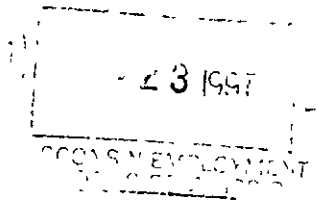
BEFORE THE ARBITRATOR



In the Matter of the Arbitration Between

WISCONSIN COUNCIL 40, LOCAL 3760
AFSCME, AFL-CIO

and

CITY OF MONROE

Case 31
No. 53750
Int/Arb-7908
Decision No. 29014-A

Appearances: For the Union — Thomas Larson, Staff Representative

For the City — Howard Goldberg, Esq. Brennan, Steil, Basting & MacDougall

Before: Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On March 18, 1997, the Wisconsin Employment Relations Commission, pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between AFSCME, Local 3760, hereinafter referred to as the Union and the City of Monroe, hereinafter referred to as the City. A hearing was held on May 21, 1997 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs. Those briefs have been received by the arbitrator. The arbitrator has reviewed the exhibits and briefs filed by the parties in reaching his decision.

ISSUES

The parties reached agreement on most of the items to be included in the successor agreement. All the tentative agreements are incorporated into this Award. The following are the outstanding issues.

The UNION OFFER:

Wages
1% across the Board increase effective 1/01/96
1% across the Board increase effective 1/01/97

Longevity
Effective July 1, 1996:

2% above base rate after 5 years of service
5% above base rate after 10 years of service
8% above base rate after 15 years of service
9% above base rate after 20 years of service

THE COUNTY OFFER:

Wages:

3% across the board increase effective 1/01/96
3% across the board increase effective 1/01/97

BACKGROUND

The City of Monroe has a population of just over 10,000. It is located in South Central Wisconsin in Monroe County. Most of the City's employees are covered by one of three collective bargaining agreements. The Police and the Police Dispatchers are the employees in the other two bargaining units. The employees involved in this dispute work in various Departments throughout the City. In 1996, the City took over the operation of the Water Utility. The employees of the Utility were then included in this bargaining unit. They were previously under a separate collective bargaining

agreement. The Agreement here will be the first agreement that specifically includes these employees and the other City employees in a single agreement. There are approximately 57 employees in the bargaining unit.

STATUTORY CRITERIA

The parties have not established their own procedure for resolving impasse over the terms for a new collective bargaining agreement. They have agreed to binding arbitration under the Municipal Employment Relations Act. Section 111.70(4)(cm)7 provides that an arbitrator consider the following in reaching a decision:

> 7. 'Factor given greatest weight.' In making any decision 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 the 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 7g then reads:

> 'Factor given greater weight'...The arbitrator shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

Section 7r sets forth the other factors an arbitrator must consider:

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 proceeding with the wages, hours and conditions of employment of other employees performing similar services.
e. 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 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 proceeding with the wages, hours and conditions of employment of other employees in the private employment in the same community and in comparable communities.
g. The average consumer prices of 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 hospitalization benefits, the continuity of 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.

APPROPRIATE COMPARABLES

This arbitration is the first time that these parties had to go to interest arbitration to resolve their dispute. An arbitration was held previously between the Water Utility and the Union. That arbitration occurred in 1992. The Utility was a Class C utility. The Union had asked the Arbitrator in that case to adopt certain other Class C utilities as the appropriate comparables. The Arbitrator concurred with the Union and adopted that list. That list included; Edgerton, Evansville, Fitchburg, Fort Atkinson, Lake Mills, Lancaster, Middleton, Milton, Monona, Mt. Horeb, Prairie du

Chien, Richland Center, Stoughton, Whitewater. It appears as though the Union contends that this same list should be utilized here.[1]

The City proposed a different list of comparables. It urges this Arbitrator to use Baraboo, Dodgeville, Edgerton, Evansville, Fort Atkinson, Hartford, Lake Mills, Mineral Point, Portage, Prairie du Chien, Richland Center, Shullsburg, Waupun and Whitewater as comparables. It maintains that the Water Utility arbitration does not provide any precedent in this case, because the Decision in that case was "primarily focused on the various DNR classifications of Water utilities."

