute to an I.R.A. account for the bargaining unit employees. Generally the citizens served by municipal employees are expected to be responsible for payment for those services. In this arbitration the arbitrator is presented with the proposition that pension benefits for employees who have served the community should be borne by citizens who had for the most part no

service relationship with the senior employees. In essence the proposition proposes that future generations pay for services rendered to past generations. The circumstances of this arbitration are unique in that a majority of the employees seeking to have the City fund prior service credits are approaching eligibility for retirement or have been in Municipal service for many years. Thus, the City is asked to fund their retirement by paying prior service credit expenses as well as funding future pension benefits for the employees who will be replacing the retiring employees. This conclusion is inescapable because the City would be paying for prior service credits over the next forty years. This is an unreasonable burden. The City and its employees set up an acceptable retirement I.R.A. ten years ago. The City's objection to double funding retirement for those and preceding years is compelling.

Based on the foregoing commentary, this Arbitrator selects the final offer of the City and directs that it be incorporated without modification together with any stipulations of the parties.

Respectfully submitted October 20, 1997

A handwritten signature in black ink, appearing to read "William G. Callow", written over a horizontal line.

William G. Callow
Arbitrator