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JUN 24 1980

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of MANITOWOC POLICE DEPARTMENT EMPLOYEES LOCAL 731, AFSCME, AFL-CIO For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of CITY OF MANITOWOC (POLICE DEPARTMENT)	Case XXXIV No. 25441 MIA-456 Decision No. 17626-A

Appearances:

Mr. Michael J. Wilson, District Representative, AFSCME, appearing on behalf of the Union.

Mr. Patrick L. Willis, City Attorney, City of Manitowoc, appearing on behalf of the Employer.

ARBITRATION AWARD:

On March 17, 1980, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator, to determine a dispute existing between Manitowoc Police Department Employees Local 731, AFSCME, AFL-CIO, referred to herein as the Union, and City of Manitowoc (Police Department) referred to herein as the Employer. The appointment was made pursuant to Wisconsin Statutes 111.77 (4)(b) which limits the jurisdiction of the arbitrator to the selection of either the final offer of the Union or that of the Employer. Hearing was conducted on May 8, 1980, at Manitowoc, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence, and to make relevant argument. No transcript of the proceedings was made, however, briefs were filed in the matter, which were exchanged by the arbitrator on May 23, 1980. Thereafter, on May 27, 1980, the Union filed formal objection to the inclusion in the record of pages 49 and 50 of the 1976 brief of the Union which the Employer submitted as attachment #1 to his initial brief. On May 29, 1980, the Employer responded, asserting that the inclusion of the attachment to his initial brief did not constitute evidence but rather a part of the record in that case; alternatively, if considered new evidence that the Employer's letter of May 29 be considered a motion to reopen the record for the inclusion of the disputed data. On June 3, 1980, the Employer and the Union filed additional argument with respect to the disputed attachment to the Employer's initial brief, each maintaining their positions in their earlier correspondence; and on June 6, 1980, the undersigned conducted conference telephone conversation with both parties simultaneously, and pursuant to the agreement of the parties, the undersigned advised both parties in said conversation that the undersigned would take the Employer motion with respect to reopening the record, et al, under advisement, and would consider the matter of the attachment to the Employer's initial brief when considering the record in its entirety. The conference telephone conversation of June 6 was confirmed to both the Union and Employer by letter on June 6, 1980, and in said letter the parties were advised that the entire record was then closed and no further argument or correspondence would be considered.

THE ISSUE:

The sole issue disputed in this matter is the wage rate to be included

for the year 1980, which is the second year of a two year agreement entered into between the parties on January 1, 1979. The instant dispute arose pursuant to the terms of the 1979-80 Collective Bargaining Agreement which provided for a wage reopener for the second year. The final offers, showing each party's final position, are set forth below:

FINAL OFFER OF THE UNION:

The wage rates for the period January 1, 1980, through December 31, 1980, shall be as follows:

Wage Rates	Effective 1/1/80
Start	$ 1,139.00
After six (6) months	1,260.00
After one and one-half (1½) years	1,294.00
After two and one-half (2½) years	1,327.00
After three and one-half (3½) years	1,360.00

FINAL OFFER OF THE EMPLOYER:

9% across the board wage increase in all classifications.

DISCUSSION:

The form in which the parties' final offers were filed with the Wisconsin Employment Relations Commission does not clearly set forth the differences between the parties with respect to the 1980 monthly wage rates. The evidence shows that the Union is proposing a 10% general wage increase, and the Employer is proposing a 9% general wage increase for 1980; or set forth in a different fashion, the monthly wage rates proposed by each party are as follows:

	Employer	or	Union
Start	$ 1,128.00		$ 1,139.00
After Six (6) Months	1,248.00		1,260.00
After One and One-half (1½) years	1,282.00		1,294.00
After Two and One-half (2½) years	1,315.00		1,327.00
After Three and One-half (3½) years	1,347.00		1,360.00

From the foregoing table it is concluded that the dispute in this matter is quite narrow, $11.00 per month per employee at the starting rate and $13.00 per month per employee at the end of the wage schedule.

In determining which final offer is to be selected in this dispute, the undersigned is directed by Statute to apply the criteria found at Wisconsin Statutes 111.77 (6), which directs the arbitrator 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) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes 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 employes, 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.

The Union primarily directs its evidence and argument to factors d, e and f of the Statute. The Employer directs his evidence and argument to criteria d, e, f and h.

CRITERIA (h) - OTHER FACTORS

At hearing the Employer adduced evidence with respect to patterns of settlement with other unions, principally police supervisors and firefighters of this same Employer. In his brief the Employer made lengthy argument with respect to the 9% pattern of settlement established with other unions for the year 1980 which coincides with the Employer's final offer in the instant matter; and the Employer further argued that the relationship between police and fire wages should be maintained. The Employer advanced his argument in his behalf with respect to the foregoing under a section of his brief entitled "111.77 (6)(d) Comparisons With Other Public And Private Employment". Because criteria d speaks to wages, hours and conditions of employment of other employees performing similar wages; in comparable communities; and because the Employer evidence and argument with respect to patterns of settlement and with respect to the relationship between police and fire wages deal with internal comparisons in the same communities rather than with comparable communities; the undersigned views this evidence and argument to be more properly directed to criteria h and, therefore, is discussing these issues under that heading.

