BEFORE THE ARBITRATOR

In the Matter of the Arbitration of an Impasse Between	:	Case 46
	:	No. 59225
VILLAGE OF EAST TROY POLICE DEPARTMENT	:	MIA-2338
	:	Decision No. 30165-A
and	:	
THE LABOR ASSOCIATION OF WISCONSIN, INC.	:	

Appearances:

Gray, Hudec & Oleniczak, Attorneys at Law, by Linda L. Gray, for the Municipal Employer.

Kevin Naylor, Labor Consultant, for the labor organization.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Case 46, No. 59225, MIA-2338, Dec. No. 31065-A, 7/9/01), the undersigned Arbitrator to issue a final and binding award pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act resolving an impasse between those parties by selecting either the total final offer of the Municipal Employer or of the labor organization.

A hearing was held in East Troy, Wisconsin, on September 20, 2001. No transcript was made. Briefs were exchanged on May 8, 2002. On approximately May 16, 2002, the parties advised the Arbitrator that no reply briefs would be submitted, but that the record should be held open until a pending grievance arbitration award was issued by Arbitrator Colleen Burns and submitted to the undersigned Arbitrator. That submission occurred on approximately May 31, 2002.

The collective bargaining unit covered in this proceeding consists of the law enforcement personnel employed by the Municipal Employer. At the time of the hearing there were five full-time and two part-time employees in the unit.

The parties are seeking an agreement for 2001, 2002, and 2003.

THE FINAL OFFERS

The final offer of the Municipal Employer would provide 3% wage increases to all classifications in the bargaining unit on January 1, 2001; January 1, 2002; and January 1, 2003.

It also proposes to amend the Health and Welfare article of the parties' preceding collective bargaining agreement "to eliminate the $200/$600 front end deductible for health insurance and replace it with a 6% coinsurance payment per employee of the Village's cost for health insurance," to be administered as a payroll deduction.

The final offer of the labor organization consists of 4% annual wage increases and the following new contractual wage schedule.

Police Officer	1/1/01 - 4.0%	1/1/02 - 4.0%	1/1/03 - 4.0%
Start	$15.42	$16.04	$16.68
After six months	$16.13	$16.78	$17.45
After one year	$16.85	$17.52	$18.22
After second year	$17.28	$17.97	$18.69
After third year	$17.97	$18.69	$19.44
After fourth year	$19.05	$19.81	$20.60
After fifth year	$20.32	$21.13	$21.98
Sergeant/Investigator	**2001 - 4.0%**	**2002 - 4.0%**	**2003 - 4.0%**
	$21.58	$22.44	$23.34
Part Time Officer	**2001 - 4.0%**	**2002 - 4.0%**	**2003 - 4.0%**
With another Officer	$11.21	$11.66	$12.13
No other Officer	$14.55	$15.13	$15.74

The preceding collective bargaining agreement provided as follows.

HOURLY SCHEDULE OF WAGES OF POLICE DEPARTMENT

CLASSIFICATION	**1/1/98**	**1/1/99**	**1/1/2000**
	(4%)	(4%)	(4%)
POLICE OFFICER			
a) Starting Rate:	$13.72	$14.26	$14.83

b) After Six Months:	$14.35	$14.92	$15.51
c) After One Year:	$14.99	$15.58	$16.20
d) After Second Year:	$15.38	$15.99	$16.62
e) After Third Year:	$15.99	$16.62	$17.28
f) After Fourth Year:	$16.95	$17.62	$18.32
g) After Fifth Year:	$17.51	$18.21	$18.93
h) After Fifth Year for Officers Hired before January 1, 1995:			
	$18.07	$18.79	$19.54
INVESTIGATOR:	$18.74	$19.48	$20.25

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PART TIME OFFICERS	(2%)	(2%)	(2%)
l) With another Police Officer:	$10.37	$10.57	$10.78
j) Working a shift with no other officer on duty:	$13.46	$13.72	$13.99

DISCUSSION:

Stipulations

At the hearing the parties stipulated as follows.

