BEFORE THE ARBITRATOR

IN THE MATTER OF THE PETITION OF

CITY OF GLENDALE

AND

GLENDALE PROFESSIONAL POLICE ASSOCIATION LOCAL 212 OF THE LABOR ASSOCIATION OF WISCONSIN, INC

Case 94 No. 59529
MIA-2370
Decision No. 30084-A

Appearances:	For the City	Daniel G. Vliet Davis & Kuelthau
	For the Association	Patrick J. Coraggio Labor Consultant

DECISION AND AWARD

The parties' current collective bargaining agreement runs from January 1, 1999 through December 31, 2001. There is a provision in the agreement that required the parties in the fall of 2000 to negotiate the wage rate for 2001. The parties attempted to reach an agreement, but were unable to do so. They then filed for final and binding arbitration to resolve the interest dispute. They submitted their final offers to the Wisconsin Employment Relations Commission. Their respective offers are as follows:

City of Glendale	3.00% across the Board increase for 2001.
Professional Police Association	3.25% across the Board increase for 2001

On April 5, 2001, 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 parties wanted to proceed without holding a hearing. In lieu of a hearing, the parties exchanged exhibits and filed briefs. The Arbitrator has considered the exhibits and briefs in rendering his decision.

POSITION OF THE CITY OF GLENDALE

The Statute requires the Arbitrator to evaluate several factors. Those factors favor the Employer. The appropriate group of comparables has been well established. When this group is used for comparison it can be seen that the external comparables point in favor of the City's offer. The City ranked first in 2000 and maintains that rank under either proposal. This is true for police officers, detectives and for sergeants. The salary that the city pays employees in these classifications is considerably higher than the salaries paid to employees in these same classifications in other municipalities.

Arbitrators have held that where an employer is at or near the top that an employer need not offer a percentage as high as the percentage increase that others paid during the same period of time. Since it pays more, the actual wage increase might compare favorably even though the percentage is less. It is the actual wage increase that should be compared here. The City offer is the best offer when actual dollar increases are compared.

The City offers greater benefits than do any of the other comparables. The cost to the City to provide these benefits exceeds the cost paid by the other cities. Its retiree health insurance, health insurance for employees, sick leave,

longevity, vacations and holidays are more generous than are offered by any of the comparables. The Arbitrator should consider these additional costs when analyzing the two proposals.

The Internal Comparables also favors the City. Arbitrators have held this factor to be determinative when a pattern has been established. There is such a pattern here. The City has only one other bargaining unit. That unit voluntarily accepted a 3% increase for 2001. There is no basis to deviate from that settlement in this case. To hold otherwise, would encourage unions to refrain from voluntarily settling disputes and encourage them to go to arbitration to try to obtain a better result. It is for that reason arbitrators have given such great weight to internal consistency. The 3% raise given to the other unit also was the same raise given to the non-represented employees. While there were isolated cases where some employees received more, overall the increase was 3% for those not in a bargaining unit. This fact further supports the City's offer.

The North Shore Fire Department serves seven communities. Glendale is one of those communities. Employees in the fire department received a 3% increase for 2001. Employees formerly employed by the Glendale Fire Department are covered by that agreement. This raise is further demonstration that an internal pattern has been established.

POSITION OF THE ASSOCIATION

Many of the Statutory factors are not relevant in this case. Ability to pay has not been argued by the City to be a factor. Since there is no proof that the

City is unable to pay this factor should not be a consideration. The factors that are relevant favor the Association.

The interests and welfare of the public are better served by accepting the Association's offer. Pay must be high enough to attract new workers. It is important to maintaining morale within the Department. The Association offer better serves that purpose.

