

In The Matter of the Arbitration Between)	
)	
AFSCME Local 1366C)	
)	
and)	Decision No. 29580-A
)	
Fond du Lac County)	
)	
Interest Arbitration)	
)	
WERC Case 161, No. 56965 MIA-2224)	

OPINION AND AWARD

The hearing in the above captioned matter was held on June 29, 1999, in Fond du Lac, Wisconsin before Martin H. Malin, serving as the sole impartial arbitrator by selection of the parties. The Union was represented by Mr. James E Miller, its Staff Representative. The Employer was represented by Mr. Richard Celichowski, its Director of Administration. The hearing was held pursuant to Section 111.77 of the Wisconsin Statutes.

At the hearing, both parties were afforded full opportunity to call, examine and cross-examine witnesses, introduce documentary evidence and present arguments. The parties chose not to present oral testimony but both parties submitted extensive documentary exhibits. Both parties filed post-hearing briefs and reply briefs.

The Final Offers

The parties' final offers are identical in every respect, except for wages. With respect for wages, the parties' final offers are as follows:

<u>Effective Date</u>	<u>Union Offer</u>	<u>Employer Offer</u>
Jan. 1, 1999	3.5% increase	3.1% increase
July 1, 1999	\$.20 increase	1.0% increase
Jan. 1, 2000	3.5% increase	2.75% increase
July 1, 2000	\$.20 increase	0.5% increase

The Statutory Factors

Section 111.77(6) of the Wisconsin Statutes provides for the arbitrator to base his findings on the following factors:

- (a) The lawful authority of the 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 those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services with other employers generally:
 - (1) In public employment in comparable communities.
 - (2) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) 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.

Background

The bargaining unit consists of all regular full time protective service employees in the Fond du Lac County Sheriff's Department, except for the Sheriff, supervisors and confidential employees. The employees are divided among the following ranks: Patrolmen, Detectives, Sergeants, and one Welfare Fraud Investigator. The parties stipulated that the following counties are comparable to Fond du Lac: Dodge, Manitowac, Outagamie, Sheboygan, Washington and Winnebago.

Union's Position

: The Union argues that its final offer should be selected. The Union contends that both final offers are within the Employer's lawful authority and that all stipulations have been incorporated in the remaining terms of the contract on which the parties agreed. The Union maintains that its final offer better serves the interests of the public because it better improves job satisfaction and job retention by moving Fond du Lac's wages closer to the median range of the comparable counties. The Union urges that the Employer has the financial ability to pay either offer.

The Union contends that between 1996 and 1997, Fond du Lac experienced an increase of 7.53 percent in property values, the third highest growth among the comparable jurisdictions. During the same period, Fond du Lac also experienced a 6.38 percent increase in per capita value, again ranking third among the jurisdictions. The Union maintains that Fond du Lac's economy is strong and that the Employer can afford the Union's final offer.

The Union focuses its comparability analysis on the benchmarks of maximum pay for patrolmen and detectives, excluding longevity. The Union observes that in 1998, Fond du Lac patrolmen ranked sixth out of seven communities and that they retain that ranking in 1999 under either final offer. In 1998, Fond du Lac patrolmen at the maximum pay rate were paid \$18.06 per hour, compared to the median of the six comparable counties of \$18.39. For 1999, the Union maintains, the median is \$19.00. Under the Union's final offer, Fond du Lac patrolmen will be paid \$18.89, whereas under the Employer's final offer they will receive \$18.81.

With respect to detectives, the Union observes that Fond du Lac ranked third from the bottom in 1998 and retains that ranking under either offer in 1999. In 1998, Fond du Lac detectives were paid \$18.93 per hour, compared to the median of the six comparable communities of \$19.63. In 1999, the median is \$20.29, and Fond du Lac detectives receive \$19.79 under the Union's offer compared to \$19.72 under the Employer's offer.

The Union argues that the low ranking of Fond du Lac wages is exacerbated because Fond du Lac employees receive no longevity pay. Washington County is the only comparable county that does not provide longevity pay. The Union urges that the comparability analysis favors its final offer because its final offer moves the employees closer to the median of the comparable communities.

The Union contends that the cost of living should play little role in this proceeding because both offers are above the cost of living and because "this factor is less relevant when the only issue is catch-up wage increases." (Un. Brief at 16).. In its initial brief, the Union contends that the overall compensation, including benefits, is not particularly relevant because all communities examined have similar fringe benefits. In its reply brief, the Union observes that Fond du Lac's sick leave benefits are among the lowest within the comparable jurisdictions, and that Fond du Lac is the only county among the group that does not provide a uniform allowance

to all employees. (Fond du Lac does provide a uniform allowance to detectives.)

The Union concludes that its offer better comports with the statutory factors. It urges that I select its final offer.

