BEFORE THE ARBITRATOR

JL 8 1998

In the Matter of the Arbitration Between

DISTRICT COUNCIL 48, AFSCME AFL-CIO,
and its AFFILIATED LOCAL 1486

and

NORTH SHORE WATER COMMISSION

Case 13
No. 54954
Int/Arb-8120

Decision No. 29301-A

Appearances: For the Union — Carolyn Delery, Esq.
Podell Ugent Haney & Delery

For the Commission — Roger E. Walsh, Esq.
Davis & Kuelthau

Before: Fredric R. Dichter, Arbitrator

## DECISION AND AWARD

On March 19, 1998, 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 1486, hereinafter referred to as the Union and the North Shore Water Commission, hereinafter referred to as the Commission. A hearing was held on April 13, 1998 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs and reply 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 all of the items to be included in the successor agreement, except wages. All the tentative agreements are incorporated into this Award. The following are the outstanding issues:

UNION OFFER:

1/96- 2.5% increase for all Rates of Pay for all Classifications
7/96- 2.0% increase
1/97- 2.5% increase
7/97- 2.0% increase
1/98- 2.0% increase
7/98- 2.0% increase

COUNTY OFFER:

Effective 1/1/96
3.5% increase to all Starting, After 6 month and After 1 Year rates, and $.55 per hour to all After 2 Year rates. ($.55 per hour is 3.5% of the weighted average of the After 2 year rates.
Effective 1/1/97
3.5% increase ($.57 per hour to After 2 Year rates.
Effective 1/1/98
3.0% increase ($.51 per hour to After 2 Year rates.

## BACKGROUND

The Commission is located just north of the City of Milwaukee. Its task is to provide water to three North Shore Communities. Those communities are the City of Glendale, the Village of Fox Point and the Village of Whitefish Bay. The Commission operates a water filtration plant that processes untreated water to make the drinking water used by these communities. Each of the three communities appoints one Commissioner. The Commissioners than oversee the operations of the Commission.

The Union has represented certain employees of the Commission for several years. The classifications of Operator, Relief Operator

and Mechanic are covered by the parties collective bargaining agreement. There are presently 6 employees in the bargaining unit. There have not been any prior interest arbitrations between these parties. The last agreement covered the years 1993 through 1995, and was voluntarily settled by the parties.

The State of Wisconsin regulates the water plants in the State. It requires that the individual in charge of the plant be Certificated by the State. This means that employees of the Commission in the Operator classification have to possess a Certificate.

## POSITION OF THE UNION

Wages are the only remaining issue that needs to be resolved. The criteria most frequently utilized by arbitrators for evaluating wage proposals is a comparison with the prevailing practice established in other jurisdictions. That is the factor that should be used here.

The Union has included the wages paid to employees in similar job classifications for 17 other localities. These include: Waukesha, Cudahy, Franklin, Port Washington, Hartland, Muskego, New Berlin, South Milwaukee, Germantown, Oconomowoc, Hartford, Oak Creek, Racine, Brookfield, Menomonee Falls, West Bend and Milwaukee. All proposed comparables are contiguous with North Shore and cover large population centers, like North Shore. These are the

comparables that the arbitrator should use in this case.[1]

The arbitrator should begin the wage comparison between the Commission and the other proposed jurisdictions with the year 1993. Such a comparison shows how the overall wage ranking of the employees of the Commission has fallen since that year. The Union proposal reverses that trend and places the employees back to where they were in 1993.

The Arbitrator could also use a much smaller group for comparison. Six of the Employers on the Union's proposed list paid approximately the same wage in 1993 to operators as did the Commission. Since that time, North Shore has fallen from second to fifth in ranking among those six. This gives further support to the Union proposal.

The Operators here perform custodial duties in addition to their regular duties. These duties are not required of operators in other places. These additional duties entitle the operators employed by the Commission to higher wages than their counterparts.

## POSITION OF THE COMMISSION

Internal comparables is a criteria that must be considered by the Arbitrator. The internal comparables favor the Employer's offer. The wage increases given to the employees in the three communities served by the Commission are similar to the wage

[1] The Union Exhibits included the wages paid to operators in 68 other communities throughout the State of Wisconsin. In its brief, it did not argue that this extensive list should be used. I shall not consider it in my analysis.

increases that would be granted under the Commission's proposal.

The Arbitrator should use the following communities as external comparables in this matter: Appleton, Cudahy, Green Bay, Kenosha, Manitowoc, Marinette, Neenah, Oak Creek, Oshkosh, Port Washington, Racine, Sheboygan, South Milwaukee, and Two Rivers. All of these Employers are located in the Eastern half of the State of Wisconsin. They are all water filtration plants that process untreated water. That is the same function that is performed by the Commission.