A comparison of increases given by other comparable communities is a critical factor to be examined. In this case, law enforcement personnel are involved. Arbitrators have noted in the past that "there is a sound basis for comparing law enforcement personnel with other law enforcement personnel." The duties of law enforcement are unique and their pay should not be compared to non-law enforcement workers. A review of the settlements in the other communities for police units demonstrates that the Association offer is the fairer offer. The average increase for the other communities was higher than the increase sought by the Association. In fact, the Association proposal is less than was given to any other community. The rate paid to police officers would continue to rank at the top for either proposal, but the differential decreases under both proposals. The decrease is greater under the City's proposal.

Contrary to the City's assertion, there is no internal pattern for wage increases for other city workers. There is only one other bargaining unit. The City attempts to use the increase for 2001 to establish a pattern. The record clearly shows that in prior years the wage increases given to the two units has

not been the same. In 2000, the law enforcement employees received a 3.25% increase while the other unit received a split 2%/1% increase that year. Similarly, the raises granted the two units in previous years had not been identical. It is clear that there is no pattern. Non-represented employees received an increase greater than 3%. This fact is further evidence that no pattern has been set.

The use of the North Shore Fire Department for comparison is erroneous. A Commission oversees the Department. Glendale has one seat on the Commission. The North Shore Fire Department is an independent public body, and not a part of the City of Glendale. The wage increases given to employees of the Department should not be a factor to be considered by the Arbitrator.

DISCUSSION

The Statute requires the Arbitrator to examine several factors in determining which of the two offers should be adopted. Not all of the statutory factors are always relevant in a proceeding. That is the case here. Neither side has argued and the Arbitrator is not aware of any statute that would preclude adopting either of the offers. Similarly, no stipulations were offered that impact upon the outcome. Thus, those two factors will not be addressed any further. The City has not argued that it is unable to pay the raise requested by the Association. The cost difference between the two proposals is only $5662 for 2001. This represents very little of the total payroll costs. I find ability to pay is not relevant. Finally, the Association argues that the interests of the public are

better served by its proposal, because having a well-paid police force attracts better people and improves morale. While that it undoubtably true, I do not see the extra 1/4% in the Association proposal as having much of an impact on attracting new officers. Therefore, I do not find this criteria of much assistance to me.

In reality, there are two main factors that have been raised by the parties as reasons why their particular proposal is best. Those factors involve a comparison between the wages each side proposed with the increases granted law enforcement personnel in other communities, and a comparison with the raises granted to other Glendale employees. An analysis of these two factors will unquestionably determine the ultimate outcome.[1]

External Comparables

There is nothing in the record to indicate that these parties have had to utilize interest arbitration to resolve their disputes in the past. Thus, there is no binding precedent as to which other communities should be utilized for comparison purposes. The Employer did introduce two Awards from Arbitrator Anderson as cases to which this Arbitrator should look for assistance in determining the appropriate comparables. In Fox Point, Arbitrator Anderson utilized increases granted in Bayside, Brown Deer, Glendale, River Hills, Shorewood and WhiteFish Bay as comparables with Fox Point. In a matter involving Bayside, he again used those same comparables. The Association exhibits utilize those very same localities as comparables. Given the Anderson

Awards and that the parties have both presented the same list. I shall adopt that list here.[2]

All six of the other communities have reached agreement in 2001. Some of them, like River Hills and Fox Point gave split increases. Thus, the actual increase is lower than the lift in wages that resulted from the two increases. The lift in Fox Point was 5%, but employees only received 3.75% more in actual wages. Since the second increase of 2.5% did not occur until one-half of the year had passed, the expense to the Employer in 2001 was half of what it would have been had it paid that money at the beginning of the year. In River Hills the lift was 4%, but the employees received only 3% more. The Arbitrator has looked at both the lift and actual increase in the six communities. The average lift was 3.71%. The actual increase in wages was 3.33% The City proposes a 3%. The Association asks for a 3.25% increase. Even using the actual increase, both proposals are below the average. The Associations is closer to the average.

