
In the matter of the Petition of

City of Eau Claire :

To Initiate Arbitration
Between Said Petitioner and

Case 225
No 54200 INT/ARB-7989
Decision No. 28982-A

Communication Workers of America
Local 4046

Appearances: Weld, Riley, Prenn & Ricci by Mr. Stephen L. Weld, for the City. Ms. Judy K Robertson, CWA Representative, and Mr Kevin Conlon, District Counsel, for the Union.

By its Order of February 13, 1997 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award, pursuant to Sec 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of the [City] or the total final offer of the [Union].

A hearing was held on May 13, 1997 at Eau Claire, Wisconsin. No transcript of the proceeding was made The parties had the opportunity to present evidence, testimony and arguments. Both parties submitted an initial brief, and the City submitted a reply brief. The Union opted not to submit a reply brief. The record was completed on August 22, 1997.

The parties are attempting to reach a 1997-1998 Agreement to succeed the 1995-1996 Agreement. The Agreements are fiscal year agreements running from July 1 through June 30. There are several unresolved issues

In its final offer the City proposes the following

1) Revise the language of Article VIII-Seniority, Section 1. The existing language reads:

> In the event that the City reduces the number of employees covered by this agreement, seniority within a classification will determine who will be laid off The last employee hired shall be the first person laid off and the person with the most seniority shall be the last person to be laid off. The last employee to be laid off within a classification will be the first employee to be rehired.

The City proposes to revise the second sentence of the above language to read:

> The last employee hired into the classification shall be the first person laid off and the person with the most seniority in the classification shall be the last person to be laid off Employees laid off shall have the right to bump the least senior person in a lower paying classification pursuant to Section 2.

2) Change the definition of "employee" and "employees" throughout the Agreement [the references are too numerous to include here] to "Telecommunicators and Communications Center Supervisors." The purpose of doing this is to differentiate these classifications from the new classification of "Communications Center Aides". The effect of the change, and the City's intent, is that Aides not receive any fringe benefits.

3) Adjust wages by 3% effective July 1, 1996 and 3% effective July 1, 1997.

4) Add the following footnote to Appendix I- Pay Plan:

> The parties agree that the Communications Center Aide positions shall be non-benefit paying positions with the exception of the Wisconsin Retirement System contributions required by statute.

In its final offer, the Union proposes the following:

1) Add to Article II Section 1 b "Communications Center Supervisor and Communications Center Aid (sic)" [this item is also included in the parties' list of stipulated agreements].

2) Add the following Section 5 to Article XXI-Safety:

> The City will provide a minimum of twenty four (24) hours per year per employee in training above and beyond any state mandates. This training will be in the form of staff meetings or specialized in-house training and can be accomplished as the Communications Center Director deems necessary.

3) Add the following Section 6 to Article VII - Seniority:

> All part time employee(s) shall earn benefits and accrue seniority prorated as follows:

Up to twenty (20) hours shall receive 50% of all seniority and benefits.

Up to thirty one (31) hours shall receive 75% if (sic) all seniority and benefits.

Above thirty one (31) hours shall receive 100% of all seniority and benefits.

Current benefits shall be prorated based on the previous six month of employment

4) The existing Article XIII-Work Schedule, Section 4 is as follows.

Section 4. Relief Telecommunicator and Communication Center Supervisor Work Schedule.

A. There shall be three Relief shifts, one to be normally scheduled for days, one normally scheduled to be a swing shift, and the third to be normally scheduled for evenings. The relief operators shall rotate these shifts every 28 days

B. The normal work schedule for Relief positions shall consist of five days on, two days off, followed by five days on, three days off.

C. Work schedules and days off for Relief positions may be changed by management if required by staffing needs If the employee receives 24 hours notice prior to such change, the hours shall be worked at regular pay. If the notice is less than 24 hours, each employee shall receive time-and-one-half pay for hours worked outside those normally scheduled.

The Union proposes the following changes to Section 4:

"Any full-time employee who voluntarily changes their hours to cover a different shift shall receive $.50 per hour pay increase for that shift worked. Remove any reference to 'RELIEF TELECOMMUNICATOR' "

5) "Pay increase of 4% for the first year. 2% July 1, 1997-December 31, 1997. 2% January 1, 1998-June 30, 1998. Pay to accumulate from 7-1-96 to present."