With respect to patterns of settlement, there is no question that police officers and firefighters have negotiated an increase with this Employer of 9% for the year 1980. The Union argues that patterns of settlement should not be persuasive in the instant dispute, and cites a prior award of this arbitrator involving the City of Marinette (Case XIX, No. 25334, MED/ARB-539, Decision No. 17583-A, 4/11/80), wherein this arbitrator found:

> The Employer argues from the foregoing evidence that his position should be awarded so that all employees of the Employer would enjoy the same percentage increase for this year. The undersigned rejects the Employer's argument..... In view of the statutory criteria found at 111.70 (4)(cm) 7, g, which requires that the undersigned consider changes in circumstances; the undersigned concludes that wage rates established as a part of negotiations for a two year agreement, a full year prior to the time that the present impasse occurred, cannot be held to be persuasive given the time disparities involved.

The fact situation involving the City of Marinette is distinguishable from the fact situation involved in the instant dispute. The evidence clearly shows from Employer Exhibit #12 (p. 28) that the settlements for the firefighters and police supervisors at 9% for the instant Employer were entered into for 1980. The instant dispute also involves wages for the year 1980. In Marinette the Employer was arguing that the pattern of settlement for the year 1980, which had been entered into one full year prior to the time of the dispute before the arbitrator there, should be persuasive as a pattern of settlement which should control the amount of increase in the dispute before

the arbitrator. The undersigned rejected the Employer argument in Marinette because of the time disparity where the settlement had occurred one year prior and was a two year agreement, and relied on the criteria found at 111.70 (4)(cm)7,g requiring the undersigned to consider changes in circumstances. Here the comparisons are direct in that both wage negotiations involved the same year and, therefore, no changes in circumstances could have occurred by reason of a one year lag. While the record does clearly establish that the 1980 wages for firefighters and police supervisors were established as part of a new Collective Bargaining Agreement which began in 1980 for those units; and while the dispute here arose from a wage reopener involving the second year of an agreement which was entered into initially, effective January 1, 1979; it is undisputed that the wage rates have been negotiated this year for the firefighters, the police supervisors, and the wages involved in the instant dispute are also for this year. Since there is no time disparity involved in the instant impasse and the settlements with the firefighters and police supervisors, the reasoning expressed by the undersigned in the City of Marinette is inapposite. The undersigned, therefore, concludes that the patterns of settlement already established for the year 1980 are persuasive evidence in the instant dispute, and that absent a strong showing on the part of the Union that they are entitled to the increases they propose in their final offer based on the comparables for employees performing similar services in comparable communities, the patterns of settlement will control the outcome of this dispute, particularly where the amount disputed is as narrow as it is here.

With respect to the argument of the Employer dealing with the relationships of the pay of firefighters and police, the undersigned concludes that the record contains insufficient evidence for the undersigned to make any findings with respect thereto. Consequently, the relationship of police and firefighters wages in this dispute will be given no weight in this decision.

CRITERIA (d) - THE COMPARABLES

The parties to this dispute are not new to the arbitration process. Prior interest arbitration awards have been issued by other arbitrators to settle disputes on a last offer arbitration basis pursuant to this same Statute which governs the instant proceedings. In 1974 Arbitrator Hales issued an Award settling a dispute at that time. Again, on January 17, 1977, Arbitrator Haferbecker issued an Award establishing among other things the wage rate for 1976. In his January, 1977 Award (Case XXVII, No. 20650, MIA-254, Decision No. 14793-A) Arbitrator Haferbecker in his opinion on page 6 established comparables to be considered in those proceedings. Since there is nothing in the instant record showing that the comparables as established by Arbitrator Haferbecker in his Award of January, 1977, should be changed; the undersigned adopts the findings and reasoning of arbitrator Haferbecker with respect to comparables. It is obvious that the parties to this dispute have had significant problems in coming to terms over collective bargaining agreements in the past, since this is at least the third interest arbitration in which they have engaged. The undersigned is of the opinion that the maintenance of comparables that the parties should consider during the course of their bargaining and in arbitration should remain consistent in the hope that the parties will be able in the future to arrive at a voluntary collective bargaining settlement.

Given the conclusions set forth in the preceding paragraph, it follows that the comparables established by Arbitrator Haferbecker should be applied in the instant dispute. Arbitrator Haferbecker's relevant findings with respect to comparables are:

> In comparing law enforcement wages I feel that comparisons in the immediate area, in this case Manitowoc County, should be given primary consideration. It is appropriate also to then consider wages in cities in the area, taking population differences into account. The Union has made comparisons with cities in eastern Wisconsin which should be considered and Manitowoc does rank low in comparison to the others. I think, however, that the differential is partly explainable by population differences. Appleton, Green Bay, Sheboygan, and Oshkosh

are all considerably larger than Manitowoc. Neenah and Menasha, although smaller, probably have wage levels influenced by their close proximity to Oshkosh and Appleton. Fond du Lac is the most comparable in population and is closest to Manitowoc in 1975 monthly wages ($963 for a top patrolman compared to $938 in Manitowoc). For 1976, Fond du Lac will go to $1,018, compared to $1,006 for Manitowoc under the City proposal and $1,013 under the Union proposal. Both proposals narrow the difference with Fond du Lac.