The wages offered by the Commission for 1996, 1997 and 1998 are comparable to the wages paid in these other jurisdictions. In fact, the wages offered are slightly higher than the average wage increase for the comparables. The wage differential of the employees of the Commission would even rise under the Employer's offer. The percentage increases for the Commission's offer are higher than the average percentage increase of the comparables for the three year period covered by the Agreement.

Even if the arbitrator were to adopt the list of 68 communities initially proposed by the Union, the arbitrator would still have to find that the offer of the Commission compares favorably. The Union proposal, on the other hand, is considerably higher than the averages of those places listed on its own proposed list of comparables.

The Union in its brief proposed a smaller list of 17 communities. The average three year increase in those communities is 10.34% The Employer has proposed a 10% increase. The Union

proposal would give a lift to wages of 13% over the three years. The Employer proposal is much closer to the average.

The Union asks the arbitrator to consider the years 1993-5. It is 1996-98 that is the relevant period. That is the period to be covered by this agreement. It would be error to use 1993 as the starting point. The parties voluntarily reached an agreement covering the 1992-95 years. If the rank fell during that time, it was as a result of that voluntary agreement. The use of 1993 is totally arbitrary. One could just as easily use 1994 as the starting point. Under the Commission proposal the Commission would stay at the same point in 1998 that it was in 1994. It is also arbitrary to use the 6 communities alternatively proposed by the Union. There is no valid basis for such a grouping.

The Statute requires arbitrators to consider the Cost of Living increases during the years in question. COLA increased 2.5% in 1996. In 1997, it increased 2%. The Commission's offer is higher than COLA in both those years. The COLA increase for 1998 appears to be even smaller. The 3% offer exceeds any expected increase.

The Union is correct that the prevailing practice is the standard to be used. That standard favors the Employer.

## DISCUSSION

The Statute requires an arbitrator to give greatest weight to "any state law or directive lawfully issued" which "places limits on expenditures that may be made." There is no contention that there are any such limitations here. After considering this factor,

I do not find that it is relevant to my determination in this case. The Statute next requires an arbitrator to give greater weight to "local economic conditions." Neither party contends that the economy of the Commission is such that this factor comes into play. *This factor is not controlling in this case.*

External Comparables

Both parties have argued that a decisive factor in this case is external comparables. The comparables establish the prevailing practice by which the parties proposals are judged. I agree with the parties that this factor is critical here. What the parties do not agree upon is exactly which communities should be used as the basis for comparison,[2] or in what year that comparison should begin.

I shall turn to the question of which year to begin my analysis before I address the question of what jurisdictions should make up the comparables. The Union believes 1993 should be the first year examined. Contrary to the Union, the Commission does not believe that 1993 should be the beginning year for an analysis. It argues that only wages paid during the three years covered by this agreement are relevant. It says 1993 to 1995 is not relevant because the parties voluntarily agreed to the wages during that period, and that wherever the Commission's employees wound up vis-a-vis the comparables occurred through voluntary choice. In general, this arbitrator agrees with the Employer's rationale.

---

[2] The Union list of 17 and the Commissions list of 14 does contain some overlap. Cudahy, Oak Creek, Port Washington, Racine and South Milwaukee appear on both lists.

There can, however, be exceptions to the rule. There can be times when looking back is relevant. The burden, however, is on the Union to prove that the facts of the case warrant ignoring what the parties voluntarily did years earlier. I find that the Union has not met that burden in this case.[3] Consequently, I find that the relevant years for the analysis of the comparables are 1996 through 1998.

It must now be determined what comparables should be utilized. The Employer's proposed list is limited to water districts that provide filtration of untreated drinking water located in the Eastern half of the State. Only five of the 17 on the Union list do filtration of untreated water. Their list includes all water facilities that are contiguous to the Commission. I agree with both parties on the need for a geographical limitation. The entire State is too big an area. Although the proposals do not have the same areas included, they are both smaller than the entire State. I find both parties geographic limitations valid, except one. The Commission included Marinette. That is too far and too small. I shall not include that jurisdiction in my list. Other than that, I do not find either parties proposal more persuasive on this point. What I do find that does differentiate the parties proposals is the fact that the Commission proposal limits the type of facility that it includes. While proximity is an important criteria, it is less

[3] The Union offered an additional argument as to why the operators are entitled to higher compensation. It states that the duties that they perform are different than the duties of other operators. There is, however, no evidence that this is true, or that anything has changed since the last agreement was signed.

so when discussing the type of operation performed by the Commission. Including only jurisdictions that have the same or similar operations as comparables is a method that has been used in the past by arbitrators.[4] Therefore, I agree with the Commission that only like water districts should be compared. For this reasons, I adopt the list proposed by the Commission, less Marinette, as the appropriate comparables.[5]