Facts and Discussion:

The statute requires the arbitrator to "consider" factors enumerated there. The parties did not present evidence or arguments with respect to several of these factors: 7r (a) the lawful authority of the municipal employer, 7r(b) stipulations of the parties, 7r(f) comparisons of wages, hours and conditions of employment with "employes in private employment in the same community and in comparable communities;" 7r(i) changes in circumstances during the pendency of the arbitration. The remaining factors are considered below

Factor 7 is entitled "Factor given greatest weight". It states

> In making any decision ...the arbitrator...shall consider and shall 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.

In its arguments, the Union does not address the greatest weight factor. The City argues that this factor supports its position. The City notes that the employees in the bargaining unit work in the Communications Center which is funded 70% by Eau Claire County, and 30% by the City, and "counties are subject to a tax levy limit enacted by the State Legislature in 1993." While acknowledging that the amounts in dispute in this case constitute a very small fraction of the City or County budget, the City argues:

> ... the fiscal challenges faced by both the City and County are real and not insignificant. As a result, every aspect of the City and County budgets are given close scrutiny...The County's fiscal constraints are real. The County has approved funding a 3% wage increase for all of its other represented employees. It should not be forced to do more...There is obvious concern where one municipality (the City) is facing major reductions in state funding and the other (the County) is financially constricted by a statutory limit on its tax levy at the same time it is facing major new expenditures

City Finance Director Noland testified that the County is committed to funding 70% of the Center, but it is the County, not the City which decides the level of funding for the

Center. She does not know if the County will continue the funding at its present level, and if it does not do so, there may be a need for the City to cut its costs further.

The arbitrator understands the City's arguments which urge fiscal restraint in a situation where both affected units of government are feeling great financial pressures A literal reading of the "greatest weight" factor is that the arbitrator must give greatest weight to "any state law...which places limitation on expenditures that may be made or revenues that may be collected by a municipal employer..." The arbitrator does not view the tax levy limit imposed on counties as an enactment which places limitations on the expenditures which the County may make to finance the Communications Center , or which limits the revenues which it may collect there. For this reason, the arbitrator does not view the "greatest weight" factor as favoring either party's position.

Next the arbitrator must consider (7g), the "factor given greater weight":

> In making any decision...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 [discussed below]

The City argues that the "greater weight" factor favors its position:

> Eau Claire has enjoyed tremendous growth in recent years...growth places increased demand on city services [and] it results in reduction of the City's share of state 'shared revenue monies.' As a result, Eau Claire has been facing, and will continue to face, loss of state shared revenue monies which requires that a greater portion of the City budget must be derived from local property taxes at the same time that the growth requires expansion of existing municipal services (also paid by property tax increases).

The City cites the loss of $ 456,000 in 1996 and $ 500,000 in 1997 in state shared revenues. As a consequence, it argues, the City increased its tax levy 10% in 1995 and 16% in 1996. In 1997 the City's equalized value rose, but the result of the loss of state shared revenues was a shortfall of $100,000 This comes at a time when the City "is faced with the need to finance major street improvements" because of the declining condition of City streets.

The City argues further:

> In the 1996 budget, in partial response to the loss of

> shared revenues, the City cut 4.4 positions city-wide [but] .. the Council approved one new fulltime telecommunicator position as well as the creation of two part-time Communication Center Aide positions (to answer non-emergency calls).

The City argues that at the same time that these problems have been occurring, wage and pay levels in the Chippewa Valley, which support the taxpayers who have to pay the taxes, remain relatively low in relation to "comparable cities or metropolitan areas within the State." City exhibits show that among metropolitan areas in the state, Eau Claire ranked last in average annual pay in 1993, 1994 and 1995. The City argues further that the wage increases which it has offered this bargaining unit are in keeping with those given by the cities,counties and school districts in the immediate Eau Claire area The City concludes, "there is simply no local support for the Union's demand of a 4% wage increase in 1996 and a 2%/2% split in 1997."

The Union takes the position that despite the City's arguments, it is clear that the City can "well ...afford the Union's fair and final offer. The modest 4% wage increase proposed is certainly a reasonable amount and well within the City's ability to pay."

The City responds that it is not claiming an inability to pay. It argues. "Instead, in light of the relatively high pay of the telecommunicators and the need to responsibly allocate available resources without placing additional burden on City taxpayers, the City is making an "unwillingness to pay" argument."

The parties acknowledge that the cost difference between their final wage offers is quite small, totaling just over $11,000. The City admittedly has the ability to pay the Union's final offer, but under the circumstances believes it should not have to do so.

The arbitrator has concluded, based upon the evidence before him that the "greater weight" factor favors the City's final offer more than the Union's.

