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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of
CITY OF TWO RIVERS
For Final and Binding Arbitration
Involving Law Enforcement Personnel

and

TWO RIVERS POLICE DEPARTMENT EMPLOYEES
LOCAL 76A, AFSCME, AFL-CIO

Case XXVI
No. 25740, MIA-483
Decision No. 17722-A

ARBITRATOR'S DECISION

GORDON HAFERBECKER
Arbitrator

September 2, 1980

Appearances: Mr. Michael J. Wilson, District Representative, AFSCME, appearing on behalf of the Union.
Mr. Michael Roshar, Mulcahy & Wherry, Attorneys at Law, appearing on behalf of the Employer.

Hearing: A hearing on the above matter was held at the City Hall, Two Rivers, Wisconsin on May 30, 1980.

BACKGROUND

The City of Two Rivers and its Police Department Employees represented by Local 76A, of the American Federation of State, County and Municipal Employees, AFL-CIO, negotiated a three-year collective bargaining agreement effective January 1, 1978. The agreement provides for employee wages, hours, and conditions of employment through and including December 31, 1980. The agreement includes a provision for renegotiation of the third-year wage rates (1980) should the CIP, All Cities, 1967=100 index equal or exceed an inflationary rise of eight percent during the twelve month period October, 1978 through October, 1979.

Since the report of the Bureau of Labor Statistics, U.S. Department of Labor, did indicate an inflation rate in excess of eight percent for the twelve month period, the parties did negotiate on the wage question for 1980. The parties reached an impasse on the issue.

The City of Two Rivers petitioned the Wisconsin Employment Relations Commission for Municipal Interest Arbitration pursuant to 111.77 Wisconsin Statutes. Peter G. Davis, Investigator for the WERC, investigated the petition on March 13, 1980, attempted to mediate, and later certified the existence of an impasse.

The WERC on April 10, 1980, notified Gordon Haferbecker of Stevens Point, Wisconsin, that he had been appointed as arbitrator in the matter.

The Arbitrator conducted the hearing at the Two Rivers City Hall on May 30, 1980. Prior to the formal hearing, mediation was attempted by the Arbitrator but it was not successful. At the hearing both parties presented evidence, testimony, and oral argument in support of their positions. It was agreed that written briefs would be filed by July 18, 1980. By mutual agreement between the parties' representatives certain new evidence was submitted to the Arbitrator postmarked July 22, 1980, and the deadline for filing written briefs was extended to August 18, 1980. Briefs were received by the Arbitrator as scheduled.

ISSUE

Final offer of the City of Two Rivers.

Wages: The City has offered to increase the wages of all members of the bargaining unit by nine percent effective January 1, 1980.

Final offer of Local 76A.

Wages: The Union has proposed an across-the-board increase of \$110.00 per man, per month, effective January 1, 1980. In addition, the Union has proposed an increase of \$20.00 per man, per month, effective July 1, 1980.

STIPULATIONS OF THE PARTIES

Concerning two of the statutory criteria in Municipal Interest Arbitration cases the parties stipulated as follows:

STATUTORY CRITERIA

In addition to the criteria covered in the above stipulation, the Arbitrator is required to give weight to the following factors as provided in the Wisconsin Statutes 111.77 (6):

"(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.

EXHIBITS

Both parties were well prepared and well represented. At the hearing the Union submitted 38 exhibits and the Employer submitted 31 exhibits. Subsequent to the hearing, the parties agreed that the Employer could submit as additional evidence data concerning the City's recent settlement with Local 76A and Arbitrator Kerkman's June 20, 1980 decision concerning the Manitowoc Police.

Comprehensive briefs were filed by the parties on August 18, 1980.

COST DIFFERENCE

The Union states that the cost difference between the respective final offers on 1980 wage rates for the whole year of 1980 is \$2,100 (Union Exhibit 4). This is less than 1% of the overall cost of 1980 wages. The Union estimates its proposed 1980 wage increase at 10.8% (Union Exhibit 31).

The Employer's final offer is for a 9% wage increase for all of the employees. The Employer calculates the average salary increase in the Union proposal at 9.6% on 1/1/80 and 1.6% on 7/1/80 (Employer Brief, p. 26). It estimates the final offer of the Union at 11.34% (Employer Brief, p. 26).

THE ISSUE OF COMPARABLE CITIES AND COUNTIES

One major difference between the parties seems to be the question of what cities are comparable to Two Rivers in determining police wages for 1980.