Where the parties have agreed upon a list of comparables, an arbitrator will generally utilize those localities. The parties do not agree on every City that should be included, but there is some overlap. Dodgeville, Edgerton, Fort Atkinson, Lake Mills, Prairie du Chien, Richland Center and Whitewater fall into that category. I shall include those Cities in the list of comparables. I agree with the City that the list used in the Water Utility arbitration should not be accorded the weight that would normally be given to prior proceedings. The list adopted in that case referenced Class C utilities as a prerequisite for inclusion. That has no applicability to the current dispute.

Middleton, Monona and Mt. Horeb are all located in Dane County and are in close proximity to Madison. Many individuals commute to Madison from those suburbs. There is no showing that there is any

---

[1] The Union did not mention Mt. Horeb in its list, but that was part of the earlier Award.

interchange of residents between Monroe and any of those Cities. If there were, inclusion might be warranted if the number of residents traveling to and from those Cities and Monroe was sufficiently large. There is nothing in the record to indicate that there is any basis to include these Madison suburban areas with Monroe. I shall not include them as comparables. I am also unable to conclude that there is sufficient basis to include Stoughton, Lancaster, Milton, Lancaster, Hartford, Shullsburg and Mineral Point. They are quite a bit smaller than Monroe or any of the agreed upon comparables. Waupun has no proximity to Monroe. It is farther from it than any of the others. I shall exclude it, as well.

Baraboo and Portage are also not in immediate proximity to Monroe. They are of similar size. Portage has a population of 8900. Baraboo has a population of 9870.[2] Monroe has just over 10,000 people. The only comparables adopted thus far that are similar in size to Monroe are Fort Atkinson and Whitewater. All of the others have a population that is under 5000. The Employer notes that adding these Cities will help balance proximity and size. To a degree, I concur that some size balance is desirable. Adding an additional City that is the same size as Monroe will provide for a more meaningful analysis of the factors that go into establishing wage rates. Baraboo is very close in size to Monroe. I shall include Baraboo. On the other hand, it is not necessary to add all of the larger cities to obtain the balance. Adding too many will diminish the effect of local economic factors. Consequently, I

[2] The figures utilized here are from 1995 estimates.

shall not include Portage. The following shall be the Comparables used:

Baraboo	Dodgeville	Edgerton
Ft. Atkinson	Lake Mills	Prairie du Chien
Richland Center	Whitewater	

WAGES & LONGEVITY

The wage and the longevity proposals need to be addressed as one. Both items have cost to the Employer, and both are part of the total wage package. If all of the current employees remained with the City through 1997, most of the bargaining unit would receive some amount of longevity pay by the end of this agreement. Over one-half of the unit would reach the 5% level. 20 employees would be at the 8% level. Assuming no turnover, the Union's offer would cost $7092.52 more than the City's proposal. The City proposal would cost a total of $2,695,938.96, and the Union's would cost $2.703,032.48. The difference represent approximately one-quarter of a percent.

POSITION OF THE UNION

The Police bargaining unit contract contains a longevity provision that is similar to the Union proposal, except the percentages here are slightly lower. Longevity is included in the agreements of other municipal employers. Almost everyone of the comparables includes some form of longevity.

The Union proposal takes into account the cost impact of its proposal. It has delayed the implementation of longevity until July

1, 1996. It also proposed a smaller wage increase than was offered by the City. Future additional costs will be offset by turnover. The savings obtained from turnover should, in fact, be greater than the cost of the longevity proposal.

POSITION OF THE CITY

The Statute requires the arbitrator to give greater weight to local economic conditions. Longevity pay "is a significant economic factor in the Monroe community. Not one of the employers surveyed gives additional compensation to its employees based on longevity or years of service." This factor strongly favors the City.