Employer's Position:

The Employer contends that its proposal should be selected. The Employer argues that when it is ranked against the comparable counties in terms of population, personal income, employment and equalized value, on a per capita and percentage change basis, its average ranking is 5.43 out of 7. Furthermore, the *Wisconsin Taxpayer* ranked the Employer as "losing ground." The Employer urges that it is less well-off economically than the comparable communities.

The Employer argues that the cost of living factor favors its offer. The Employer observes that its offer is closer to the increase in the cost of living than the Union's offer. The CPI for December 1997 and December 1998 increased 1.7% and 1.6%. The Union's final offer produces an increase of 9.30% over two years. The Employer urges that its offer, which produces an increase of 7.78% over two years better reflects the increase in the cost of living.

The Employer contends that its final offer is more in keeping with the internal comparables than the Union's final offer. The social workers bargaining unit agreed to 3 percent increases for 1999 and 2000, with 3.5 percent increases at the top steps. The highway bargaining unit agreed to what amounted to a 3 percent increase for 1999 and a 3 percent increase for 2000. An arbitrator awarded the social services unit 3 percent increases in 1999 and 2000. Another arbitrator ordered 3 percent increases in 1999 and 2000 for the corrections officers unit. The Employer maintains that its final offer is more generous than settlements or awards in other units within the county and comes closer to those settlements and awards than does the Union's offer.

Concerning external comparables, the Employer disputes the Union's claim to catch up wage increases. The Employer argues that the Union is not entitled to the degree of catch up it seeks merely because its wages are below those of comparable counties. The Employer notes that the Union's argument for catch up was recently rejected in the arbitration for the corrections officers.

The Employer maintains that it recognizes the importance of comparing maximum wage rates, but urges that wage rates at all levels are relevant. The Employer contends that at the hiring rate for patrolman, Fond du Lac ranked second out of seven counties at the end of 1998. According to the Employer, that ranking remains the same under either final offer in 1999, but probably increases to first under the Union's final offer for 2000. Furthermore, the Employer observes, in 1998, Fond du Lac was 35 cents above the median. This increases to 55 cents under the Employer's final offer for 1999, or 65 cents under the Union's offer. In 2000, according to the Employer, the Union's offer produces a likely result more than \$1.00 above the median.

At the maximum patrolman rate, the Employer contends, both final offers keep Fond du Lac's rank of sixth out of seven in 1999, but under the Union's final offer, the rate would jump from sixth to third in 2000. Both reduce the disparity between the Fond du Lac rate and the

median in 1999, while in 2000, under the Union's final offer the maximum patrolman rate will be slightly above the median while under the Employer's offer it will likely be a little below the median.

The Employer observes that both final offers, as applied to the maximum rate for detective, maintain Fond du Lac's rank as sixth out of seven in 1999. In 2000, the Employer's offer maintains the sixth place ranking, while the Union's offer probably would improve the ranking to fifth. Both offers reduce the discrepancy between the Fond du Lac wage rate and the median, but the Union's offer provides a greater reduction.

The Employer observes that both final offers, as applied to the maximum rate for sergeant, maintain Fond du Lac's rank as fifth out of seven in 1999. In 2000, the Employer's offer maintains the fifth place ranking, while the Union's offer probably would improve the ranking to fourth. Both offers reduce the discrepancy between the Fond du Lac wage rate and the median, but the Union's offer provides a greater reduction.

The Employer contends that its final offer ranks either first or second in percentage increase and cents per hour increase, on an annual basis and on a lift basis, for every rank at maximum and entry levels. It observes that the Union's final offer ranks first in every category. The Employer urges that the Union has not justified what the Employer regards as an excessive amount of catch up.

The Employer argues that its final offer better serves the interests of the public because it is less costly than the Union's offer. The Employer urges that, overall, its final offer better comports with the statutory factors.

Discussion:

The arbitrator has considered his notes of the hearing, the exhibits, the parties' briefs, reply briefs and arguments, and all authority relied on therein. As I have stated elsewhere,¹ interest arbitration represents the breakdown of the parties' collective bargaining process. The arbitrator's function is to determine what contract terms the parties most likely would have agreed to if the collective bargaining process had not broken down. The weight to be given each factor listed in Section 111.77(6) is to be assessed in light of its value in making such a determination.

Some of the statutory factors do not require much discussion. There is no contention that either final offer is beyond the lawful authority of the employer. The difference in cost between the two final offers is not great and the Employer concedes that it has the ability to pay either offer. The increase in the CPI indicates that under either offer the employees will experience an increase in real wages.

¹Malin, *Public Employees' Right to Strike: Law and Reality*, 26 U. MICH. J. L. REF. 313, 333 (1993).

As is often the case in interest arbitration, the most significant factor in the instant case is the external comparables. The Union bases almost its entire case on the external comparables, focusing on the need to catch up with the comparable communities based on the Union's selected benchmarks of maximum wage rates for patrolman and detective.