The parties are operating under a three-year agreement. They have a re-opener for the last year. Given that it is a three-year agreement, the increases in the previous two-year are relevant. The comparables received an average actual increase of 3.125% in 1999. The employees in this unit got a 2.75% actual increase in 1999. They were also behind when the total lift is compared. The average increase for the comparables in 2000 was 3.16%. Glendale Law

[1] The Association does point out that the Cost of Living rose 3.33% in 2001. That figure is closer to the Association proposal and does support its position. It is certainly one indicator in its favor, albeit not the most critical one.

Enforcement received a 3.25% wage increase. The two-year average actual increase was 3.1425% for the comparables and was 3% for Glendale. As can be seen, the increase for the previous two years in Glendale was slightly less than the average for patrol officers.[3] Regardless of which offer is accepted the increase is again less in 2001. Looking at just the percentage increase, the external comparables point in favor of the Association.

The Employer cited a case by Arbitrator Zeidler. In City of Racine Dec. No. 24262-A Arbitrator Zeidler stated:

> Comparability in percentage increases usually is directed to result in actual wage increases to either keep rank or reach near equality with other comparable units. Where the Employer offer is near the top in actual results as far as wage levels are concerned, the importance of comparability of percentage increases diminishes. Thus, the Employer offer here which maintains relatively high or even highest rates is reasonable in that it meets the criterion of actual wages, even though not in percentage increases.

The exhibits reveal that Glendale ranks first in wages among the comparables. It ranked first in 1998. 1999 and in 2000. It continues to rank first in 2001 under both offers. Adopting the Employer offer would not impact upon that ranking. For this reason, the Employer has asked to Arbitrator to look beyond the percentages, but to the ranking. It argues that under the ruling of Arbitrator Zeidler its proposal is the better proposal because the actual increase in dollars received by its employees is as high under its offer as the increase granted elsewhere. The Employer offered several exhibits to support

[2] The Association Exhibits included a list of secondary comparables. I do not find the use of such a list is warranted in this case and I shall not use them in my compariosn.
[3] The differential actually increases slightly for Sergeants under the Association proposal, but decreases for Detectives.

its position. The exhibits show that the average annual salary for a police officer at the top step in 2000 was $48,050 in the six comparables. It was $48,984 in Glendale. The difference came to $934. The difference decreases to $696 under the Association offer and to $574 under the City's. On a monthly basis, the difference decreases from $78 to $48 under the City proposal. It decreases to $58 under the Association's. At the beginning of this contract in 1998, the top salary was $80 higher per month. The downward trend continues no matter which proposal is adopted. The monthly differential between starting salaries for police officers also has dropped and would continue to drop under both offers. From 2000 to 2001 it would drop from $256 to $205 or $213, respectively. At the beginning of this contract, the average starting salary in Glendale was $419 per month over the average. Even though the City of Glendale would continue to rank first under either offer, the amount by which it maintains that rank has been slowly shrinking.

It is certainly possible for an employer that pays more than others to pay a smaller percentage increase than the comparables and still pay more out of pocket to each employee than the other comparables. In order for that to occur, the percentage proposed must be high enough to maintain the differential that existed before the raise. Here, the Employer percentage offered is not enough to bring the wages increases to a level that equaled the increase in actual wages received by the other comparable communities. Even under the theory espoused by Arbitrator Zeidler, a proposal must meet "the criterion of actual wages, even though not in percentage increases." I find that the proposal in

2001 of the City is not equal in dollars to the wage increases given by the comparables. Thus, I find that no matter how I compare the wage offer in Glendale with the other communities, I am faced with the inescapable conclusion that the offer of the Association is preferable.[4]

The City next argues that it is improper to simply look to a wage increase comparison to determine the acceptability of a party's proposal. It believes the Arbitrator must look at all of the benefits offered and the cost of those benefits to the City in relationship to the cost of those benefits to the other communities. For example, the health insurance costs to the Employer will rise by over $77,000 over the three years covered by the agreement. How do these added costs impact upon the evaluation of the parties' proposals?