The remaining statutory factors which must be considered are. (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) and (e) comparisons with "wages, hours and conditions of employment "of other employes performing similar services," and "other employes generally in public employment in the same community and in comparable communities"; (g) cost of living; (h) overall compensation; and (j) "such other factors ..which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining..." These factors are considered by the arbitrator, below.

At the hearing the parties did not attempt to agree upon which other units of government were relevant external comparables. The City has opted to use communities which have been used by three previous arbitrators in cases involving

the City's police and public works employees Appleton, Beloit, Chippewa Falls, Fond du Lac, Janesville, LaCrosse, Manitowoc, Menomonie, Oshkosh, Rice Lake, Sheboygan, Stevens Point, Superior, Wausau and Wisconsin Rapids. The arbitrator agrees with the City that the Union's proposed use of only two of these external comparables is not sufficient

With respect to wages, these external comparables demonstrate that in 1996, 11 of the 15 gave wage increases of 3% or less Only one, Sheboygan, gave an increase which was at or above 4% for the year Three comparables had increases between 3 and 4%. These comparisons clearly favor the City's 3% offer more than the Union's 4% offer, for 1996.

For 1997, 9 of the 13 comparables which have reached settlements have increases of 3% or less. Only one, Sheboygan, gave an increase which was at or above 4%. Two comparables had increases between 3 and 4%, and one comparable's increases are not readily determined on a percentage basis Both parties' final offers for 1997 are supported by the external comparisons (City: 3%; Union 2%, with 2% additional 1/1/98)). Thirteen of the fifteen comparables have not yet settled for 1998. The two that settled have 3% increases.

Both parties final offers result in 6% increases for 1996 and 1997 combined, which is at or below the increases given by 8 of the 13 comparables which have settled for both years. Four comparables have greater increases for the two year period, and one is not clear in percentage terms. Thus, both proposals are reasonable when looked at over two years. What distinguishes the two final offers is that the Union's proposal has a higher lift (4%) in the first year than the City's final offer (3%), and there is only one comparable unit, Sheboygan, which has a lift of that magnitude. Thus, the City's final wage offer is closer to what the comparables have offered than is the Union's final wage offer, in percentage terms.

Employer Exhibit #32 shows comparisons of Telecommunicators' maximum wage rates. Looking at the 13 comparables which have settled for both 1996 and 1997, the arbitrator has compared Eau Claire to the median of the comparables. For 1996 the City's offer is $ .44 above the median of $ 13.63, while the Union's offer is $ .57 above the median. For 1997, both parties' final offers are $.57 above the $ 14.49 median of the comparables. This analysis slightly favors the City's final offer more than the Union's final offer. It is noteworthy also that only three of the comparables have higher hourly rates than are paid to the bargaining unit, and none of them is geographically located in the Eau Claire vicinity (Appleton, Fond du Lac and Sheboygan).

Ten of the comparables which have settled for both 1996 and 1997 have Lead Telecommunicator positions. Eau Claire pays maximum hourly rates which are the highest among all of the comparables for these positions.

The Union points to the increased level of job responsibilities of bargaining unit

employees, in arguing for implementation of its final wage offer It characterizes the bargaining unit as requiring "specialized training, increased independent judgment and higher levels of responsibility."

The City does not disagree with the Union that employees' job responsibilities have increased substantially. It argues:

> However, there simply is no evidence to prove that comparable employees in other communities are not assuming the same or a similar level of job responsibilities as has been assumed by telecommunications employees in the City of Eau Claire

The arbitrator has no basis for knowing whether the skills and responsibilities of the employees of the bargaining unit are greater than those of similar employees in the comparable bargaining units. He thus has no basis for altering his conclusion, above, that the external comparables support the City's final wage offer more than the Union's final wage offer.

With respect to internal comparability the record demonstrates that among the City's unionized employees, for 1996-97, the police patrol (78 full time employees), the public works employees (126) and transit employees (21) have settled for 3.0% Only the firefighters unit (77) has not settled. The 1996-97 internal settlements clearly favor the City's final wage offer more than the Union's final wage offer. There is no pattern established as yet for 1997-98. Only one of the units has settled. Public works employees settled for 3.0%. With respect to its non-unionized employees, the City has given 3 0% increases to all of them in both 1996-97 and 1997-98.

The Union argues that the employees of the bargaining unit have been given new duties, requiring special training. It argues that in past years other employees, in other bargaining units, who were given new duties received higher percentage increases than employees generally received. The Union's reference appears to be the firefighters. The City argues:

> .. What the Union fails to acknowledge is that the City has paid for all training required to achieve telecommunicator certification status and all telecommunicators are <u>required</u> by statute to be certified. On the other hand, firefighters can elect to become certified as EMT's or remain uncertified. Those firefighters with EMT certification are provided a higher wage rate than those who remain uncertified.

