

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between)	Case 22
PULASKI POLICE OFFICERS BARGAINING UNIT,)	No. 60912
LOCAL 3055, AFSCME, AFL-CIO)	MIA-2451
and)	Dec. No. 30496-A
VILLAGE OF PULASKI)	AWARD

Appearances: For the Union, AFSCME Staff Representative Mark DeLorme, Green Bay.

For the Employer, Attorney Robert W. Burns, Green Bay.

On February 22, 2002, the Pulaski Police Officers Bargaining Unit, Local 3055, AFSCME, AFL-CIO (referred to as the Union) filed a petition with the Wisconsin Employment Relations Commission (WERC) pursuant to Section 111.77(3) of Wisconsin's Municipal Employment Relations Act (MERA) to initiate arbitration. The Union and the Village of Pulaski (referred to as the Employer or Village) had begun negotiations for a successor to their collective bargaining agreement which expired at the end of 2001 but failed to reach agreement on all the issues in dispute. On November 11, 2002 following an investigation by a WERC staff member, the WERC determined that an impasse existed and that compulsory arbitration should be initiated. On December 2, 2002, the undersigned, after having been selected by the parties, was appointed by the WERC as Arbitrator to resolve the impasse. By agreement of the parties, she held an arbitration hearing on March 27, 2003, in Pulaski, Wisconsin, at which time the parties were provided with a full and fair opportunity to present evidence and make arguments. The parties filed and exchanged post-hearing briefs.

ISSUES AT IMPASSE

Although the parties reached tentative agreement on a number of issues, they were unable to resolve two issues relating to Article 23 (Holidays) and Article 29 (Sick Leave). The Union 's final offer adds Easter as a holiday. The Union 's final offer also adds the following language to the end of the Sick Leave Article:

Thirty percent (30%) of accumulated sick leave will be paid to retiring unit members. Employees shall receive compensation at the rate of the employee 's regular rate of pay. One-half (2) month or more shall be considered a full month for the purpose of sick leave accumulation payout at retirement. The compensation may be taken in cash and/or applied to the payment of premiums for health and/or dental insurance. In addition, in case of the death of a former employee, an eligible survivor or designated beneficiary will receive any monies

left in a former employee ' s escrow account.

STATUTORY CRITERIA

Pursuant to Section 111.77(6), the undersigned is required to give weight to 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 these costs.
- (d) Comparisons 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 performing similar services and with other employees 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 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.

ARGUMENTS OF THE PARTIES

The Union

The Union first addresses the issue of which communities are appropriate comparables. In addition to the four communities which both parties agree are appropriate comparables (Clintonville, Oconto, Oconto Falls, and Seymour), the Union proposes Ashwaubenon, DePere, New London, and Shawano as primary comparables. It also proposes Brown, Oconto, and Shawano Counties, the three counties in which the Village is located, as secondary comparables. The Union relies upon the 1992 Village of Pulaski decision by Arbitrator William Petrie and its rationale for the Union ' s primary comparables¹ noting that the proximity of the primary

¹Both parties agree that four of Arbitrator Petrie ' s comparables should not be considered: Allouez and Howard because they do not have police departments and Bonduel and Gillett because they have populations under 2500 and thus their law enforcement units are not

comparables to Pulaski makes them part of the same labor market. The Union rejects Kawaunee and Peshtigo, the Employer's additional primary comparables, because both municipalities are more remote geographically. In fact, they are not even located in any of the three counties in which Pulaski is located.

Although the Union acknowledges that in terms of population both Ashwaubenon and DePere are significantly larger than Pulaski, it contends that the statutory criteria do not require comparisons only with similar sized communities and cites a number of Wisconsin interest arbitration awards which favor proximity and common labor markets over similar population size in determining appropriate external comparables.

Turning to the statutory factors which it believes are relevant in this proceeding, the Union starts with the interests and welfare of the public and the financial ability of the unit of government to meet these costs as a factor. Noting that the average length of service for bargaining unit members is approximately 18 years, the Union argues that the public's interest is best served by the recruitment and retention of qualified, experienced employees. The Union further points out that the Employer has failed to present specific or meaningful evidence of reduced shared revenues for this contract term or other economic restraints indicating any inability by the Village to pay for the Union's final offer herein. Accordingly, the Union concludes that the minimal or negligible difference in cost between the two final offers demonstrates an unwillingness but not an inability to pay argument by the Village.

The Union next deals with external (police unit) comparability. It argues that its sick leave payout proposal (cash or conversion to pay for health insurance premiums at retirement) has strong external support, noting that all of its primary comparables have a more generous version of the Union's proposal. It also argues that its proposal to add Easter as a holiday is easily justified, particularly when viewed within the framework of compensatory time opportunities, paid holidays, and holiday premium pay where the overwhelming number of comparables have more favorable benefits than those provided by the Village. In contrast, the Union does not believe that the Village's only internal comparable, the DPW, is relevant in this proceeding because of the unique nature of police units and the need to bring benefits for this bargaining unit into line with the external comparables outweighs the employer's need for uniform internal settlements.