I will begin with a discussion of health insurance since this was the first example used by the Employer. The City pays an amount equal to 105% of the premium for the lowest plan. Three of the other six comparables have a similar provision. In proportion to the number of employees, the added expense is the same for them as it is for Glendale. Brown Deer pays 95% of the Primecare rate. It is unknown how that compares. In any event, one-half of the comparables pay the same as the City, and presumably paid the same premium increases. Why should I only consider the increase for Glendale, when one-half the others suffered the same fate? Should not their added costs also be factored into the equation? The same is true for the other benefits. The

[4] The City also cited City of Sturgeon Bay Dec. No. 40626 (Vernon). In that case, Arbitrator Vernon noted that the fact that the City was in a "leadership position relative to the comparables takes the sting out" of its lower offer.

City has fewer holidays. Sick Leave and vacation accumulations are in line with the other comparables. While the City pays more in real dollars to provide benefits such added costs are attributed to the larger number of employees in Glendale and not to greater benefits. The fact that it has more employees and, therefore, pays more should not be treated as proof that the total benefit package offered by Glendale is superior to the benefit package of the comparables. The cost per employee for longevity, sick leave, vacation and holidays is not greater in Glendale. It is true as the City points out that the number of days an employee can accumulate sick leave and vacation and for which they can receive a payout when leaving or retiring is higher in Glendale. However, that has not changed since the contract was signed. In fact, there is no evidence that there has been any change in any of the benefits currently received by the employees in this community or any change in the other communities since the parties voluntarily signed their contract in 1998. Thus, there is no new cost to this Employer or a lowering of costs elsewhere that would justify Glendale paying a lower wage increase than was received by the other comparables. The City chose during the negotiations for the current agreement to give the benefits that they did knowing full well at the time what benefits others were giving to their employees. It would be wrong for me to now undo that decision. The time to do that is when the parties bargain over a successor agreement. Thus, I must reject the Employer's argument that the total compensation package it gives its employees when compared to benefit

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However, of critical importance in his finding was that there was an economic downturn in the community that

package given by the other communities warrants adopting its lower wage proposal. It is my finding that when all things are considered, the external comparables favors the Association.

Internal Comparables

The City has only one other bargaining unit. That unit received a 3% increase for 2001. The City has argued that the North Shore Fire Department should also be considered as an internal comparable. That Department received a 3% increase in 2001. A five-member commission runs the North Shore Fire Department. Each of the cities that are covered by the North Shore Fire Department has a member on the Commission. The Association opposes the inclusion of the Department claiming it is a different entity than the City of Glendale. I agree with the Association. This Arbitrator issued a decision in a case involving the North Shore Water Commission.[5] Like the Fire Department, a Commission ran the Water Department. In that case, I was asked to consider as internal comparables the raises given by the communities that made up the Commission. I declined to do so. I noted that the Commission is not the same "governing body" as each of the communities. That is still my position and I shall, therefore, not consider the North Shore Fire Department in my analysis.

As noted, the one other organized unit in Glendale received a 3% wage increase. The Employer argues that this has created a pattern. Arbitrators have often held that where an internal pattern has been established that the arbitrator should not break that pattern. Doing so can encourage a party to

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favored a lower increase. That downturn has not been shown to be present in this case.

hold out for arbitration to try to do better than if it settled. Settlements would thereby be discouraged. I agree with that premise, but can one unit make-up a pattern? If it can, how long does that pattern have to be in existence for it to be a persuasive factor in a wage analysis? Finally, does it make a difference that the unit involved in the dispute is part of public safety and the alleged comparable unit is not?

