

EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Interest Arbitration Between :
:
Wisconsin Professional Police Association / Law :
Enforcement Employee Relations Division :
:
and : Case 85
: No. 60871 MIA-2449
City of West Allis : Decision No. 30597-A

Appearances: Mr. Thomas W. Bahr, for the Association

Davis & Kuelthau by Ms. Nancy L. Pirkey, for the City

By its Order of May 6, 2003 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator to issue a final and binding award pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act.

A hearing was held at West Allis, Wisconsin on July 14, 2003. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed on September 24, 2003 with the receipt by the arbitrator of the parties' reply briefs.

This is an arbitration to establish the terms and conditions of employment to succeed the parties' 1999-2001 Agreement. The parties agreed that there should be a one year Agreement covering 2002, but they could not agree upon its terms. They agreed also that there should be a three year Agreement for 2003-2005, but they could not agree upon its terms. In this arbitration they have agreed that the final offers should encompass both Agreements, and the arbitrator should select one party's final offer which will establish the terms of the 2002 Agreement and the 2003-2005 Agreement.

With respect to the 2002 Agreement, there are two issues in dispute. One is the effective date of a 3.0% wage increase. The City proposes an effective date of 9/1/02; the Association proposes 1/1/02. The other issue is the City's proposal to change the funeral leave provision, to add to the first tier of benefits: mother, father, mother-in-law and father-in-law. The Association proposes no change to the existing provision.

For 2003-05 the parties are in dispute with respect to: wages, hours, out of classification pay and educational incentive, but the clear focus of their presentations is the wages issue and the hours issue. Both parties final offers are identical with respect to proposed changes in health insurance and retiree health insurance, except for differences pertaining to effective dates. The Association includes language which states The insurance coverage provided shall not be less than the level in effect on January 1, 1999. In addition, with respect to prescription drug co-payments, the City proposes an effective date of January 1, 2003, whereas the Association proposes the effective date as the first of the month following the arbitrators award or as soon as administratively possible. With respect to office visit co-payments, the City proposes an effective date of January 1, 2004, whereas the Association proposes the effect date as the first of the month following the arbitrators award or as soon as administratively possible. Wages: The City offers a 3.0% increase each year, with effective dates of 5/1/03, 3/1/04 and 1/1/05. The Association proposes a 2.0% increase effective 1/1/03 and another 2.0% increase effective 7/1/03; a 2.0% increase effective 1/1/04 and a 1.5% increase effective 7/1/04 and a 3.0% increase effective 1/1/05.

Hours: Effective on the date of the arbitration award, the City proposes to change the work schedule for twelve detectives working the Main Bureau and the Early Night Shift in the Youth Guidance Bureau to a 5-2 Monday through Friday shift. In exchange for this change the City will provide an additional two

hundred dollar clothing allowance to all twenty-three officers who work in the Detective Bureau. The Association proposes no change in hours of work.

Out of Classification Pay: The City proposes the following: increase Field Training Officer from \$ 3.60 to \$ 5.00; Communications Sergeant from \$ 3.60 to \$ 5.00; Acting Court Liaison Sergeant from \$ 6.00 to \$ 8.00; Acting Sergeant (road supervisor) from \$ 6.00 to \$ 8.00; Patrol Officer assigned to the Training Bureau for an entire day as an instructor shall receive \$ 8.00 / day. The Association makes no proposal with respect to Out of Classification Pay.

Educational Incentive. The City proposes to reimburse up to \$ 1000 / year of tuition costs for employees enrolled in courses required for an advanced degree from an accredited university for purposes of promotional advancement within the Police Department, and up to \$ 500 / year of tuition costs incurred for job-related courses designed to directly improve the knowledge of the employee. The Association makes no proposal with respect to Educational Incentive.

The parties agree that nine municipalities are comparable to West Allis : Brookfield, Franklin, Greenfield, Menomonee Falls, New Berlin, Oak Creek, South Milwaukee, Waukesha and Wauwatosa. The City includes Muskego and West Milwaukee as comparables. The Association does not view those as comparable municipalities. The arbitrator has included both Muskego and West Milwaukee in the comparisons. Muskego, while much smaller in population than West Allis, is in the same geographical area as the agreed upon comparables, and is larger than one of the agreed upon comparables. Moreover, while arguing against its inclusion, the Association acknowledges that the inclusion of Muskego would not significantly change the result of the comparisons made by the Association... West Milwaukee is contiguous to West Allis and for that reason alone is a relevant comparable, whether or not it is entitled to as much weight as the others based on other economic criteria. In the arbitrators view, inclusion of West Milwaukee will also not significantly affect the analysis of wages and benefits in this case.