Anticipating an Employer argument that the Union should be required to provide a quid pro quo to justify its final offer for new benefits, the Union points to arbitral precedent that when comparability is at issue, there is no requirement to demonstrate a quid pro quo. In addition, since this is this unit's first round of negotiations where interest arbitration is available

subject to interest arbitration. Both parties have agreed upon Clintonville as a primary comparable in this proceeding although it was not considered in Petrie's 1992 Pulaski decision.

(Pulaski 's population was under 2500 until the 2000 census), the Union believes this proceeding is similar to an initial contract situation in which a quid pro quo analysis carried little weight.

Finally, the Union challenges the Employer 's emphasis on overall compensation and its costing of the parties ' total packages, particularly what the Union believes to be the Employer 's flawed casting forward costing method which assumes 6 employees when in fact there are now only 4 bargaining unit members and the Employer 's unclear assumptions about which bargaining unit members had the more costly family health insurance (versus those who had single coverage). In light of the fact that Pulaski police minimum and maximum wages and the percentage of health insurance premiums paid by the Village are consistently at the low end when viewed with the comparables, the Union concludes that the modest gains represented by its final offer are exceedingly reasonable.

In its reply brief, the Union reiterates many of the above points and adds some rebuttal arguments. It emphasizes that the Village continues to provide misleading mill rate information (by including taxes for school districts, VTAEs, counties, etc.); that the Village 's rejection of Ashwaubenon and DePere as comparables flies in the face of Arbitrator Petrie 's analysis that Green Bay area municipalities are part of the same economic community and the same labor market as Pulaski; that the Village 's contention that Pulaski police wages and fringe benefits are comparable to surrounding communities is incorrect because Pulaski trails in both wages and benefits; that because the Village continues to mischaracterize the Union 's overtime exhibit (Union #6) the Employer 's arguments relating to the Union 's overtime exhibit should be disregarded; that a number of the comparables have sick leave incentive plans similar to the Union 's proposal; that, while the Employer is correct when it points out that some of the comparables have a service requirement before a bargaining unit member is eligible for sick leave payout at retirement, the Union 's proposal provides only for a very modest 30% payout; and that the Village 's argument about an impending budget crises is speculative and not relevant in this proceeding regarding the parties ' 2002-2003 collective bargaining agreement.

For all the above reasons, the Union submits that its final offer should be selected as the more reasonable one.

The Employer

The Employer also begins its arguments by addressing the issue of what constitutes the appropriate pool of comparables. The Village rejects adopting Arbitrator Petrie 's 1992 listing of comparable communities in his Village/ DPW impasse arbitration award and argues that the listing is inappropriate for this police bargaining unit due to the unique duties and hours of police officers and the separate statutory impasse procedure provided for police and firefighter bargaining units in contrast to other bargaining units of municipal employees. The Employer argues that Kewaunee and Peshtigo should be added to the agreed upon list of four comparables, Clintonville, Oconto, Oconto Falls, and Seymour, because of geographic proximity, similar size work forces, and similar mill rates and full value assessments. The Village reject 's the Union 's comparables of Ashwaubenon, DePere, Shawano, and New London because of their larger size and because the latter two have different property value levels which are not comparable to

Pulaski ' s.

The Employer also rejects the Union ' s secondary comparables because of the numerous differences between the Village and the Counties of Shawano, Oconto, and Brown, including the differences in law enforcement responsibilities and the enormous difference in size between the Village and each of these counties.

Turning to the issues in dispute, the Employer first notes that Pulaski ' s wage increases for 2002 and 2003 agreed to by the parties (identical in each party ' s final offer) are clearly in line with the comparables. In considering the Union ' s proposal to add Easter to the list of paid holidays, the Employer contends that not only paid holidays must be considered but other paid time off must also be considered. In this regard, bargaining unit members already receive 36 hours of paid personal leave (equal to 4 2 days) in addition to holiday benefits and this additional benefit is unlike any benefits which members of police units in comparable communities enjoy. In addition, members of this bargaining unit also enjoy exceedingly generous paid sick leave benefits. Thus, when total paid time off is taken into consideration, members of this bargaining unit already enjoy Aricher@ or more generous benefits than those employed as police officers in comparable communities. This is true even if sick leave benefits are disregarded.. Accordingly, adding another paid holiday is not supported by the evidence from the comparables or the statutory factors, in the judgement of the Employer.