Internally, only one of the two other bargaining units grants longevity. The reason for including it in that contract does not exist here. Externally, the wages paid by other public employers are closer to the wages contained in the City offer than to those in the Union offer. COLA supports the City. Its proposal is in line with COLA. The Union's is not. These factors favor the City.

The Union has proposed changing the status quo. It has the burden of supporting its proposed change. The Union must prove that there is a problem that exists that the proposal seeks to remedy. It has not identified any such problem. It has also failed to offer a quid pro quo for their proposal. There is no justification for the Union's proposal.

DISCUSSION

Greatest Weights

The Statute requires the Arbitrator to give the greatest weight to "any state law or directive lawfully issued by a state legislature or administrative officer." Neither party has indicated that there any such restrictions on the City. The Arbitrator is not aware of any limitation placed by the State on the City. The Arbitrator has considered this factor and finds it inapplicable.

Greater Weight

The Arbitrator must give greater weight "to economic condition in the jurisdiction of the municipal employer." The City believes that this factor is determinative. It noted that it polled several private employers and that none of them gave longevity pay to their employees. It has argued that this is a "significant economic factor" that must be given greater weight than the other factors. The Union does not believe this factor is applicable to this dispute.

This Arbitrator has bee called upon to examine this factor in other interest arbitrations. In some instances, I have found it significant and in others I have not. In each case, it was the health of the economy of the jurisdiction that was examined. For example, I found in Juneau County that the unemployment rate was considerably higher than the comparables and that this fact coupled with other indicators demonstrated that the economy in Juneau was in poorer condition than elsewhere. In Vernon County, I found that the economic conditions there did not a justify a lesser wage

increase. What was common to both cases were the factors that went into the analysis. How was the jurisdiction doing when compared to other jurisdictions? Neither party has argued that the economy in the City is suffering. There was no data showing high unemployment or poor growth. Instead, the City argues that the fact that the local private employers do not favor longevity proves its contention. I do not agree with the City that the evidence supports the invocation of this factor in this case. Local economic conditions as that term is used in the Statute does not refer to the benefits given by others, but instead to the well being of the economy as a whole.

Sub-section (f) of the Statute directs the Arbitrator to consider the wages of the "municipal employer" with the wages of "other employers in the private employment in the same community and in comparable communities." It is this factor to which the Employer's survey has application. It shall be considered under that factor, but not here. I find that the facts do not demonstrate that there is anything about the economy in the City of Monroe that impacts upon this Decision.

External Comparables

The Union proposal has greater repercussions on the high end of the wage scale than the low end. In fact, the starting wage is lower under the Union proposal than under the Employer's. The Union seeks only a 1% increase, while the City is offering 3%. The Chart below demonstrates what the high and low wages are in the comparables in 1997 and what they would be under the parties

proposals in certain benchmark classifications. The average wage for all the comparables is also provided.

	Secretary	Lead Op.	Laborer	Mechanic
Baraboo	NA	12.80/13.79	12.26/12.96	12.66/13.43
Dodgeville	8.97/9.82	10.53/13.30	8.92/11.15	9.22/11.44
Edgerton	10.52/11.24	13.02/13.59	11.41/12.22	13.02/13.59
Ft. Atkinson	NA	13.96/15.02	12.55/13.56	13.47/14.50
Lake Mills	8.54/9.76	14.61/15.61	10.92/12.82	13.78/14.55
Prairie du Ch.	9.17/9.45	NA	10.78/11.05	NA
Richland Ctr.	NA	12.15/13.50	12.15/12.15	NA
Whitewater	8.62/9.64	14.14/14.14	12.52/12.52	12.45/13.37
Average	9.16/9.98	13.03/14.13	11.43/12.30	12.43/13.48
Monroe(City)	8.93/9.43	13.56/14.06	10.94/13.17	13.56/14.06
Monroe(Union)	8.67/10.00	13.35/15.09	10.70/14.11	13.34/15.09

* NA indicates either that the classification does not exist in the jurisdiction or that it is a non-union position in that jurisdiction.