Section 111.77(6) Wis. Stats requires the arbitrator to consider certain factors. Several of those factors are not in dispute or are not discussed by the parties in their presentations in this case: (a) lawful authority of the employer; (b) stipulations of the parties; that part of (c) pertaining to the financial ability of the unit of government to meet these costs; that portion of (d) pertaining to comparisons of wages, hours and conditions of employment in private employment in comparable communities; (g) changes in circumstances during the pendency of the arbitration. The arbitrator will consider the remaining factors below.

Both parties make arguments pertaining to that portion of factor (c) pertaining to the interests and welfare of the public. Both parties view their final offers as fostering and maintaining the morale of employees, which is in the interests and welfare of the public. The City views its offer also as avoiding the lowered morale of firefighters, which it argues would result from implementing the Association's final offer, by maintaining the police-fire parity that has been in effect for many years, and by not rewarding a bargaining unit which does not agree to a voluntary settlement. It views its offer also as more in the public interest because it has a lower cost impact than the Association's final offer at a time when municipalities are struggling to maintain services within reduced budgets and reductions and uncertainties in State revenues. The City notes that among the comparable municipalities, it has the second lowest property value per capita, and second highest property tax rate, and the second highest percentage of state shared revenues. In light of the current budget crisis at the state level, the City has reason to be concerned about the financial impact of an award of the Association's final offer on the residents of West Allis.

The Association views its offer as one which raises the morale of the police force by reducing what has become a growing gap in wages in comparison with police in comparable municipalities. It argues that the City's offer will have an adverse effect on officers. Reason dictates that the interests and welfare of the public will be similarly affected.

Within factor (d) it is appropriate to consider comparisons with the City's other bargaining units, as well as comparisons with the external comparable units. With respect to the internal comparisons, it is undisputed that the City's wage offer is identical to what was accepted by the firefighter unit for the period in dispute, while the Association's final offer exceeds that amount. It is also undisputed that wage parity between the police and firefighter units has existed for more than 20 years, whether stated in dollar or percentage amounts, and including the identical number and dollar amounts of salary steps. The only exception, not explained by the parties, occurred in 1991 and parity was restored in 1992.

The City argues that this historical parity should be continued, emphasizing that the Association ...has offered no justification whatsoever to break parity...no explanation or compelling need... Breaking parity through arbitration would create a major labor dispute and would result in poor morale, the City argues, and encourage bargaining units to go to arbitration rather than settle voluntarily. The Association argues that it is not holding out for arbitration, but rather attempting to reverse a situation in which the police unit has been losing ground in relationship to wages paid by the comparable police departments. It argues that even if the internal comparables are viewed as favoring the City, that should not determine the outcome of the case if the result is the imposition of a final offer which is ...substantially out of line with conditions in existing external employer-employee relationships. In this connection, the Association argues, ...the average patrol wage relationship between [patrol officers] and their external comparables [is] growing farther and farther apart and, if the City's offer is adopted, would be five times larger than it was in 1990. The Association argues that by being slavish to parity, the City ignores the Association's right to bargain, since the City's parity plan has reached a point that it is no longer fair and equitable to the City's police officers...The City, by its argument regarding parity, appears to suggest there need not be meaningful wage negotiations with both the fire and police bargaining units as it apparently believes in all circumstances what is good for one unit ought be good enough for the other.

There are other internal bargaining units besides police and fire units. With the exception of nurses, they have reached voluntary settlements with the City. The engineers bargaining unit will have the following wage increases: 3% 7/1/02; 3% 7/1/03; 3% 3/91/04 and 3% 1/1/05. The other two bargaining units (public works employees and clerical employees), represented by AFSCME settled for identical wage increases as they have done historically. The settlements are: 2% effective 1/1/02, 3% 1/1/03; 3% 1/1/04; 3% 1/1/05

The Association argues that there is not a pattern of internal settlements. There has been parity in the past between police and firefighters, but the remaining settlements do not follow that pattern. It is apparent from the evidence that the City and the various bargaining units within the City have voluntarily agreed to settlements that are different and presumably such agreements were struck that dealt with the specific concerns of those individual bargaining units and their chosen profession. There has been no demonstration by the City that there is a historic settlement pattern between the City and its bargaining units, therefore internal settlements should not be considered as primary comparables.