Also, the proposed Easter holiday presents the Employer with additional concerns because whenever a member of this bargaining unit has paid time off, the Employer must fill the slot (incurring additional costs) or leave the shift vacant (reducing needed services), a problem compounded by the Village ' s budgetary constraints and loss of shared revenues.

As for the Union ' s sick leave payout proposal at retirement, the Employer notes that bargaining unit members are the beneficiaries of a provision already contained in their collective bargaining agreement which provides that once an officer has accumulated 1,200 hours of sick leave, the officer is entitled to receive \$100 annually for each day of sick leave in excess of 1,200 hours. Since none of the comparables provide a similar benefit, the Employer views the Union ' s final offer regarding an additional sick leave payout at retirement as excessive. Particularly since the proposed benefit is based upon future wage rates, its cost escalates each year and makes it even more impossible in current depressed economic times.

The Employer next points to a Awell known and accepted principle@ of interest arbitration which cautions an arbitrator against granting any proposal which significantly changes the status quo unless the party making the proposal provides a quid pro quo. Since the Union has failed to provide anything of this nature, it has failed to meet its well established burden, according to the Employer. Citing many precedents, the Village concludes that the Union never could have secured its final offer at the bargaining table and thus is trying to secure benefits through this arbitration proceeding which it could not achieve through a voluntary settlement.

The Employer also points to current economic conditions faced by Wisconsin municipalities as additional grounds for rejecting the Union's final offer. In particular, the Employer notes regional plant closings and layoffs, the large state deficit, rapidly escalating health insurance costs (the Village's averaged 17.5% in the past four years), and anticipated cuts in state aid to municipalities. Given this bleak picture, the Employer does not believe that adding new benefits is an option for any municipal employer at this time even if there is support among the comparables for added benefits, particularly in the absence of any Union concession or quid pro quo..

In addition, the Employer voices concern that accepting the Union's final offer will widen internal benefits disparities between members of the police bargaining unit and members of the DPW bargaining unit since police officers already enjoy a variety of generous benefits. Enhancing police benefits further would certainly haunt future Village/DPW negotiations.

Finally, the Employer addresses the cost of living statutory factor. (Although the Village cites Section 111.70(4)cm)(7r)(g), Section 111.77(6)(e) is identical.) Emphasizing total package costing, the Employer points out that under either party's final offer, bargaining unit members will receive wages and fringe benefits in excess of cost of living increases.

Accordingly, the Employer concludes that, based upon internal and external comparability, the state of the economy, overall compensation, the interest and welfare of the public, and cost of living data, its final offer should be selected by the arbitrator.

DISCUSSION

The first issue to be decided is what constitutes the appropriate pool of external comparable communities. An important starting point is Arbitrator William Petrie's 1992 arbitration award in a case involving the Village of Pulaski. He determined that the following municipalities were the pertinent primary comparables for the Village's DPW bargaining unit: the Villages of Ashwaubenon, Allouez, Bonduel, and Howard, and the Cities of Gillett, Oconto, Oconto Falls, and Seymour. He considered and excluded Brown County, the City of Green Bay, and Shawano, (all proposed by the Union) from his listing of primary comparables. He also considered and rejected the Employer's argument that significant population differences required the exclusion of Ashwaubenon as a primary comparable..

In this current arbitration, the parties have agreed that Oconto, Oconto Falls, and Seymour (three of the primary comparables listed by Petrie) are appropriate comparables. In addition, they have agreed that Clintonville (not considered in 1992) should be a primary comparable. After these four agreed upon external comparables, the parties differ from Petrie's analysis and from each other's analysis. The Employer argues that Kewaunee and Peshtigo are appropriate primary comparables. In contrast, the Union argues that Ashwaubenon, DePere, New London, and Shawano are additional appropriate primary comparables.

In resolving this threshold issue, the undersigned agrees with Arbitrator Petrie's

rationale that, despite population differences, the key factors in determining appropriate comparables should be those communities which have employees who perform similar duties, share a common labor market and thus are part of a shared geographical and economic community. In this proceeding, she concludes that Ashwaubenon, Shawano, DePere, and New London should be added to the pool of agreed-upon primary comparables. Ashwaubenon comes directly from Petrie 's 1992 listing. The other three municipalities are appropriate to include because their inclusion is consistent with the parties ' agreement to include Clintonville as well as Arbitrator Petrie 's rationale for his 1992 primary comparables. She has not included Kewaunee and Peshtigo as primary comparables because she believes they do not form part of this community. As for secondary comparables, the record does not contain sufficient information about similarities and differences between duties performed by Brown, Oconto, and Shawano Counties ' law enforcement bargaining units and the Village 's law enforcement bargaining unit for her to determine whether the three counties in which the Village is located are appropriate secondary comparables. Since sufficient data is available from the primary comparables in this case, selection of secondary comparables is unnecessary.