It is apparent from a review of the chart that in 1995 the City was near the average for starting wages in most of the classification.[3] The ranking falls under the Union proposal. The City was also near the average at the top rate in 1995. That does not change under the City proposal. Under the Union proposal, the top rate the City would be paying would be higher than many of the comparables. That would be true for every benchmark classification.

[3] In some classifications the starting wage was slightly lower than the average and in others it was slightly above.

The ranking moves up substantially.

These facts must be balanced against the length of time that it would take to reach the top rate. The following chart shows the length of time that it takes to reach the maximum in each of the comparables.

Baraboo	Raise at 6 Months -12 Months
Dodgeville	$30/Yr x Yrs of serv. beginning at 3 Yrs.
Edgerton	Raise at 6 months -12 Months
Ft. Atkinson	Raise at 6 Months -12 Months -18 Months
Lake Mills	Raise at 6 Months -12 Months -24 months
Prairie du Ch.	Raise at 2 Yrs - 5 Yrs.(Sec. Only)
Richland Ctr.	Raise after probation and promotions in some Class.
Whitewater	Raise at 6 Months -12 Months -24 Months -36 Months

Under the Union proposal, longevity increases are granted at 5, 10, 15 and 20 years. None of the comparables take nearly as long to reach the top. Thus, it is somewhat deceiving to simply compare the maximum rates. For example, the maximum wage for a mechanic is reached in Lake Mills in 2 years. The maximum is $14.55. It would take 10 to 15 years to reach that wage in Monroe. Comparing maximum wages in communities is like comparing apples and oranges. The time variables makes any meaningful analysis impossible.

The only worthwhile manner in which to analyze the data is to treat longevity as a benefit like health insurance or holidays. Are others offering it and how, if at all, has that changed? No one gives longevity along the lines sought here. There is no indication that this fact has changed. No one gave it before either.[4] The

[4] The Union categorizes the progression in the other jurisdictions as longevity. If it were longevity, it is substantially different from what is proposed. I do not agree that the facts demonstrate that it is longevity that the others are giving. The raises end by the third or fourth year.

parties negotiated their last contract with full knowledge of what others were doing and what benefits were and were not offered. They agreed upon a wage scale, without longevity based upon that knowledge. Since none of the comparables have now changed their position and commenced the payment of longevity, there would seem to be no justification for that change here. External comparables simply do not support the Union proposal.

Internal Comparables

There are two other bargaining units in the City. The Dispatchers receive wage increases each year for the first four years.[5] The Police contract does include longevity steps. The progression is the same as that proposed by the Union, but the percentages are 1% greater at each of the steps. An employee with 20 years of service receives 10% longevity under the police contract. An employee with 20 years of service would get 9% under the Union proposal. The same is true at each incremental level.

The Employer gave an explanation as to why the police employees receive longevity.[6] Turnover had been a problem. Longevity has been in that contract for some tine, and had been placed in the contract to solve the turnover problem. The City

---

[5] The City had previously only given increases for the first three years. In 1997, that was expanded to 4 years.

[6] The Employer in its brief characterizes the evidence on this point as testimony from a City witness. The Union objected to that characterization. As is true in many interest arbitrations, the hearing was held informally. Each side presented its case through its spokesperson. That does not make the evidence offered inadmissible. Such statements cannot, however, be attributed to people present, but who did not speak.

notes that the same rationale for longevity does not apply to this bargaining unit. It has not had the turnover problem that the police unit had. The facts bare that point out. The average length of service in this bargaining unit is high. As noted earlier, a substantial portion of the bargaining unit would receive longevity under the Union proposal. Most of the employees would be receiving one of the higher percentage increases. That can only be true when there is a stable work force. The need that existed in the police unit is not present in this unit. Similarly, the need has not existed in the dispatcher unit. They also do not get longevity, although they do get some incremental boost during the early years of employment.