With respect to the voluntary internal settlements, the City argues that the City's final offer is closer to the settlement reached with its other bargaining units than the Association's final offer.

The long history of police-fire parity is most certainly an internal pattern, notwithstanding the fact that the units other than police and fire do not follow the same pattern. Thus, the internal comparisons favor the City's final offer. An analysis of the external comparisons is necessary in order to determine whether greater weight should be given to the external comparisons or the internal comparisons.

The arbitrator has constructed a table, for the years 2001, 2002 and 2003, for which full data are available. The year 2000 is the most recent year prior to the dispute. The table does not include 2004 and 2005 because there are not enough settlements yet to make comparisons meaningful. Franklin has been left out of the analysis for purposes of consistency, since it is not settled for 2002 and 2003. The analysis uses the maximum patrol year end rate for comparisons, and thus does not take into account the effective dates of wage increases or differences in annual hours worked. The Association argues that its final offer takes steps to remedy the deterioration in wages, in comparison to the comparables, which has

occurred since 1990. j The record in this case does not support arguments that there is a need to remedy what has occurred since 1990, particularly since the results have come from voluntary bargaining between the parties, and thus the starting year for the analysis is 2001.

	2001	2002	2003	
average of comparables	\$ 49063	\$ 50711	\$ 52401	
West Allis rate	48476	49930	51428 51948	City offer Assn offer
West Allis relative to average-	587	-781	-973 -453	City offer Assn offer
West Allis rank	10 of 11	10 of 11	10 of 11 9 of 11	City offer Assn offer
median of comparables	49311	50877	52510	
West Allis relative to median	-835	-947	-1082 - 562	City offer Assn offer

These figures demonstrate that while there is a slight change in ranking, the main effect of the final offers is that the City's offer results in continuing deterioration of the police wage rate in relation to both the average and median rates of the comparables, while the Association's final offer ends the deterioration and reduces the disparity which existed in 2001 and 2002.

The following analysis shows wage increase in percentage terms. The figures are adjusted to reflect the annualized percentage change, thus adjusting for the fact that the City, unlike the other comparables, has not offered January 1 effective dates.

	2001	2002	2003	
average of comparables	3.15	3.33	3.19	
West Allis rate	2.00	1.00 City offer 3.00 Assn offer	2.00 City offer 3.00 Assn offer	
West Allis relative to average	-1.15	-2.3 City offer - .33 Assn offer	-1.19 City offer - .19 Assn offer	
West Allis rank	11 of 11	11 of 11 City offer 7-9 of 11 Assn	11 of 11 City offer 6-8 of 11 Assn	
median of comparables	3.0	3.25	3.13	
West Allis relative to median	-1.0	-2.25 City offer - .25 Assn	-1.13 City offer - .13 Assn offer	

Viewed in annual percentage terms, the Association's final offer is much closer to both the average and median increases given by the comparables than is the City's final offer.

Factor (e) requires the arbitrator to consider changes in the cost of living. The annual increase (i.e. the increase each month over the same month in the preceding year, added and then divided by 12) in 2001 was 2.75%. The parties' agreement for wages in 2002 was 3%. Thus, without regard to any other economic improvements, the parties' agreement for 2002 exceeds the increase in the cost of living. In

2002 the annual increase in the cost of living was 1.4%. Again considering only wages, the City's offer of 2% (i.e. 3% effective May 1st) is closer to the change of cost of living than is the Association's offer of 3%.

The Association argues that the best measure of changes in the cost of living, articulated many years ago by Arbitrator Kerkman, is the percentage wage increase which has been bargained by comparable Employers and Unions facing the same changes in the cost of living. Using this analysis, the Association argues, results in a conclusion that the Association's final offer is more reasonable than the City's. The arbitrator does not use this measure because the statute has separate factors, one dealing with external comparisons and one dealing with changes in the cost of living, and it does not call for them to be combined.