Employer Position. The Employer argues that the parties' offers should be weighed in comparison to those Wisconsin communities with populations between 10,000 and 20,000 (excluding communities in the Milwaukee metropolitan area and including the City of Manitowoc). These communities are Beaver Dam, Chippewa Falls, De Pere, Kaukauna, Manitowoc, Marinette, Marshfield, Menasha, Middleton, Sun Prairie, Watertown, and Wisconsin Rapids. The City of Manitowoc, while considerably larger, has been included in this pool due to its proximity to the City of Two Rivers. The City's selection of the comparative pool was based, in part, upon the discussions of comparability set forth in Arbitrator Frank P. Zeidler's award involving the 1976 contract for the Two Rivers Fire Fighters (Employer Exhibit 14) and in Arbitrator William W. Petrie's 1976 award for the Two Rivers Police (Employer Exhibit 18).

The Employer contends that its comparables are the most appropriate because communities with similar populations have similar size police departments, with officers performing similar job responsibilities in a similar setting. Communities of relatively equal size frequently offer the same level of municipal services to their citizens (Employer Exhibits 17 and 21).

The Employer objects to the Union's selection of a pool consisting of 28 cities and counties they felt to be geographically close to Two Rivers since that is the only criteria they used as supporting rationale (Union Exhibit 29). The Union presented no authority to

support the standard of proximity upon which its comparisons are allegedly based. Only four of the ten counties in the Union list are contiguous to Manitowoc County. The Employer objects to the use of data from municipalities with such large populations as Appleton, Brown County, Green Bay, Oshkosh, Sheboygan and others. The Union has concentrated its comparisons in favor of larger municipalities with their corresponding higher levels of compensation. The average of the communities chosen by the Union for comparative purposes is 43,606. This far exceeds the Union's reported 1970 Two Rivers population of 13,553 or the 1979 Department of Administration estimate of 13,208. The Employer also objects to the Union's inclusion of cities with populations of less than 7,000 such as Algoma, Horicon, Plymouth and others.

The Employer also points out that Union Exhibit 31 is misleading since the Union has used only the year end lift to calculate these figures and not the actual amount that the employees received (Employer Brief, p. 31).

The Employer also argues that even if the Union's set of comparables is used, the Employer's offer of 9% is still closer to the established settlement norm than is the Union's final offer of an 11.34% year end lift. The average percent increase received by the 26 comparable units that had settled for 1980, as presented in Union Exhibit 31, is 9.75%. The City's final offer is only .75% away from this figure; however, the Union's proposal exceeds the average by 1.59%.

Union Position. The Union points out that the parties in their 1980 voluntary wage negotiations used other Fox River Valley municipalities (Oshkosh, Neenah, Menasha, Manitowoc, etc.) and did not discuss Wisconsin Rapids, Sun Prairie, Middleton, Watertown, Chippewa Falls, Marshfield, Menominee or Beaver Dam.

The recent arbitral opinion in City of Manitowoc, MIA-456 indicates Two Rivers--City of Manitowoc--Manitowoc County Sheriff's are the most comparable communities for law enforcement wages.

The Union feels that geographic proximity should be the primary factor in police wage comparisons and therefore has based its comparables on area comparisons.

Arbitrator's Comments. It is apparent that arbitrators differ as to what are appropriate comparables. As I indicated in my January, 1977 award in a Manitowoc case (Case XXVII, No. 20650, MIA-254), both geographical proximity and population should be considered in determining appropriate comparables. The Employer in this case gives almost exclusive consideration to population and the Union gives almost exclusive consideration to proximity. Both are important.

Proximity is significant because employers, both public and private, and employees both public and private do normally compare their wages with other employers and employees in the geographic area. Workers often change employers within the community or they may commute or move to neighboring communities. In order to maintain a stable labor force, employers must consider whether their wages are competitive with employers in the community and neighboring communities. Taxpayers also are more apt to feel that comparing police wages in Manitowoc and Two Rivers is much more reasonable than comparing Two Rivers to Wisconsin Rapids or Marshfield. There are also more likely to be fewer differences in economic conditions within the near-by area in matters such as the industry mix, cost-of-living, and per capita income.

In my experience as a fact finder and interest arbitrator, I have found that usually both employers and unions take both geographical proximity and population into account in their wage and fringe benefit comparisons. I therefore do not think the Employer's selection of cities as comparables is reasonable.

