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In the Matter of the Arbitration Between *
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Drivers, Salesmen, Warehousemen, Milk *
Processors, Cannery, Dairy Employees *
and Helpers Union Local No. 695, affiliated *
with I.B.T.C.W. & H. of A. *
*
-and- *
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City of Monona (Police Department) *
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Case IX
No. 20994 MIA-265
Decision No. 15093-A

Appearances: Merle Baker, Business Representative, for the Union
Robert D. Sundby, City Attorney, for the City

On December 30, 1976, the undersigned was appointed by the Wisconsin Employment Relations Commission as arbitrator to make a final and binding determination of a dispute between the above-captioned parties. The provisions of Section 111.77(4)(b) of the Municipal Employment Relations Act require that the arbitrator select the final offer submitted by one of the parties, and the arbitrator has no authority to modify the position of either party in making the selection.

The final offers submitted to the Commission by the parties for their 1977 contract indicated disagreement on just one issue, wages. The final offers of both parties contained agreement to continue the 1976 contract for the police bargaining unit except that the City agreed to increase its payment of insurance premiums to \$51.99 per month for a single employe, and \$144.35 for an employe under the family plan. The Union accepted the City's insurance proposal. The Union's final offer contained the following: "Increase all steps and classifications by fifty five dollars (\$55.00) per month." The City's final offer contained no wage increase.

A hearing was held at Monona, Wisconsin, on February 23, 1977. At the hearing the parties were given full opportunity to present evidence and testimony and make arguments. No transcript of the proceedings was made. Both parties agreed to submit post-hearing briefs and the record was completed with exchange of briefs by the arbitrator on March 28, 1977.

Facts

As noted above, the City and Union agreed to an increase in the City's insurance contributions. The increase amounted to \$13.31 per month for each employe (1) in the unit covered by the single plan and \$33.94 per month for each employe (12) covered by the family plan. The City made no other improvement in the economic package offered to the bargaining unit.

The Union presented figures showing the relationship of wages for police in Monona with wages paid to police in comparable communities. The City agrees that the communities cited are the ones generally used by the parties in negotiations for purposes of comparison. Union Exhibit #1 is as follows:

Area	Wages (Top Patrolman)		1977	Increase Amount	Percent Increase
	1975	1976			
Monona Union Proposal	\$ 923	\$ 943	\$ 998	\$55	5.8%
Monona City Proposal	923	943	943	0	0
Madison (City)	1,041*	1,114*		Not Settled	
Madison (Town)	873	934*	1,000	66	7.1%
Middleton	880	1,015	1,070	55	5.4%
Stoughton	851	915*	970*	55	6.0%
Sun Prairie	940	1,010	1,070*	60	5.9%

* Does not include Educational Incentive

The City, while arguing that Union Exhibit #1 is incomplete because it does not include fringe benefit calculations, agrees that the wage comparisons indicate that there is justification for a wage increase to the bargaining unit. It takes the position, however, that because of the effects of State-imposed levy limits, it cannot grant any increase in 1977. The Union disputes that claim. The arguments are presented below. The following facts were submitted with regard to the City's financial position and deliberations.

The City stipulates that were it not for the imposition of the levy limits, the City would have the financial ability to pay the increases sought by the Union.

During the hearing, the following potential revenue sources were identified which, if implemented, would provide additional funds for 1977. The City could: (1) incur long-term debt, as it did for \$46,000 of street maintenance supplies for 1977, for non-capital operating expenses; (2) incur short-term (less than one year) debt, which would be deducted in the calculation of allowable levy limits in 1978, assuming that there will still be levy limits; (3) adopt a wheel tax and/or user fees for city services now covered by property taxes, e.g. for trash collection; (4) raise fees for city licenses and permits beyond the level of the substantial increases already made for 1977; (5) reduce the size of the general fund, the non-budgeted fund of accounts receivable, which if eliminated would require that the city undertake short-term borrowing. The State Division of Municipal Audit has previously told the City its general fund is too small and recommends that it be increased. The general fund for 1976 was approximately \$80,000, and \$25,000 of it has been reduced and built into the 1977 budget. The general fund for 1977 is expected to be in the \$20,000-\$30,000 range; (6) reduce personnel. Laying off the most junior policemen, it is estimated, would save \$6,000-\$7,000 if figured for a full year.

The City could have levied higher taxes for 1977 had there been a referendum for that purpose approved by the voters in 1976. No referendum was conducted in 1976 because it was the judgment of city officials that when they became aware of the severity of the crisis in October-November, 1976, there was inadequate time to educate the public about the problem sufficiently to secure passage of a referendum modifying the levy limits. City officials testified that it is the intent of the City Council to have a referendum during the Summer of 1977 which, if approved, would raise the levy limits in calculating the 1978 budget, but which would offer no relief for 1977.