The Union has proposed a longevity schedule similar to that of the police, but greater than that of the dispatchers. Compared to the dispatcher agreement, the externals do not support the Union's proposal. While on its face, the proposal would appear to be supported when comparing it with the police contract, the facts demonstrate that extenuating circumstances existed there that do not exist here. Thus, the Union proposal is not supported by that comparison either. I find that the internal comparables do not bolster the Union proposal.

Other Factors

Both offers cost approximately the same amount. The average increase is, therefore, approximately the same. COLA was near 3%. That is the same amount as the Employer proposed. While, the Union proposal is higher for some, it is less for others. Overall, it is

also near COLA. Therefore, I do not find that this factor favors either party.

A comparison with private employers, as has already been discussed, favors the City. No private employer grants longevity. Nevertheless, this factor carries diminished weight when discussing longevity. Longevity is a creature of the public sector. Few private employers provide it. The fact that no private employer in the area grants it is of no surprise. While consideration of this factor cannot be ignored, it is certainly not determinative on this issue.

Requirements needed to Justify a New Provision

The Union seeks to add longevity to the contract. It seeks a new benefit. It is axiomatic in interest arbitration that the party proposing the change has the burden of justifying that change. Arbitrators favor change at the bargaining table, rather than through arbitration. Before an arbitrator agrees to change the status quo, certain conditions must be met. The party seeking the change must show that a problem exists, and that the proposal "reasonably addresses the problems.[7] There might also need to be a quid pro quo offered.

The City contends that the Union has not offered any quid pro quo. The Union counters that it has. I agree with the Union that it has offered a quid pro quo. It is very unusual to find an employer offering more than the Union seeks. The Employer proposes a 3% increase. The Unions seeks 1%. If the Union accepted the 3% and

[7] Arbitrator Petrie in Iowa County.

also sought its longevity proposal, I would agree with the City. By seeking 2% less than the Employer offered, the Union has indicated its willingness to pay for its proposal.

The parties proposals in 1996 and 1997 have substantially the same cost. The additional $7,000 cost represents a small difference. It is one-quarter of one percent. On this basis alone, the price the Union is willing to pay for this benefit might seem enough. There are, however, other factors to consider. Unless the number of senior people leaving exceeds the number of junior people obtaining the next plateau, the cost of the proposal will escalate each year. Given the stability of this labor force, it would seem likely that this would occur. Therefore, the fact that the proposals have approximately the same cost does not automatically mean that the price the Union is willing to pay suffices. One must look beyond to the effect of the proposal in the long run.

If this arbitrator had to decide this case based upon a determination of whether the Union gave enough to get what it seeks, this would be an extremely close call. However, before I get to that question, the Union must first show that there is some problem that this proposal seeks to address. In the police unit, turnover necessitated longevity. What in this unit warrants such a proposal? Other than the fact that the police have it, no justification has been shown to exist. I do not find that any need has been proven that merits granting the Union's proposal. The burden is upon the Union to explain why a change in the status quo ante is needed. They have failed to meet that burden.

In concluding that the Union must show a need exists to support the change, it is important to observe what this case is not. If here the Employer had offered longevity to every other bargaining unit in the current round of negotiations, but not to this unit, the Union would have a strong argument. Internal comparables are always a more persuasive factor when evaluating benefits. There is a desire and a need for uniformity of benefits within a public employer. The need the proposal would address would be the disparity in benefits among the bargaining units. The quid pro quo required from the Union, under this scenario might simply be the same level of wage increase or percentage increase in cost as was involved for the other units.

Conclusion

A review of external public and private sector employers does not favor the Union. No compelling need for the change has been shown. There are no other factors that support the proposal of the Union. In balance, the Employer offer is preferable.

AWARD

The Employer proposal together with all other tentative agreements and stipulations shall be incorporated into the parties 1996-7 collective bargaining agreement.

Dated: September 22, 1997

Fredric R. Dichter,
Arbitrator