The internal comparables support the City's wage offer more than the Union's wage offer, and the the Union's argument about extra pay for new duties does not persuade the arbitrator to reach a different conclusion

With respect to the increase in cost of living, the City suggests correctly that comparison of the parties' total final offers should be measured against the change in the cost of living index during the twelve-month period preceding the first year of the new Agreement. That would be the period from July, 1995 through June, 1996. Employer's Exhibit #23 does not enable one to determine the cost of living increase for that entire period. One can determine that the average monthly increase from January, 1996 through June, 1996 was 3.1%.

The City has provided costings for both parties' total packages for 1996-97 The City's total package increase is 3 59%, while the Union's is 4 51% Both appear to be higher than the increase in the cost of living for the prior year Thus, there is more justification for the City's final offer than the Union's since the City's final offer is closest to the change in the cost of living.

The Union also proposes that the City provide fringe benefits to part-time employees. The prior Agreement does not address fringe benefits for part-time employees because there were none in the bargaining unit. The parties have agreed to create a Communications Center Aide classification. The City's final offer includes language, quoted above, which makes clear that these are "non-benefit paying positions with the exception of the Wisconsin Retirement System contributions required by statute. The Union's final offer provides fringe benefits on a prorata basis, according to a formula (quoted above).

In arguing in support of its final offer, the Union states, "public employees, like private sector employees, deserve to be fully covered with the same benefits afforded to every full time employee." Moreover, it argues, the City's hiring of part-time employees "was to expressly circumvent payment of full-time benefits coverage "

Union President Clark testified that in 1995 he agreed with the City to use part-time Aides on a trial basis until there was a new Agreement. The City said they would not receive benefits. Clark responded that he would go along with the trial, but wouldn't allow part- time employees to work under the new Agreement without benefits. He testified that at the time he was not aware that there were "temporary" employees in the Police Department working without benefits who had been in that status for many years, and had he known, he wouldn't have agreed to the trial. On cross-examination Clark acknowledged that in the initial discussions, the City took the position that if the City had to pay benefits to the Aides, it would eliminate those positions.

The City's arguments on this issue are as follows:

..At a time when the City has, because of its budget

> crunch, been cutting positions elsewhere, it created the CC Aide classification [which]...was patterned after the Police Department's use of Community Service Officers (CSOs). In 1995, the police department lost four fulltime positions, two fulltime animal wardens and the two fulltime parking monitors. Their tasks are now performed by eight part-time CSO positions. The 1995 budget crunch within the Police Department was addressed by eliminating fulltime benefitted (sic) positions and replacing the employees with part-time non-benefitted (sic) positions...
>
> ...The CC Aides answer the non-emergency phone calls that come into the Center and handle minor paperwork, thereby easing the workload of the fulltime telecommunicators. The parties agreed to include the CC Aide positions in the bargaining unit. While the Union has consistently sought fringe benefits for those in the classification, the Employer has responded that, because of the marginal value of the CC Aides, fringe benefits would simply make the CC Aides too costly.
>
> Under the Employer offer, the part-time CC Aides will receive $ 8.17 / hour in 1996-97 and $ 8.42 / hour in 1997-98. In addition, 12.4% of their total wages is paid into the Wisconsin Retirement System. They are not minimum wage jobs.
>
> ...In addition to the CSOs the Police Department also employs part-time clericals who receive no fringe benefits.

The City argues further that if both Aides elected family health insurance coverage under the Union's final offer, the cost for 1997-98 would be $ 2,844.30 per employee, plus the cost of life insurance, paid holidays, vacation and sick leave.

The record contains information about how part-time employees are treated under the City's other collective bargaining agreements. The agreements for police, public works and firefighters have no provisions for part-time employees. The transit employees who are part-time are eligible for 50% of full-time fringe benefits, but not sick leave.

The City's non-unionized part-time employees receive prorated fringe benefits. The

City argues that these employees do not receive proration in the manner provided in the Union's final offer That is, the City argues, "an employee who works only 21 hours per week is not entitled to 75% of all benefits and an employee who works [32] hours per week is not entitled to 100% of all benefits " The City states, "Under the Union final offer, part-time employees in the telecommunications bargaining unit would receive fringe benefits which exceed those provided to part timers in all other organized and unorganized employee groups "

These internal comparisons partially support the Union's position. That is, there is an argument to be made, based upon what exists in some bargaining units and among non-unionized employees, that part-time employees should be given some fringe benefits. However, there is no support for the Union's specific final offer regarding fringe benefits for part-time employees. No justification is presented to indicate why the part-time employees of this bargaining unit should have more generous eligibility requirements for fringe benefits than any of the City's other part-time employees.