Many of the cases cited by the City involve multiple bargaining units. In one case there were six other bargaining units and all had settled.[6] In another case 9 of 12 units had settled for the same raise.[7] In those cases an internal pattern was set. Here, we have only one other unit. That fact distinguishes this case from those two. There are other differences, as well. In City of Madison, Arbitrator Vernon found that there had been a "long history of voluntary settlements fitting to an internal bargaining unit pattern." In City of New Berlin (Krinsky, 1993) there was only two other bargaining units, still a pattern was found to exist. In that case, each unit received the same increase for all three years of the contract. As the Association correctly pointed out there is no long history of comparable raises here. In 1999, the other unit received a split increase of 2% and 1%. This unit got 2.25% and 1%. In 2000, this unit got a 3.25% increase while the other unit got a split 2% and 1% increase. Where is the long history of similar settlements? The answer is that there is no such pattern. In this case, the Employer agreed to give different raises in each of the

[5] Case 23 No. 54954 (1998)
[6] Marinette County Sheriff Dec. No. 22574-A (Grenig, 1985);
[7] City of Madison Dec. No. 21345-A (Vernon, 1984)

first two years of the agreement. Why should I follow a pattern in 2001 when the Employer did not believe it had to follow a pattern in prior years?

Arbitrator Vernon in City of Madison also had to face a question of parity between fire and police that had been in existence for the last eleven years. Each group received the same raise over that period. Quoting Arbitrator Ziedler he noted that there was "special emphasis on the relationship between police and firefighters." Arbitrator Vernon found this relationship was "so significant that it can be said to have established a prima facie case in favor of the Employer's offer." The need for parity is absent here. I have already noted that the North Shore Fire Department employees cannot be fairly considered employees of the City or as a comparable.[8] Consequently there is no parity that needs to be considered. The prima facie case that was established in Madison is not established here.[9] As the cases cited show and as this Arbitrator previously has found internal consistency is less significant when public safety employees are involved, unless they are being compared with other public safety employees such as firefighters. In City of Algoma Case No. 55888 I quoted from Arbitrator Fleischli. The Association also included that quote in its brief. That quote is worth repeating here.

> Logically, there is a sound basis for comparing law enforcement personnel with other law enforcement personnel. Not only is the nature of their work significantly different than that which is performed by blue collar and white collar employees in the same community, a separate statutory procedure exists...

[8] Even if it were there would still be no history of parity. The raise those employees got in 1999 was 3.1% and in 2000 it was 2.85%.

[9] Parity was also important in Milwaukee Police Supervisors Dec. No 25223-B (Rice, 1988)

I, therefore, reject the Employer argument on this basis as well.

There is one final matter concerning internal comparables that was raised by the parties that should be addressed. The parties disagree as to what the wage increase given to the non-represented employees in 2001 was. I find the question of what non-represented employees received not to be relevant for two reasons. What non-represented employees received might arguably be relevant if it demonstrated a continuation of a pattern established for the represented employees. Since I have found that there is no pattern for the represented employees what the non-represented employees received does not come into play. More importantly, in determining whether there has been a pattern established arbitrators "enter into a careful review of the settlements reached with other represented groups."[10] Consequently, I shall not consider and do not find relevant the raises granted to the non-represented employees.

Based upon all of the above, I find that internal comparables are not a factor in this case. The lack of historical consistency among the two units and the fact that the unit before me involves public safety employees demonstrates that there has been no pattern to which I must adhere. I find that the wages offered and accepted by the other unit does not weigh into the equation as to which offer should be accepted. Internal comparables favors neither party.

Summary

As noted at the beginning of this discussion, there are only a limited number of factors that are germane to this case. COLA favors the Association.

External Comparables favor the Association. Internal comparables, notwithstanding the City's contention to the contrary, have no impact since no historical wage pattern has been established. I find that the relevant factors favor the Association.

AWARD

The final offer of the Association shall be incorporated into the parties 1999-2001 agreement.

Dated: October 29, 2001

Fredric R. Dichter,
Arbitrator

[10] City of Waukesha, supra at p. 20. See also City of Racine, supra at. P. 10 where Arbitrator Zeidler looked to "organized units" to ascertain if there was a pattern.