The Union's selection of comparables, while better than the Employer's, also has serious deficiencies. No rationale was presented for the particular selection other than general proximity. As the Employer notes there is a very wide population range in the Union's comparables and the inclusion of cities much larger than Two Rivers affects the results.

The Employer's comparisons include only city law enforcement units. The Union includes both cities and counties. Neither party addressed the question of why counties should be included or excluded. Are there significant differences in the duties and responsibilities of city and county law enforcement units?

I would agree that the immediate county, in this case Manitowoc County, should be included since it is in the same labor market as Two Rivers and the City of Manitowoc and employees could change jobs among the units. They are also very aware of local area wage and fringe benefit differences among the units. However, in 1980, Manitowoc County has not yet settled its 1980 contract so it cannot be easily compared with Two Rivers and Manitowoc.

This Arbitrator feels that there would be merit in this case in using the comparables suggested by Arbitrator Zeidler in the Two Rivers Fire Department Arbitration (Case XVII, No. 20204, MIA-228, Employer Exhibit 14). In that case Arbitrator Zeidler ruled that only De Pere, Kaukauna, Marinette, and Menasha were properly comparable to the City of Two Rivers. He rejected the Union's other comparables because of their large size. This Arbitrator would also add Manitowoc to the list (as do both the Union and Employer in this case) because of its close proximity. I will come back to this comparison later.

OTHER TWO RIVERS CITY SETTLEMENTS

Employer Position. The Employer states that the City tries to treat all city employees as equitably as possible, and in a manner consistent with their position in the municipal framework. Fringe benefits such as health insurance, life insurance, longevity and retirement fund contributions are uniform for police, fire, public works, and non-union employees (Employer Brief, p. 25).

The percentage offered to the Police (9%) is relatively equal to the percentage in the Fire Fighter's settlement (9%) and the Department of Public Works (9% 1/1/80 and .5% 7/1/80). These settlements are much below the Union's final offer in this case of 9.6% on 1/1/80 and 1.6% on 7/1/80. The slight lift over 9% for DPW employees was due to the relatively low comparative ranking of several positions in the unit and the percentage of total impact cost would be identical to that in the City's offer to the Police. The City contends that adoption of the Union offer in the police case would be unfair to other city employees and would tend to disrupt the City's relationship with those employees.

The City is concerned that the rough parity which has been established between the Two Rivers Police and Fire Fighters would be broken by an award of the Union's offer. Because of an award issued by Arbitrator Zeidler in August 1976 (Employer Exhibit 14), the City has gone to great lengths in its 1978-1979 agreement to establish a plan which would achieve a rough degree of parity between the Police and Fire Fighters. The average employee wage increase for the Fire Fighters in 1980 is \$1,287. The City's offer to the Police is \$1,334 but the Union is requesting \$1,440 (Employer Brief, p. 28).

Union Position. The Union points to a contract provision;

ARTICLE III - UNION ACTIVITY

Paragraph 3: "The Local is to bargain separately from all other bargaining units under the jurisdiction of the City." The Union feels that this clause requires separate bargaining and that it would be violated if one or two of the City's bargaining units are to be prejudicial to the third. The Union cites various arbitrators' decisions which rejected comparisons with other employees in the City (Union Brief, pp. 14-15).

The Union points out its Exhibits 21 and 22 which show that there is no real parity between Police and Fire Fighter wages in Two Rivers and other area communities. In some the Police earn more and in others the Fire Fighters earn more.

The Union contends that under the Employer's final offer, the Fire Fighters would earn \$6.90 more per month than the Police (Arbitrator's note; The Union includes in its calculations some retirement contribution. This may explain in part the difference from the Employer-Police-Fire Fighter salaries cited earlier).

Arbitrator's Comments. I find myself more in agreement with the Employer than with the Union on this question. It is reasonable for the Employer to try to maintain some degree of uniformity in collective bargaining settlements with various union units. Such settlements need not necessarily be the "controlling" factor in the Arbitrator's decision but in the interests of general collective bargaining relationships between the Employer and the Unions it bargains with, they deserve some consideration.

In this case, the settlements with the Fire Fighters and the Department of Public Works employees are closer to the Employer's proposal than the Union's and this fact needs to be given some weight in arriving at a decision. If the wages of Two Rivers Police were significantly lower than appropriate police comparables and if the percentage increase were less than appropriate police comparables, then that could be a reason for giving less weight to the City's previous settlements.

The Employer has shown some flexibility in revising its 1980 wage pattern slightly in the recent case of the DPW unit.