Following Haferbecker's reasoning, the undersigned would first turn to Manitowoc County and Two Rivers law enforcement units. Unfortunately, in the instant dispute, data for the year 1980 for Manitowoc County and Two Rivers are not available, since no settlement has been entered into there. Consistent then with Haferbecker's reasoning, the arbitrator must turn to the City of Fond du Lac which Haferbecker found to be the most comparable community in his Award of 1977. In his findings at page 6 of his opinion, Arbitrator Haferbecker found that the Fond du Lac rate for 1976 was $1,018 and that the Employer proposed $1,006 and the Union proposed $1,013 for the year 1976 in Manitowoc. Since Haferbecker awarded for the Union, it is clear that the wage rate comparisons for the year 1976 between Fond du Lac and Manitowoc are $1,013 for Manitowoc and $1,018 for Fond du Lac.[1]

The record establishes then that in the year 1976 the difference between the wage rates paid in Fond du Lac and Manitowoc was $5.00 in favor of Fond du Lac. Union Exhibit #49, however, sets forth the rate paid in Fond du Lac in 1976 as $992.58. The undersigned concludes, from the findings of Haferbecker with respect to the Fond du Lac 1976 rates, that Union exhibit #49 is erroneous with respect to the 1976 Fond du Lac rates, and adopts Haferbecker's findings that the 1976 rate in Fond du Lac was $1,018. Furthermore, the Haferbecker Award found the 1975 Fond du Lac rates to be $963. compared to a Manitowoc rate of $938 for 1975. Having found the Fond du Lac rate to be $1,018 in the year 1976, and having found the Fond du Lac rate to be $963 and the Manitowoc rate to be $938. for the year 1975; it is unnecessary to deal with the motion of the Employer with respect to the inclusion in this record of the attachment to his brief. The data with respect to wage rates in the City of Fond du Lac in 1975 and 1976 have been taken from the findings of Arbitrator Haferbecker, and not from any attachments furnished by the Employer post hearing. Consequently, no ruling is made with respect to the inclusion of that attachment in the instant record.

The Union argues that a comparison of increases and rates among comparable communities for the period 1976 to 1980 requires that their offer be adopted. The Employer argues that the proper time span for comparison should be the period 1975 through 1980, because, except for the other issues Arbitrator Haferbecker would have found for the Employer if only wages had been disputed then. The Haferbecker Award clearly sets forth that he would have found for the Employer on the wage issue in his decision of January, 1977. Consequently, the undersigned accepts the Employer argument that the proper comparison when considering Fond du Lac and Manitowoc would be the comparison of wages between 1975 and 1980. The Haferbecker Award establishes the Fond du Lac wage rate for the year 1975 as $963. compared to the Manitowoc wage rate for that year of $938. In 1975, then, the difference between the wage rates in Manitowoc and Fond du Lac was $25.00 per month, and the wage increases for the time span 1975 through 1980 in Fond du Lac represented a $402. increase, which calculates to a percentage of 41.7%. For the same time span the Employer's final offer would represent a $409. increase, which calculates to 43.6% over that period, while the Union final offer represents a $422. increase, which calculates to 45.0%.

1/ While the arbitrator found for the Union in the 1976 dispute, he did so on grounds other than the wage dispute. Specifically, on the issue of wages the arbitrator clearly found for the Employer in1976 on that issue alone, but awarded the last best offer of the Union when weighing the impact of all disputed issues.

Since for the period 1975 through 1980, the difference in the wage rates between this Employer and Fond du Lac will be narrowed from $25.00 per month to $18.05 per month, if the Employer final offer is adopted; and since the percentage of increases for this Employer exceeds the percentage of increases in Fond du Lac for the period 1975 through 1980 by 1.9%, if the Employer's offer is adopted; it follows that the Employer's offer here is reasonable when viewing the comparables.

SUMMARY AND CONCLUSIONS:

The undersigned has found that the patterns of settlement favor the Employer offer; and that the comparables over the time frame 1975 through 1980 establish that the Employer offer is reasonable; and since neither final offer represents an amount which will fully offset the increase in the cost of living which the arbitrator is directed to consider under criteria e; it follows that the Employer final offer should be adopted in this dispute. Based on the record in its entirety, after considering the statutory criteria and the argument of counsel, the Arbitrator makes the following:

AWARD

The final offer of the Employer is to be incorporated into the Collective Bargaining Agreement between the parties for the year 1980.

Dated at Fond du Lac, Wisconsin, this 20th day of June, 1980.

Jos. B. Kerkman,
Arbitrator

JBK:rr