Factor (f) requires the arbitrator to consider overall compensation. The City argues that the wage increases offered by each party cannot be evaluated without consideration of holiday pay because among the comparables the City is unique in payment of holiday pay at time and a half, whether or not the officer works on the holiday. The 11 paid holidays which the officers receive is in line with the median number of holidays given by the comparable municipalities. It is the time and one-half payment which is unique. It must be noted that while citing the relative costs of the parties' final offer and arguing that its offer is the more reasonable, the City has not included in its final offer anything relating to the number of holidays or the way in which holiday pay is calculated. The Association does not address the effects of holiday pay or the City's arguments that meaningful wage comparisons cannot be made without including those effects.

The City is correct that the impact of holiday pay is substantial. The arbitrator has analyzed the combined wages and holiday pay presented in the City's exhibits, in the same manner as shown above for wages. The results are shown in the following table:

	2001	2002	2003	
average of comparables	\$ 50282	\$ 51972	\$ 53703	
West Allis rate	51669	53219	54816	City offer
			55370	Assn offer
West Allis relative to average	1387	1247	1113	City offer
			1667	Assn offer
West Allis rank	3 of 11	3 of 11	4 of 11	City offer
			1 of 11	Assn offer
median of comparables	50327	52094	54057	
West Allis relative to median	1342	1125	759	City offer
			1313	Assn offer

The City's offer results in a reduction of one place in the ranking, while the Association's offer results in an increase of two places to first place. Both offers maintain the City's standing as significantly ahead of the comparables in relation to the average and the median, although the City's offer results in dollar deterioration in relation to the average and the median while the Association's offer does not, and significantly increases the dollar figure above the average of the comparables.

Factor (h) requires the arbitrator to consider other factors...which are normally or traditionally taken into consideration in...bargaining [and] arbitration... One such factor is the City's deviation from its usual pattern of giving wage increases effective January 1st, which has been the effective date since at least 1991, and January 1st is also the usual pattern among the comparable municipalities. The effective dates in the City's Offer are September 1st in 2002, May 1st in 2003 and March 1st in 2004. These are the effective dates in the firefighter settlement, but not in the other internal settlements. The only

explanation given for these dates is that they are ... a reflection of the difficult financial position of the City. The Association argues, a The City has proposed, for 2002, to increase the wage rate by 3% but does so on September 1, 2002. The City cannot assert that its offer for this year is in any way comparable to any external settlement when the resulting compensation to its officers is only 1.3% more than 2001. In the following years the City's wage offer has similar results in that the effective dates for 2003 and 2004 are pushed back into the year and result in raising the base wage by year end but at the cost of reducing wages paid to officers that are already seeing their wage rates eroding, by comparison to departments...

In addition to wages, the other major issue in dispute in this matter is the City's proposal to change the shifts of twelve detectives, approximately half of the detective force (23), to a 5-2 Monday-Friday schedule, thus putting them on the same schedule as other detectives. The Association opposes the change, notwithstanding that the City has offered an increased clothing allowance to all detectives as a quid pro quo. What is the City's justification for changing the shift schedule? The City presented no testimony to explain its offer. In its brief it argues, This proposal was made by the City in order to establish consistency among all of the detectives because one-half of the detectives are already working a 5-2 schedule, and 18 other officer's work a 5-2 schedule... It views the 5-2 schedule as a reasonable one, arguing also that more than one-half of the municipalities presently have a 5-2 schedule for their detectives. The Association argues that the City has not shown, or even suggested, that there is a problem which is in need of being remedied by changing the shifts of the affected detectives. Clearly, the Association argues, the parties had reason for establishing the existing detectives schedules, and it was done voluntarily. The Association argues that the City should have the burden of explaining the reason for the change and supplying compelling reasons to do so.

In its reply brief the City reiterates that it seeks greater efficiency by having consistency in the schedules and doesn't need testimony or evidence to support its position. It argues, ...The City's final offer would place all detectives on a Monday to Friday schedule, so that they are scheduled to work at times when businesses, banks, school and other institutions are open for business. This certainly makes it easier for the detectives to contact witnesses, take statements, respond to calls, and perform other investigative duties...Aligning the work schedules of all detectives also makes it easier for the detectives to coordinate their cases and to share information...[and] is a more efficient and effective use of the City's resources...

There is no internal pattern within the police department which justifies the City's proposed change. Almost exactly half of the detectives work a 5-2 schedule, and the other half does not. The Association is correct in its contention that the City needs to demonstrate a persuasive reason to make the change. The City argues in terms of efficiency and consistency, but at some point years ago it agreed to the existing schedule. What has changed in the interim? The existing schedule was apparently viewed as mutually desirable, and was part of the bargain at the time it was put into effect. The arbitrator does not know what the parties' thinking was at the time, but he is not persuaded by the City's arguments that efficiency now requires that the schedules be changed. The City has not demonstrated that there have been problems with the existing scheduling which the change would overcome.