I find no reason to limit the analysis to patrolman and detective. However, the record in this case suggests that the primary focus should be on the maximum rates, i.e. Step V, for all job classifications. As reflected in Employer Exhibit 9, all five sergeants, the welfare fraud investigator and six out of seven detectives are paid at Step V. Seventeen patrolmen are at Step V, and another four attain Step V in 1999. Only twelve patrolmen are at lower steps during 1999. Thus, the large majority of employees in the bargaining unit are at the top step of the pay scale.

The maximum wage rates generally are below those of the comparable counties. Fond du Lac ranks sixth out of seven in maximum wage rate for patrolman and detective and fifth out of seven for sergeant. These rankings, however, are the result of prior bargaining between the parties and the Union has the burden of establishing sufficient justification for departing from the existing pattern. Merely asserting that there is a need for a catch up wage increase does not establish that it is likely that, if their bargaining process had not broken down, the parties would have agreed to the catch up increase that the Union has proposed.

Furthermore, both parties' offers provide for catch up increases. Each offer narrows the differences between the Fond du Lac wage rates and the medians among the comparable counties. The different degrees of catch-up can be summarized as follows:²

<u>Classification</u>	<u>1998 difference from median</u>	<u>1999 difference from median</u>	
		<u>Union Offer</u>	<u>Employer Offer</u>
Sergeant	\$.45	\$.27	\$.34
Detective	.67	.40	.47
Patrolman	.33	.10	.18

²The Union's and Employer's calculations of median wage rates differ. The Union has calculated the median of the six comparable communities. The Employer has calculated the median of the seven communities, i.e., it includes Fond du Lac in its calculation. A major reason for examining comparable communities is to get a sense of the overall market. Consequently, I find it appropriate to include Fond du Lac in the mix when calculating the median wage rate. Therefore, I have taken the data from Er. Exs. 18 and 21. However, the differences between the Employer's calculations and the Union's are so small that they make no difference in the outcome of this proceeding.

Viewed another way, the Employer's final offer ranks first or second among the seven counties in cents per hour and percentage increases on an annual and on a lift basis for 1999 and 2000. Thus, the narrowing of the differences between Fond du Lac's maximum rates and the median maximum rates continues into 2000 under either offer. The differences between the two offers are a matter of degree. The question is whether the Union has justified the greater amount of catch-up provided for in its offer.

The Union maintains that the differences between Fond du Lac maximum wage rates and the comparable counties is exacerbated by the absence of longevity pay in Fond du Lac. The Employer counters that longevity pay in the other communities requires such lengthy service that most employees do not qualify for it. Unfortunately, the record does not reflect that actual length of service of the employees in the bargaining unit. Therefore, it is impossible to tell on this record how many, if any, employees in the unit are actually affected by the absence of longevity pay.

On the other hand, the internal comparables clearly favor the Employer's offer. Every other Fond du Lac bargaining unit, by either agreed on settlement or arbitration award, has gotten a 3 percent increase in 1999 and 2000. The only exception is the social workers bargaining unit which received a 3 percent increase except for the top rates which received 3.5 percent. Both final offers in this case exceed the pattern of settlements among the other Fond du Lac bargaining units, but the Employer's final offer is closer to the pattern. Given that the Employer's final offer exceeds the pattern otherwise set internally and provides for significant improvement vis-a-vis the comparable counties, I am unable to justify the Union's final offer.

The remaining statutory factors do not contribute much to the analysis in this case. Each party argues the overall compensation, pointing to different fringe benefits and their treatment as compared to the comparable counties. The Union stresses the absence of uniform allowances in Fond du Lac and the low level of sick leave. The Employer focuses on the pay out for unused accumulated sick leave at retirement. Neither party has presented a systematic analysis of all fringe benefits and the effects those benefits have on how Fond du Lac ranks in total compensation compared to the other six counties.

Changes in the circumstances during the pendency of the arbitration proceedings have been considered. Specifically, I have considered the two arbitration awards that have been rendered since the hearing. Finally, neither party has pointed to any other factors traditionally taken into consideration in the determination of wages, hours and conditions of employment that are relevant to the instant case.

Thus, comparability drives the result in the instant case. Both offers provide for catch-up at the maximum wage rates. Both offers exceed the pattern of wage increases in the other Fond du Lac bargaining units, but the Employer's final offer is closer to the pattern. The Union has offered no persuasive reason as to why its offer, which provides for greater catch-up should be selected. Accordingly, I conclude that the Employer's final offer better comports with the statutory standards.

A W A R D

Based on all of the factors provided in Section 111.77 (6) of the Wisconsin Statutes, and for the reasons set forth in the opinion above, the Employer's final offer is selected.

Chicago, Illinois

November 2, 1999

Martin H. Malin, Arbitrator