Turning to the issue raised by the Union 's final offer which adds Easter as a paid holiday, the Union argues that the comparables provide more generous paid leave benefits than does the Village. For example, the majority of the comparables have compensatory time opportunities which enable their police officers to accumulate time and take time off with pay while the Village does not permit such accumulation of compensatory time. The Union also supports its additional holiday final offer by noting that the comparables provide more paid holidays than the Village and also provide more favorable premium overtime and holiday pay. On the other hand, the Employer points out that bargaining unit members receive 36 hours of paid personal leave annually in addition to eight paid holidays annually (including a floating holiday and a birthday holiday), unlike members of comparable police bargaining units. Thus, the Employer concludes that the Village 's status quo is the substantial equivalent of what is provided by the comparables. The Employer also stresses the serious dilemma which the Village must face when it must choose between finding and paying for a replacement officer or reducing vital law enforcement services. In response to the Union 's complaints about limitations on overtime opportunities, the Employer points to the existing language in Article 12 negotiated by the parties and which the Union has not sought to modify.

In determining which party 's position on paid holidays is to be preferred, the undersigned concurs that the issue must be considered in the context of related fringe benefits, not solely on the number of paid holidays enjoyed by bargaining unit members. Particularly in light of the 36 hours of annual paid personal leave each Village bargaining unit member enjoys (albeit subject to the prior approval of the Chief) and despite the Village 's limited opportunities for compensatory time, the Arbitrator concludes that an additional paid holiday has not been justified. She has reached this conclusion based upon external comparability.

The second issue in dispute relates to the Union 's final offer to add a new benefit based upon unused sick leave remaining at retirement. (This proposed benefit is in addition to the provision already included in Article 29 which provides \$100 for each day of sick leave a

bargaining unit member accumulates in excess of 1200 hours per year.) As the Employer argues, not one of the comparables provides such an annual payout benefit although a majority of the comparables, unlike the Village, do provide some benefit based upon unused sick leave at retirement. The Employer is also understandably concerned that the Union has not proposed this new benefit as a replacement for the existing sick leave payout benefit but as a new and potentially costly benefit. In contrast, the Union emphasizes that all the comparables already provide a much more generous sick leave payout plan at retirement than the Union's Aextremely modest@ proposal and further notes that the Employer's percentage contribution for employee health insurance and the parties' agreed upon wage package place the Village at the low end of the comparables in these two important categories. These arguments of the parties make this a close issue to resolve.

In Arbitrator Petrie's 1992 award, he observes that:

... application of the intra[-]industry comparison criterion does not necessitate immediate wages and benefits uniformity within the group, particularly where there are one or more wages and/or benefits leaders; it does normally justify, however, at least a gradual narrowing of the gap(s) between such leaders and the rest of the group.

In this case, based upon the parties' agreement on wages and health insurance, the Village's police bargaining unit finds itself at the low end of the wage scale and health insurance comparables. For this 2002-2003 collective bargaining agreement, there is no Agradual narrowing@ of these two gaps. It is reasonable to assume that the Union agreed to these modest wage and health insurance provisions because it hoped to secure improvements in other benefits to narrow the total compensation gap. Although the undersigned has reservations about the Union's decision to press for its Amodest@ new sick leave retirement payout proposal without any modification of its existing Article 29 annual sick leave bonus, she believes that the Union has justified a need for some improved economic benefits in the light of external comparability data. Under either party's package, overall increases for 2002-2003 exceed the cost of living. Cost differences are small, in any case, due to the size of the bargaining unit. If the Union's Article 29 final offer were the only issue in dispute in this proceeding, the Arbitrator concludes that, despite her noted reservations, the Union's final offer regarding unused sick leave at retirement is to be preferred.

Since this proceeding is final offer whole package arbitration, the final decision to be made by the Arbitrator is which party's whole package is to be selected. Of the two issues, the undersigned believes that the more critical policy issue involves the Union's attempt to Anarrow the gap@ by its Amodest@ addition to Article 29 (Sick Leave) of a benefit provided by the external comparables and not the Union's addition to Article 23 of another holiday which was insufficiently justified. She therefore selects the Union's whole package. In making this choice, the Arbitrator notes that by the time the parties receive this award, nearly three-quarters of the period covered by the collective bargaining agreement will have been completed. Negotiations for a successor agreement will be commencing before the end of the year. This next round of negotiations should provide the parties with an opportunity to make any mutually satisfactory

adjustments which they desire as a result of this arbitration award.

AWARD

Based upon the statutory criteria of Section 111.77(6), the evidence and arguments presented by the parties, and for the reasons set forth above, the Arbitrator selects the final offer of the Union and directs that the Union ' s final offer be made part of the parties ' collective bargaining agreement.

June 20, 2003
Madison, Wisconsin

June Miller Weisberger
Arbitrator