There are two aspects to any comparison of wages. First, the parties proposals must be compared with the average percentage increase of the comparables. Next, it must be determined whether there are any changes in ranking that would result from adopting either party's proposal. In 1996, the average increase for the comparables was 3.28% with a 3.47% lift. In 1997, the average increase was 3.1% with a 3.26% lift. Not all of the comparables have settled their contracts for 1998. Eight of the 13 have reached agreement. The average increase was 3.11% and average lift was 3.15%. For the three year period, the increase under the Commission offer is .51% higher than the average and provides a .12% greater lift. The Union offer gives the same differential in actual percentages, but provides a 1.1% greater lift. Both offers exceed the average for both lift and in actual percentages. The Union offer would result in a larger difference in lift than the

---

[4] See City of Monroe, Int/Arb-7908; Monroe Water Utility (Johnson)

[5] A review of both parties exhibits shows that the Employer's proposed comparables are unionized. Unionization is a factor that is required by arbitrators before a comparable will be included.

Commission's.

The Commission ranked sixth among the comparables in 1995. Under the Commission's proposal, the rank falls to seventh in 1996 and stays at that point through 1998. South Milwaukee passes the Commission. The wage increase for South Milwaukee in 1996 included a new wage increase and a COLA adjustment from the prior agreement. Their total increase in 1996 was 5%, which is higher than any other. South Milwaukee would go from $.07 below in 1995 to $.15 above in 1996. This falls to $.07 above in 1997 and 1998. The Commission's employees would stay above South Milwaukee under the Union proposal. I find that given the explanation as to why the Commission was passed by South Milwaukee in 1996 the fact that it passes the Commission does not affect significantly the overall determination as to which offer is more acceptable. Under the Union offer, the employees would repass South Milwaukee and would also pass Neenah. In addition, the differential between the Commission and those below it would increase by several cents more under the Union proposal.[6]

Internal Comparables.

This is a somewhat unique situation. The Commission does not

---

[6] It is worth noting as pointed out in the Employer's brief, that even if the Union's comparables had been adopted, the results of the comparison would not change. For the period 1996-98, the relevant period here, the average increase granted by the comparables proposed by the Union for the three year period was 10.34%. While this is more than the Commission is proposing, it is much closer to their offer than it is to the Union's. The total increase at the end of three years under the Union proposal would be 13%. The ranking moves from 13 to 12 under the Commission proposal and from 13 to 8 under the Union proposal.

have any other bargaining units. It is not your typical public employer. The three governmental bodies that comprise the Commission do have other public employees. Is it appropriate to use these employees as internal comparables? I do not believe that it is. The Commission is run by three Commissioners. One is appointed by each of the three communities. Each of those three governmental bodies is overseen by elected officials from those areas. They are not the same governing body that runs the Commission. Given this difference, the use of internal comparables here is of dubious value. Nevertheless, to the extent that they are at all relevant, they do show that the average wage increases for 1996 for the employees of the three communities was 3.2% with a 3.5% lift. In 1997, it was 3% with 3.2% lift. Only two of the three have settled agreements for 1998. The average for those two is 3.06% with a 3.25% lift. The proposals of both the Commission and the Union surpasses that average. The Union proposal is further out of line than the Commissions. This factor to the limited extent relevant favors the Commission.

Cost of Living Adjustment

COLA was well below 3% in 1996 and 1997. Both proposals are over 3%. The Union proposal totals 4% for each of those years. It far exceeds COLA. This factor favors the County.

Summary

Cost is really not a factor for either of these proposals. Since the Union split its increases, the total cost of the

proposals for each of the years is very close.[7] The second year the increase is calculated using the 1995 base wage plus 3.5% under the Employer's proposal and with a 4% increase under the Union's. Thus, there is some additional cost to the Union's proposal after the first year. However, I do not find that this extra cost is determinative. What I do find determinative is the difference in the total lift that results from the structure of the Union proposal. The Union proposed a split increase each year to allow the employees to catch up to the comparables by the end of the agreement. A split increase is a way to do that without having the employer incur large expenses during the term of the agreement. The extra cost is deferred until later. However, when the facts do not demonstrate that a need for catch up exists, the justification for this approach also does not exist. That is the situation here.

I find that the external comparables favor the Commission's offer. The ranking, with one unusual exception, does not change during the term of the agreement under the Commission's proposal. It rises under the Union's. The actual percentage increases and lift contained in the Commission's offer are in keeping with and even a little higher than those paid by the comparables. The lift is significantly higher under the Union's.

The parties agree that external comparables is the most relevant criteria in the determination of this dispute. It is the factor that I rely upon most heavily here. It is worth noting that

---

[7] The overall difference is a little over $8000 over three years.

the internals and COLA also support the Commission's proposal. Though far less relevant, these factors present some further justification for the Commission's proposal.

## AWARD

The final offer of the Commission together with the tentative agreements shall be incorporated into the parties agreement.

Dated: August 17, 1998

Fredric R. Dichter,
Arbitrator