

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

Wisconsin Professional Police Association/
Law Enforcement Employees Relations Division,

and

WERC Case 31 No. 64128 MIA-2618
Dec. No. 31283-C

The Village of Fox Point (Police Department).

ARBITRATOR: Christine D. Ver Ploeg

DATE AND PLACE OF HEARING: October 10, 2005
Village of Fox Point offices
Village of Fox Point, Wisconsin

DATE OF RECEIPT OF
POST-HEARING BRIEFS: November 9, 2005

DATE OF AWARD: November 28, 2005

For the Association

Thomas Bahr
Wisconsin Professional Police Association,
Law Enforcement Employee Relations Division
340 Coyier Lane
Madison, WI 53713

For the Employer

Alan Levy
Lindner & Marsack, S.C.
411 E. Wisconsin Ave., Suite 1800
Milwaukee, WI 53202

INTRODUCTION

This interest arbitration has been conducted pursuant to Wisconsin's Municipal Employment Relations Act (MERA), Wi. Stat. Sec. 111.77. The Wisconsin Professional Police Association/Law Enforcement Employees Relations Division (hereinafter the Association) is the Exclusive Representative of all regular full-time and regular part-time, non-supervisory sworn law enforcement officers with power of arrest employed by the Village of Fox Point, Wisconsin (hereinafter Employer).

The Association and the Employer have engaged in contract negotiations and agreed on all but the following items. As a result, on March 22, 2005, the Wisconsin Employment Relations Commission ordered that they arbitrate their respective final offers. This case arises under Wisconsin's "all or nothing" system, by which the Arbitrator must select one Party's final offer in its entirety.

On October 10, 2005, the parties and the arbitrator met for a hearing on the certified issues.¹ The parties agree there are no procedural issues present in this case. Following the hearing the parties submitted post-hearing briefs on November 9, 2005.

ISSUES

The parties disagree as to:

1. Whether to adopt the Association's the six-month "across the board" wage increments of 2%, 2%, 2% and 1.5% or the Employer's proposed 2%, 1.5%, 2% and 2%, and

¹ Although the Commission certified the issue of the timing of payments to the Deferred Compensation Plan, the parties did not offer evidence or argument on the subject and it is not now considered.

2. The portion and method by which the employees must contribute toward their health insurance premiums. The Employer proposes a conversion from specific dollar amounts to a percentage of the premium, while the Association seeks to maintain the current dollar method.

ANALYSIS

This case arises under Wisconsin's "all or nothing" system, by which the Arbitrator must select one Party's final offer in its entirety. In awarding the Employer's position, I have considered all of the statutory criteria outlined in Wi. Stat. Sec. 111.77. In particular, in following the path of the parties' evidence and arguments I have focused most heavily upon the following:

(1) Determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table. To award wages and benefits different than the parties would otherwise have negotiated risks undermining the collective bargaining process and provoking yet more interest arbitration.

(2) Seeking to avoid awards that significantly alter a bargaining unit's relative standing, whether internal or external, unless there are compelling reasons to do so.

These bases in turn entail a two-fold analysis. First, arbitrators consider an employer's ability to pay. This issue is self-evident: it serves no purpose to issue an award that an employer cannot fund and thus could never agree to in collective bargaining. However, a simple assertion of financial crisis does not alone justify freezing wages and other benefits. It is not unusual for employers to claim financial exigency, and when they do so arbitrators closely scrutinize that claim.

If an employer's claims of inability to pay do not withstand scrutiny, and the evidence demonstrates that at least some financial improvement is possible, arbitrators next consider the

comparability data. This step requires the arbitrator to evaluate the parties' proposals in two contexts: (1) considering the wages, benefits, and other cost items this employer gives to its other employee groups (internal comparables); and (2) considering what comparable employers provide to similar employees (external data).

The preceding analysis has been applied in awarding the Employer's position on the issues in dispute.

Ability to Pay

Although the Association argues that the Employer has failed to provide any information that would indicate it lacks the financial ability to meet the cost of the Association's final offer, the Association did not rebut the Employer's quite substantial evidence that it has been experiencing budgetary pressures that have significantly affected its ability to fund either parties' proposals.

In 2005 the Wisconsin state legislature changed the way municipalities like the Employer may budget and tax. Municipalities may not now raise their tax levy by more than 2% per year unless their net new construction growth exceeds that figure. Because Fox Point is a mature, fully developed community, its new construction growth factor is only 0.069%, so its maximum allowable levy increase is 2%.

The 2006-2007 state budget controls on tax levy limits (first known and effective upon the Governor's line item veto in August 2005) means that the Employer's maximum net revenue increase available in 2006 will be \$106,403.00. However, \$84,592.00 of this amount is already committed to mandatory cost increases such as added participation obligations in the regional fire department, rising fuel and utility costs, and wage increases required by the Employer's other labor contract (the Public Works, or "DPW," unit). In the end, the portion of the 2006 tax revenue

increase available to the police unit is \$21,592.00, while the Employer's offer will cost \$2,000.00 more than that.

In addition, earlier budgetary restrictions have already forced the Employer to undertake a number of cost cutting actions. In the last five years, the Employer has laid off three non-represented employees and reduced the hours of three others, left a Public Works position vacant since 2003, and waited until August 2005 to fill a police position which had gone unfilled in 2004.

Finally, it is noteworthy that the Employer's cost of employee health insurance has doubled the last five years, increasing by at least 14% each year during that period (31% in 2003).

In summary, the Employer presented persuasive evidence that today's economic conditions require it to manage its resources conservatively. The above evidence has demonstrated that ability to pay is a relevant consideration in this case.