1) The Municipal Employer did not present the aforesaid insurance proposal until its final offer. Previously, it proposed an increase in the deductibles.

2) One officer who is eligible for family coverage opts out of coverage and receives $2600.00 per year, in lieu of a benefit costing $846.58 per month.

3) One officer would receive a higher rate of pay by virtue of the elimination of the "hired before January 1, 1995" tier of the wage schedule proposed by the labor organization.

The Pending Grievance Arbitration

As indicated above, at the time of the instant hearing and until after the parties submitted their briefs herein, there was a pending grievance arbitration proceeding bearing upon the matter of health insurance. At the hearing before the undersigned the parties agreed to withhold their briefs until after that award issued so as to incorporate it in their arguments. When they concluded that they could not predict when the grievance award would issue and did not wish to contribute to further delay in the instant matter, they submitted their briefs to the undersigned, holding the record open for eventual submission of the grievance award.

The grievance arbitration award, which is dated May 30, 2002, concluded, inter alia, that, "The Village of East Troy's current health insurance plan does not comply with Article XX, Section 20.01, of the collective bargaining agreement with the East Troy Professional Police Association: (That was the agreement immediately preceding the agreement sought herein.)

More particularly, Arbitrator Burns held that, while the Employer had the right under the labor agreement to change health insurance providers, as it had; in doing so it was required to maintain benefits that were "comparable." Upon examination of the benefits before and after the Employer's change of providers, she found that the new plan was "significantly deficient in a number of 'benefits' and significantly improved in one benefit;" and therefore "not comparable" to the earlier plan.

As a remedy, Arbitrator Buns directed the Municipal Employer to make the bargaining unit employees whole by reimbursing them for any costs they incurred as a consequence. These costs might involve prescription drug purchases, oral contraceptive purchases, hospice care, oral surgical procedures, front-end deductible administration, and fees charged to employees in connection with the medical savings account feature.

The Parties' Contentions on Health Insurance

The labor organization contends that the Employer's health insurance proposal should be rejected because it was first made as part of the Employer's May 22, 2001, final offer, and was not part of the November 8, 2000, mediation attempt by an Employment Relations Commission investigator. However, judging from the text of Arbitrator Burns' award, this proposal must have been known to the labor organization by the time of the July 19, 2001, hearing before Arbitrator Burns, and during the November 19, 2001, to December 13, 2001, period during which Arbitrator Burns was asked by the parties to hold her decision in abeyance pending negotiations. Thus, on September 20, 2001, when the undersigned conducted the hearing herein, the Employer's proposal was subject to negotiations between the parties.

While it would be preferable if the parties' final offers were subject to Employment Relations Commission mediation in cases such as this, and that surely is the intent of the statute, the above factors, as well as the fact that failing to negotiate in good faith is the subject of a prohibited practices procedure, persuade the undersigned to examine this offer on its merits.

In that respect, the Employer emphasizes the well-known increase in premiums required by insurers; the increases in deductibles that the bargaining unit experienced over recent years; and the relatively small amounts that its 6% employee-share proposal represents per employee per year ($115.67 for the family plan and $99.51 for the single plan).

In its argument the labor organization, in addition to its aforesaid objections based upon the timing of the Employer's health insurance offer, also raises other contentions. The most impressive of these, in the view of the Arbitrator, is the contention that the Employer is not making the same 6% employee-share proposal to other bargaining units also represented by the labor organization, or to its unrepresented employees. However, it must be noted that these contentions are not grounded in evidence submitted at the instant hearing and therefore must be discounted.

Finally, ironically, although the pendency of the grievance arbitration had a major impact on the instant interest arbitration procedure, perhaps due to the parties' determination to submit briefs before the grievance award, their arguments shed no light on the relevance, if any, of the grievance award to the instant award.

The undersigned would seek surer footing than this health insurance matter provides for selecting a final offer.