The budget passed by the City for 1977 stayed within the allowable levy limits. It contained new program money of only approximately \$2,000 for the East Madison Coalition (a senior citizens project) and \$500 for a County water quality control study. The budget reduced the level of services in all areas. It reduced: lake trash pick-up; snow and ice removal and salting; street cleaning; city hall supplies; City Attorney's fees; the City's allocation to Metro Transit for bus service; and provided also that maintenance on city equipment be deferred. It also reduced the budget for summer employment in parks and public works areas.

The budget eliminated some items completely: lake patrol program; fireworks; insect control program; contingency fund (\$5,000 in 1976). Also, no money was allocated for Highway 12 & 18 safety improvements.

The amount of new tax levy which the City was permitted to raise above 1976 levels according to the levy limits formula was \$15,896, thus allowing a total base levy of \$114,449. This represented a 12.13% increase over the 1976 base levy.

The budget adopted by the City stayed within these levy limitations. The budget did not necessitate the layoff of any personnel. It included the hiring of one new employe, a full-time dispatcher in the police department. At the same time, the budget provided no salary increases for city employes.

The police bargaining unit received a salary increase of \$20 per month in 1976 as a result of bargaining for that year. This brought the monthly salary for a top patrolman to \$943. The amount of money directly involved in this arbitration case is \$8,580, the amount which would be required to raise the salary of each member of the bargaining unit by \$55 per month as requested by the Union.

Positions of the Parties:

Union: The position of the Union may be summarized as follows:

- 1) The Union contends that wage comparisons with the police departments normally used as a comparison standard by the parties demonstrate the fairness of the Union's proposal. In comparison to Middleton, Sun Prairie, Town of Madison and Stoughton, the Monona police were ranked number two in wage rates in 1975, dropped to number three in 1976, and will be number four if the Union prevails in this arbitration, or number five if the City prevails, in 1977. In the Union's view, there is no valid reason for this deterioration in comparative positions.
- 2) The Union acknowledges that the City has reached the maximum of its allowable levy limitations, but it contends the City has not attempted to circumvent the problem. According to the Union, the City could have taken a variety of steps including borrowing, imposition of user fees or a wheel tax, further reduction of the general fund and putting a referendum on the ballot in 1976 to bypass the levy limits in anticipation of the problem. The Union emphasizes that the City did not take these steps for political reasons, and that in fact it had the ability to anticipate the problem and find a solution.

City: The position of the City may be summarized as follows:

- 1) The City emphasizes that the Union's final offer amounting to 5.8% increase in wages does not include the cost to the City of the insurance premiums it has agreed to pay. When those costs are added, the Union is seeking an increase of 9.4% which the City says is "substantially in excess of the average reported settlements in the Dane County area for 1977."
- 2) The City argues that an award in the Union's favor would create an imbalance between the police unit and other groups of city employes who have not been given wage increases for 1977.
- 3) The City bases much of its case on its claimed inability to pay, citing the fact that it "is a legal disability imposed on it by State law, i.e. the levy-limits law." The City makes the following arguments with respect to its position on the levy limit question: During 1976 the City was justified in expecting that levy limits would not continue. Along with this expectation, it was the view of

4) The City acknowledges that it could meet the Union's demands by further reducing city services, and by layoffs of personnel. Instead, according to the City, it chose to have a wage moratorium, and the City argues that the arbitrator should not substitute his judgment on this question for that of the City's elected representatives.

5) The City asks the arbitrator to reject the Union's proposed solutions to the problem, namely that the City could have imposed user taxes, borrowed or drawn more heavily on the general fund. The City contends "it would have been wrong to decrease services in 1977 to any significant extent without forewarning the people" and that it did in fact increase fees although it opted not to impose user taxes or a wheel tax. The City argues that short-term borrowing is not feasible because it is a stop-gap measure which adversely affects the levy-limit formula in the succeeding years. The City believes that long-term borrowing for operational expenses is inadvisable. With regard to the general fund, the City cites a recommendation by the State Division of Municipal Audit that the general fund is already too low.

6) Lastly, the City urges that this is a temporary wage moratorium and a temporary problem. While the City expects the legislature to repeal the State levy limit formula, it is readying a referendum for the voters during 1977 should its legislative efforts not be successful. The referendum would allow an increase in expenditures during 1978.

Discussion:

The City argues that its ability to pay is limited by law in this case. That is an overstatement. The City's problem, seriously compounded by the levy limit statute, is a political one. As the City acknowledges, there are ways to raise the revenue needed to pay for the Union's wage demand, ways that are legal and do not require exceeding the statutory levy limitation. However, as the City noted at the hearing and in its brief, these are politically difficult choices, and ones which the City argues are not as wise or as responsible in safeguarding the public's interest as is the policy of a temporary moratorium on wages as reflected in the City's final offer.

The City has demonstrated its fiscal responsibility in this matter. It has not given wage increases to any employees, it has reduced departmental budgets, it has not expanded programs or personnel, it has reduced its general fund below recommended size, and it has borrowed funds for programs which it previously would have financed out of current revenues.