OTHER LOCAL AREA SETTLEMENTS (NON-POLICE)

The Employer in Exhibit 27 points out that the City of Manitowoc has settled with its nurses and fire fighters, at 9% and with its City Hall and cemetery and parks employees at 9.21%. Manitowoc County has bargained contracts with court house, highway, institutional, and social service employees at percentages of 9.08, 9.08, 9.26, and 9.4. Its nursing home settlement was at over 10% because of reclassification.

The Arbitrator finds these settlements closer to the Employer's offer than to the Union offer in the instant case.

COST OF LIVING

Both parties presented extensive exhibits on the cost of living issue.

Union Position. Union Exhibits 24 through 28 show the loss of real spendable earnings for police employees since 1977. "Real spendable earnings" for a patrolman show a decline from \$496.55 in January, 1978 to \$448.90 in April, 1980 under the Employer's offer and to \$449.45 under the Union offer. The Union contends that a 9% increase for 1980 is grossly inadequate in view of the inflation rate of over 13% in the past year. What is the value of a wage reopener clause in this case when the Union is being offered only 1% more than the 8% provided in the original contract?

Employer Position. The Employer states that the CPI exaggerates the cost of living. It does not allow for changes in consumer buying patterns such as cutting back on the use of gasoline. The increase in the cost of homes and mortgage interest rates have contributed much to the rise in the index but in reality most Americans did not buy a home in the past year.

Local contract settlements and the settlements cited by the Union all lag far behind the CPI increase of 14.6% from March, 1979 to March, 1980.

Nationally real spendable earnings were down 7.9% in March of 1980 compared to March of the previous year.

Arbitrator's Comments. The increase in the CPI is one of the factors to be considered in this case. The Arbitrator will consider this along with other criteria in making his award. Neither the Union nor the Employer offer would fully offset the impact of inflation but the Union offer would come closer to doing so.

PERCENTAGE vs. DOLLAR INCREASE

The Union is asking for a dollar increase rather than a percentage increase on the grounds that the lower ranking police, the patrolmen, are suffering more from inflation than the higher paid sergeants and detectives. Also, the Union law enforcement comparisons of patrolmen, sergeants, and detectives in various cities would seem to support a larger increase for patrolmen than the others.

The Employer does not present any argument in support of his percentage increase vs. a dollar increase. However, the Employer does seem to recognize that the sergeants are in a more favorable position than patrolmen (see Employer Brief, p. 14).

The Arbitrator finds some merit in the Union position and regrets that the Employer did not analyze this issue more fully. The disadvantage of flat dollar increases, especially if repeated over a period of years, is to narrow the differential between ranks. This makes promotion less attractive and eventually leads to a demand to restore the differentials and grant larger increases to the higher ranks. This needs to be considered in making wage adjustments. Whatever the outcome of this 1980 wage case, the parties should look at the relative rank of pay of patrolmen, sergeants, and detectives in comparison with other police units and determine whether there needs to be larger adjustments for patrolmen in 1981.

OTHER EMPLOYER ARGUMENTS

Hourly Pay Rates: The Employer points out that Two Rivers Police have a 37½ hour work week which makes their hourly rate of pay more favorable when compared with cities having a forty hour work week. On an hourly basis Two Rivers patrolmen would earn \$8.07 per hour, surpassing the average of the City's comparables by 18 cents per hour (Employer Brief, p. 14).

Longevity: The 1978-80 contract with the Union provides for a significant increase in longevity pay from 3% of base after 6 years and 4% of base pay after 18 years to; 3% of base pay after 6 years, 4% after 12 years, and 5% after 18 years. The average maximum amount of longevity received by comparable police employees is \$451. The maximum rate that a Two Rivers Patrolman would receive under the City offer would be \$787. This is 42.7% more than the average amount received in the comparable units (Employer Brief, pp. 19, 22).

Wisconsin Wage Data: Employer Exhibit 30 shows the City of Manitowoc ranking lower than most state areas in average weekly wages of production workers. In March, 1980, Manitowoc workers earned \$281 weekly compared to \$311 for Appleton-Oshkosh (Calumet, Winnebago-Outagamie), \$309 for the City of Fond du Lac and \$324 for Brown County. This would seem to justify lower police wages in Manitowoc than in such Union comparables as Oshkosh, Appleton, Fond du Lac and Green Bay.

The Union's per capita income figures (Exhibit 30) also show adjusted per capita income lower in Manitowoc County than in Brown, Outagamie, and Winnebago Counties.