The Wage Offers

In the view of the undersigned, the most substantial element of the parties' impasse which should dominate the instant determination is the differences between the final offers as they refer to the wage schedule. It is this matter that will have the greatest consequences for both the Municipal Employer and the members of the bargaining unit.

As the parties view their competing offers, they present two fundamental issues. The first is whether the labor organization's offer should be rejected because it would end the "two-tiered" schedule that has provided for different treatment of employees who were hired before and after January 1, 1995. (That is, three of the five full-timers.)

The Employer urges that this arrangement was bargained for, and obtained with concessions, in approximately 1995; and that now the labor organization must establish some necessity for undoing the status quo. The Employer argues, "The Union's proposal has an increase of f7.3% for fifth year officers hired after January 1, 1995 which affects one officer immediately making that employee's wages equal to those employees with greater longevity and nullifies the payment by the Village for the elimination of longevity pay made in 1995."

The Arbitrator, and indeed the labor organization in its brief, recognize the arbitral doctrine that presumes in favor of negotiated arrangements and against revisions of such terms, absent compelling reasons for such revisions.

Once again, however, the Arbitrator is not well served by the record. Indeed, the Employer asserted without contradiction at the hearing that it agreed to the two-tier system when it entered the parties' 1995-1997 collective bargaining agreement as a "one time buyout of longevity," but there is no real evidentiary record or stipulation in this regard.

The other element of the parties' impasse over the wage schedule consists of their competing arguments over the wages of comparable employees elsewhere, and the Municipal Employer's fiscal constraints. These contentions are well grounded on facts-in-evidence and have served as the ground upon which the selection of a final offer has turned.

In interest arbitration awards issued to this Municipal Employer and another labor organization, representing two other bargaining units, in 1991 and 1992, Arbitrators Sherwood Malamud and William W. Petrie both determined that it should be compared in such proceedings to: the City of Delavan, the City of Elkhorn, the City of Evansville, the City of Jefferson, the City of Lake Mills, the City of Lake Geneva, the City of Milton, and the Village of Mukwonago. Arbitration Malamud also included the Town of Beloit and the Village of Fontana on Lake Geneva.

In the present matter the Employer contends that it should only be compared to municipalities within Walworth County and within 22 miles of itself. Those are Lake Geneva, Elkhorn, Walworth, Genoa City, Delavan, Fontana, and the Town of East Troy, almost all of which report substantially lower wage rates than those offered by the Municipal Employer.

The undersigned finds no persuasive basis for rejecting the analysis of the two previous interest arbitrators. The Employer emphasizes the geographic proximity of the municipalities it prefers as comparables and their location in Walworth County. But, as the Union emphasizes, the Employer's comparables include some very small municipalities; and comparability should involve consideration of work responsibilities and labor market factors. Such consideration was much more apparent in the other interest awards than in the Employer's focus on geography.

Having determined to apply the comparisons employed in the previous interest awards, the parties' wage proposals may be fairly systematically evaluated. This assessment reveals that the members of this bargaining unit are compensated at a materially below average level, whether they are experienced or recently hired; and that the proposal of the labor organization will, of course, provide more correction, but not so as to place these employees ahead of their peers.

As indicated above, the Employer urges that its final offer should be selected because of compelling fiscal constraints. These include state-imposed expenditure restraint and current state fiscal policies that suggest lower revenue-sharing payments to local governments. However, in the Arbitrator's judgment these factors alone, without persuasive evidence of insufficient resources, do not justify compensating the members of this bargaining unit at a materially lower level than that of their counterparts in comparable municipalities.

AWARD

On the basis of the foregoing, and the record as a whole, as well as all of the factors specified at Section 111.77(6) of the Municipal Employment Relations Act, the undersigned Arbitrator selects the final offer of the labor organization.

Signed at Madison, Wisconsin, this 29th day of July, 2002.

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Howard S. Bellman
Arbitrator