The City relies in part on the external comparables to justify its position on hours. The City argues, A review of the comparable data demonstrates that the City's offer more closely mirrors a standard work schedule. Brookfield, Franklin, Greenfield, Muskego, Oak Creek South Milwaukee, Waukesha, and West Allis detectives all work a 5-2 schedule...Note that none of the comparable communities have their detectives working two different work schedules as West Allis does.... In 8 of 11 of the comparables, detectives all work a 5-2 shift. These data show that the 5-2 schedule for detectives is the norm.

As mentioned at the outset, the parties agree about health insurance changes, but not their effective dates. The Association's final offer calls for these changes to be implemented on the first of the month following the Arbitrators award, or as soon as administratively possible, while the City's final offer makes the changes retroactive, at least those which take effect in 2003, given the date of issuance of this Award. The City's offer is identical to the firefighters settlement with respect to health insurance. The City's offer, the Association argues, causes additional expenditures to [employees] by repricing past transactions at a

higher rate. This is in a context in which, the Association argues, the health plan changes will save the City approximately \$ 45,000 per year.

Conclusion:

The arbitrator is required by the statute to select one final offer in its entirety. This is a close case. The arbitrator does not favor either final offer based on consideration of the interests and welfare of the public, since morale of one group or another of the City's employees will be adversely affected, whichever offer is selected. Presumably, the cost of the City's offer is less than the Association's, which might therefore be in the public's interest, but neither party has presented an overall cost analysis of either final offer, and thus the arbitrator is not in a position to judge whether the cost differences between the two final offers are substantial and/or entitled to significant weight. The cost of living factor favors the City's final offer. The two areas of greatest significance in this case are the comparisons, both internal and external, and the other factors which are normally taken into account. The long history of police-fire parity which the City's final offer would continue is entitled to significant weight, and supports the City's final offer. Maintenance of internal relationships is very important from the standpoint of administration of consistent and fair relationships among different groups of employees, but external considerations may be more important if the employee group in question is not keeping up with its counterparts in comparable municipalities. The Association's final offer would end the recent deterioration of police wages in dollar terms relative to the comparables, and the Association's final offer is clearly preferable also when annual percentage increases are compared. The City's final offer is more reasonable than the Association's in dollar terms when the holiday pay received by the bargaining unit is factored in. The Association's offer is favored with respect to the effective dates of the offers. The City's effective dates delay implementation of wage increases and therefore reduce their value. The City is not persuasive in arguing that budget uncertainties required it to postpone the effective date of raises in each of the years in question, and it should be noted that comparable jurisdictions have not done that. Although West Allis economy is not as robust as those of most of the comparables, the City has not demonstrated that either the structure or terms of its final offer were necessitated by these concerns. So far as the hours issue is concerned, there is no compelling reason given by the City to change long term shift arrangements which were bargained previously, notwithstanding that the result of implementing the City's offer would be that the affected detectives would work the same shifts which are worked by detectives in most of the comparable departments. The fact that the City offers a quid pro quo for the change reduces the arbitrariness of the change, but the fact remains that there is no persuasive or compelling reason for requiring the affected detectives to change their shifts at this time.

On balance, the arbitrator views the Association's final offer as the more reasonable one. The main difficulty caused by selection of the Association's offer is that parity with firefighters is broken, but there is no obvious reason that it cannot be restored at a later date if the City and firefighters feel that it is important to do so. The City is concerned that the effect of this decision is to reward the bargaining unit which did not settle voluntarily, but held out for arbitration. In other cases, the arbitrator has discouraged rewarding of holdouts who do not voluntarily adhere to established patterns, but he does not view this case from that perspective. The Association had justification for not simply accepting the firefighter settlement where it was faced with deteriorating relative wages compared to external comparables, plus undesirable changes in effective dates for implementing wage increases which substantially reduced the real value of those increases, and an undesirable change in shift arrangements which was not adequately explained or supported.

Based on the above facts and discussion, the arbitrator hereby makes the following AWARD:

The final offer of the Association is selected.

Dated this 12th day of November, 2003 at Madison, Wisconsin

Edward B. Krinsky
Arbitrator