Internal comparability

Parties present evidence of "internal comparability"--evidence of the terms and conditions of employment an employer provides its other employee groups--to demonstrate that the bargaining unit now in interest arbitration is or is not being treated equitably by comparison.

As discussed above, an interest arbitrator must determine what agreements the parties would have struck for themselves had they been able to do so. In determining what the Association and the Employer would have agreed to had they been able to do so, evidence concerning the wages and benefits negotiated by the County's other employee groups is very relevant.

In this case the Association argues that when these employees are compared to other Fox Point employees it is important to remember that as law enforcement personnel they function under unique circumstances. They work 24/7, and are constantly responsible for dealing with

individuals and issues not found in any other type of municipal employment. Regardless of circumstance or workload, an officer must perform his or her duty with a professional demeanor and the knowledge that all actions will be closely scrutinized. Accordingly, maintaining a high level of morale is imperative to an officer's well being.

With specific reference to the health benefit now at issue, the Association notes that the Employer's proposal to convert officers' health premium contributions from a cash basis to a percentage basis conflicts with the voluntary settlement it has reached with the Employer's equipment operators. The Association asks how the Employer can propose to treat its employees so differently on such an important issue. It argues that the current dollar amount method of calculating health premium contributions should be maintained, for to do otherwise will preclude the Association from being a partner on this subject in future negotiations. Treating these employees differently than the equipment operators will also breed internal strife.

I have considered these arguments but find that they do not overcome the Employer's evidence that its final proposal compares favorably with the wages and benefits provided to its other employees, represented and non-represented. The evidence demonstrates that the Employer's 2005 wage package offer to the police is $\frac{1}{2}$ % more than the wage package it is providing for public works and non-represented Fox Point employees. Although no 2006 wage scale is yet available for non-represented employees, the public works contract calls for 1% less than the Employer's offer to this unit for that time period. By the last six months of 2006, the public works unit will be receiving wage increases $1\frac{1}{2}$ % less than the police under both proposals.

Notwithstanding the fact that this unit's wage increase will be partially offset by higher employee health insurance payments, the Employer has persuasively demonstrated that the proportion of a patrol officer's monthly straight time wage paid for health insurance will

nevertheless be between ½ % and 1% less than the percentage wage increase of an equivalent public works employee.

By the same token, the Employer offered persuasive evidence that (1) there is a compelling reason to alter the current method of contributing to the health premium, and (2) the Employer has provided a reasonable *quid pro quo* for making this change. The Employer seeks this change to gain some control over the skyrocketing health premium costs it has experienced in recent years. Although the Employer is part of a state-wide plan, and therefore has no ability to contain costs by adjusting benefits, it persuasively argues that by making employees more aware of and concerned about those costs the employee becomes a stakeholder with an incentive to use insurance wisely. The *quid pro quo* the Employer has offered is the above-described wage increases, which go beyond those being provided to other employees.

Finally, it is noteworthy that when the equipment operators negotiated their 2004 contract they agreed to a wage freeze in return for no change in their premium payments. By contrast, at that same time members of this bargaining unit did obtain a wage increase. Non-represented employees have been paying 5% of their health insurance premium for several years, and those hired on or after January 1, 2002 must pay 15%.

External comparability

“External comparability” evidence--evidence which compares the employment terms and conditions of employees who perform same or similar work for different but “comparable” employers--is offered to demonstrate that the bargaining unit in interest arbitration is or is not being treated appropriately. Here the parties disagree concerning the appropriate comparison

group, with both agreeing to use the other northshore suburbs², but with the Association disagreeing with the Employer's position that Elm Grove should also be included.

Despite this disagreement, the evidence demonstrates that regardless whether Elm Grove is included or not, under either the Association's or the Employer's offers this employee group's wages would remain in the middle of the group. Thus, the external comparisons provide no reason to adopt one position over another. Nevertheless, the Association properly notes that such comparison is important in deciding whether to convert from a dollar to a percentage basis to compute an employee's premium contribution.

The Association offered evidence that of the seven municipalities (including Fox Village) that the parties have historically viewed as being comparable, four of the seven collective bargaining agreements use a specified dollar contribution. From this the Association submits that the Employer's proposed change for the police officers is not the "norm" of their external comparables. Moreover, the Association offered evidence that among those comparables these officers pay more to their health premium costs, and can be assumed to have agreed to these higher payments in return for protection from automatically increased costs.

By contrast, the Employer offered evidence that Elm Grove and half the other North Shore municipalities already use a percentage contribution system for employee health insurance payments. Indeed, all the North Shore employers with a percentage requirement already have employees paying at least 7.5% of the relevant cost (River Hills is 10%), an amount which Fox Point does not seek until the last six months of the contract.

From this evidence I find that the Employer has persuasively argued that it cannot continue to pay for employee health insurance as it has in the past, and that it should join those communities that have moved to a percentage based system.

² Bayside, Brown Deer, Glendale, River Hills, Shorewood, Whitefish Bay.

SUMMARY

In summary, the Employer's Final Offer responds to its changing economic circumstances, which include: levy limits, cost commitments such as energy, fuel, and other labor contracts, and health insurance premiums which have doubled in the last five years. The Employer's proposed wage and health insurance package maintains this unit's relative position among its external comparable group and provides wage increases greater than those for the Employer's Village employees (the internal comparables). The Employer has demonstrated a significant need to alter the method for calculating these employee's premium contributions, and providing these employees with a larger percentage wage increase has provided a *quid pro quo* for that change.

For the above reasons, the Employer's position is adopted.

November 29, 2005



Christine D. Ver Ploeg