Most of the external comparables do not have a part-time Communication Center Aides classification. La Crosse does, and it provides benefits At least 10 of the other external comparables provide some level of benefits to part-time employees, although it does not appear that the benefits formula which the Union seeks in this proceeding is in effect elsewhere.

Generally speaking, the arbitrator favors paying prorated benefits to part-time employees who work half time or more. However, both the internal and external comparables favor the City's position more than the Union's because of the unusual formula which the Union is proposing.

The next issue to be analyzed is the Union's proposal to mandate "...a minimum of twenty-four (24) hours per year per employee in training above and beyond any state mandates."

The City argues that the Union has not shown a need for this proposal, nor has it offered any *quid pro quo* to compensate for the extra costs which such a proposal would entail. The City argues:

> ...The Union presented no evidence of situations in which the staff was unprepared or unable to meet their job responsibilities...New employees are sent to classes to become certified. Additional training is and has been provided to all telecommunicators...New employees may always need additional training above and beyond that required for initial certification, but whether all seasoned employees will need the same additional training, or whether 24 hours is the appropriate

> measure of additional training needed, is totally speculative. .
>
> ...
> The City's refusal to include a contractual mandate to provide a specific number of hours of training above and beyond the state requirements does not represent a refusal to adequately train its employees. It simply reflects the City's desire to maintain its management right to determine how much training is necessary and its reluctance to mandate unnecessary and duplicitous (sic) training "because the contract requires it."

The Union argues that additional training of employees is important, given their increased levels of responsibility and the vital function they have in dispatching personnel and equipment in emergency situations. In the Union's view it is in the interest and welfare of the public to have the additional training opportunities provided in the Union's final offer. The Union argues, "obviously, the importance of an employee being well trained in handling an emergency dispatch situation cannot be overemphasized. The City's final offer, however, evidently demonstrates that it feels otherwise."

Union witnesses Drath, and Chief Steward Wallace, testified at length about the changes at the Center and the increased kinds and levels of responsibilities of Telecommunicators, including the addition of EMT services and a "priority determinant response" system, which determines the kind and level of responses to emergency calls.

Wallace cited the need for mandated training as the Union proposes, in order "to allow employees to do their job better." He acknowledged that employees have received training, but under the present arrangements there is no assurance that training will continue to be given.

The arbitrator understands the need for very well trained Telecommunicators. Anyone who has used 911 services appreciates the importance of receiving prompt assistance of the right kind. Having said that, however, the fact remains that the Union has not shown persuasively that there is a need for more training than is now being given, and more importantly it has not shown why there should be mandated training of a particular number of hours above state requirements. It may well be that such additional training is desirable, and even essential, but the evidence in the record is insufficient to demonstrate that.

The last issue to be analyzed is the Union's proposal in its final offer that the City provide a 50 cents per hour additional payment to any employee who willingly works a

different shift. The Union argues that "this proposed change will serve to alleviate the need for additional and excessive overtime." Wallace testified that some one to three times per months, employees are asked to change shifts. If there are no volunteers, either the shift stays open, or it is posted as overtime. By paying the 50 cent premium, the City would encourage employees to volunteer to change shifts, Wallace testified, and would avoid having other employees work longer shifts and overtime.

In the arbitrator's opinion the Union has not adequately justified the need for this change Also, the arbitrator agrees with the City that the relationship between the Union's proposal and existing Article XIII, Section 4 is ambiguous. In its brief the City spends several pages illustrating the nature of the ambiguity, and the uncertainty about who would be paid the premium and under what conditions. (The City's arguments are not described here for sake of brevity and because this issue is not a determining factor in this case).

The arbitrator has made no mention of the change which the City proposes to make in Article VIII, Section 1 The parties made no mention of this provision in their presentations at the hearing, or in their arguments. Clearly, it is not viewed by them as a decisive factor in this arbitration, and the arbitrator has not considered it further.

The arbitrator is required by the statute to select one party's final offer in its entirety, based upon consideration of the statutory factors. The above analysis of the record and the parties' arguments makes it clear that there is more justification for selection of the City's final offer than the Union's final offer

Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD·

The City's final offer is selected.

Dated this 4th day of September, 1997 at Madison, Wisconsin

Edward B. Krinsky
Arbitrator