The Union for its part offers undisputed facts that the normal wage comparisons used by the parties would justify a wage increase. While the City argues that the Union's wage demand would create an imbalance with respect to the comparison communities, the City has not demonstrated that to be the case, nor has the City supported its assertions about the relative size of its wage and benefit offer in comparison to other units of government in Dane County.

The Union's wage demands appear to be reasonable when viewed against wage increases granted in comparison communities.

Given the reasonableness of the Union's position the arbitrator believes it necessary to address the question of where the money would come from to meet the Union's demands, given the City's arguments about the restraints placed upon it.

The levy limits cannot be raised in 1977. The arbitrator cannot order that the City impose any new taxes, even were it clear that the City could still impose new taxes in 1977 which would produce the revenue needed in 1977. What avenues remain, then, appear to be borrowing, a further reduction in the general fund contrary to the recommendation of a state agency, or cuts in services and personnel.

What about borrowing? The arbitrator cannot compel the City to borrow, but the City admittedly does not have a large debt and could afford to borrow. The City does not want to engage in short-term borrowing because it adversely affects the future levy limit allowance. At the same time, however, the City acknowledges its citizens have the ability to pay the wages requested by the Union and the City asserts it expects the levy limit formula to be repealed. Given this situation the indebtedness necessary to pay the Union's demands could be temporary. The City also does not favor long-term borrowing for operational expenses, arguing that such measures got New York City in financial difficulty. Again, this overlooks the fact that the borrowing would be of a limited amount in a community that is not in financial difficulty, and to meet a situation which the City anticipates will be temporary.

The City intends to put a referendum before the voters to enable it to exceed the levy limits. The City's arguments with regard to the inadvisability of borrowing would be stronger, in the arbitrator's view, if the voters had rejected (or the City contemplated that the voters would reject) such a referendum.

Funds to meet the Union's demands could also come from reductions in services. The City argued at the hearing that any such reductions would come from the police department budget. This possibility did not dissuade the Union, as representative of all employees in the bargaining unit, from continuing to demand a wage increase. Also, the City did not argue that reductions in the police force and/or in other city departments would result in the inability of the City to deliver vital services to the taxpayers.

It is clear to the arbitrator that the City could raise the approximately \$8,600 needed to cover the added costs of the Union's demands. While it would certainly cost the City more than this amount to provide similar wage increases for its other employees should the City feel it wise to so treat its other employees, no evidence was submitted by the City to indicate the cost impact of extending an award in the Union's favor beyond the bargaining unit, nor was there indication of what the City's policy would be concerning treatment of its other employee groups.

The arbitrator is thus left to choose between two unpalatable alternatives. One alternative is to support the City in granting no wage increase to employees, when it is acknowledged by the City that a wage increase would be justified were it not for the levy limits problem. The other is to grant a wage increase knowing that such an increase may necessitate borrowing and/or reductions in services and layoffs.

After considering all of the circumstances in this case, the arbitrator believes that at the present time it is more reasonable to make an award in favor of the Union's offer. Were the City in financial difficulty, had the voters of the City been presented with and rejected a referendum which would make it impossible to exceed the levy limits in the future, had the City exercised additional revenue options and/or had the City offered even a modest wage increase, the arbitrator might have reached a different conclusion. While the City has taken many measures to keep its budget within the levy limits constraints and has maintained service levels without imposing layoffs, and has offered sound reasons for its actions, the fact remains that there were other options which it could have exercised in order to make a reasonable wage offer to its employees.

If, as the City anticipates, the levy limits situation will be temporary, any unpopular measures which it must take to implement this Award will also be temporary. If the City's prediction about the length of its revenue crisis is wrong, that will provide more support for the City's position in subsequent rounds of negotiations. Under the present circumstances it is the arbitrator's view that the burden on employees in the police unit of receiving no wage increase for 1977 would exceed the burden on the City's taxpayers of providing the wage increases contained in the Union's final offer.

In making this Award the arbitrator is mindful of the arguments made by the City that the arbitrator should not substitute his judgment for the judgment of the elected officials about the best way to meet the City's current financial problem. By providing binding arbitration for police and firemen the State Legislature has

in effect authorized arbitrators to substitute their judgments for those of local elected officials in deciding which of the parties' final offers is more reasonable. The arbitrator has made that judgment in this case and believes it was not reasonable for the City to attempt to resolve its problem by offering no wage increases to the bargaining unit given other options available to it.

Based on the above facts and discussion as well as the statutory criteria governing arbitration decisions contained at Section 111.77(6), Wis. Stats., the arbitrator makes the following AWARD

The City is hereby ordered to implement the Union's final offer, namely, "Increase all steps and classifications by fifty-five dollars (\$55.00) per month."

Dated at Madison, Wisconsin this 27th day of April, 1977.

Edward B. Krinsky /s/
Edward B. Krinsky, Arbitrator