OTHER UNION ARGUMENTS

The Union argues that in a case involving a wage reopener such as the instant case, roll-up costs, fringe benefit costs, and comparison of overall compensation should not be considered in wage adjudication. It cites several arbitration cases involving this issue. For example, in City of Two Rivers (Police Department) MIA-259, 3/77, the arbitrator determined "That deferred negotiated increases in fringe benefits which became effective in 1976, and certain non-negotiated 1976 increases in employment related costs for the City of Two Rivers are inappropriate for major consideration in the wage determination question."

This Arbitrator agrees that major consideration should be given to the wage question and that fringe benefits are not here a major issue. However, in comparing 1980 police wages in various cities, major fringe benefits affecting wages such as longevity have some significance whether such longevity was effective in 1980 or earlier. It does directly influence comparative pay.

ARBITRATOR'S POLICE WAGE COMPARISON

As indicated earlier, the Arbitrator found that the Employer's comparables were lacking in area comparisons while the Union's comparables ignored population differences. I indicated that Arbitrator Zeidler's comparables in the Two Rivers Fire Department case could be the basis of a more valid comparison. He recommended De Pere, Kaukauna, Marinette, and Menasha as properly comparable to Two Rivers. This Arbitrator would also add the City of Manitowoc to the list because of its close proximity to Two Rivers. Manitowoc County, in the same labor market, would also be added if a 1980 settlement had been reached.

Since an earlier arbitrator and the Union currently doubts that Kaukauna is a valid comparable, I have put a question mark next to it. Union Exhibit 36 shows that the Kaukauna bargaining unit does not have a majority of patrolmen while in most other police bargaining units, the patrolmen are a majority.

The larger cities like Oshkosh, Appleton, and Green Bay are not in the comparables. However, they do have some influence since no doubt Menasha wages are influenced by nearby Appleton and Oshkosh and De Pere would normally be influenced by Green Bay wages.

1979 and 1980 Patrolman Maximum Monthly Salaries

<u>Municipality</u>	<u>1978 Per Capita Income</u>	<u>1979</u>	<u>1980</u>	<u>\$ Increase</u>	<u>% Increase</u>
De Pere	\$6,311	\$1,337	\$1,442	\$105	7.9
Menasha	6,015	1,322	1,441	119	9.0
Manitowoc	5,956	1,236	1,347	111	9.0
Kaukauna - ?	5,542	1,217	1,308	91	7.5
Two Rivers - E	5,682	1,204	1,312	108	9.0
Two Rivers - W	5,682	1,204	1,334 (7/1)	130	10.0
Marinette	5,219	1,118	1,210	92	8.2

It should be noted that the De Pere, Marinette, and Kaukauna contracts are second year contracts and thus would tend to not reflect the recent inflation rate as much as new 1980 contracts. Data are taken from Employer Exhibits 20 and 23.

It would appear that the Employer's offer in this Two Rivers case compares favorably with the other communities in percentage and dollar amount for the 1980 increase while the Union offer would be higher than any of the others in dollars and in percentage.

There also seems to be a close relationship between the rank of the cities in 1978 per capita income and the rank in patrolmen's salary.

Concerning the Manitowoc-Two Rivers differential, it should be noted that Manitowoc is a considerably larger city, that it has a higher per capita income, and that the longevity pay schedule is not as favorable as that of the Two Rivers police.

Results are very similar when 1980 maximum salaries are compared for sergeants. Again, the Two Rivers Employer offer of 9% is comparable to Manitowoc and Menasha while the Union percentage and dollar amounts are the highest (Employer Exhibit 24).

SUMMARY AND CONCLUSIONS

Neither the Employer nor the Union wage offer fully offsets the increase in the cost of living. The Union offer comes closer to doing so but the Arbitrator must also consider the other criteria in the statute.

I find that the other criteria outweigh the cost of living issue and the Arbitrator selects the Employer offer as being more reasonable overall. The Employer's offer is closer to other City of Two Rivers settlements than the Union's. It is closer to other Manitowoc County public employee settlements. It is similar to the Manitowoc Police settlement. It compares favorably with settlements for other police units in East Central Wisconsin.

Based on the record, the argument of the parties, and considering the statutory criteria, the Arbitrator makes the following:

AWARD

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

Dated at Stevens Point, Wisconsin, this 2 day of September, 1980.

Gordon Harerbecker
Gordon Harerbecker, Arbitrator