

RECEIVED

MAR 05 1986

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration )  
 )  
 Between )  
 )  
 CITY OF BELOIT )  
 )  
 And )  
 )  
 WISCONSIN PROFESSIONAL )  
 POLICE ASSOCIATION, )  
 LEER DIVISION )  
 \_\_\_\_\_ )

WERC CASE 61  
 NO. 34435  
 MIA-972  
 Decision No. 22565-A

Impartial Arbitrator

William W. Petrie  
 1214 Kirkwood Drive  
 Waterford, Wisconsin 53185

Hearing Held

July 10, 1985  
 Beloit, Wisconsin

Appearances

For the Employer

HANSEN, EGGERS, BERRES,  
 KELLEY & BLAKELY, S.C.  
 By Daniel T. Kelley, Esq.  
 416 College Avenue  
 Beloit, Wisconsin 53511

CITY OF BELOIT  
 By Lee C. Davis  
 Personnel Director  
 City Hall  
 100 State Street  
 Beloit, Wisconsin 53511

For the Association

WISCONSIN PROFESSIONAL  
 POLICE ASSOCIATION  
 By John H. Burpo  
 LEER Administrator  
 7 North Pinckney Street  
 Madison, Wisconsin 53703

## BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Beloit Police Department and the Wisconsin Professional Police Association, LEER Division, on behalf of the Beloit Professional Police Association, with the matter in issue the terms of a renewal labor agreement for calendar year 1985. The parties are in dispute with respect to the matter of wages only, with the City proposing no wage increase for 1985 and the Union proposing two general wage increases of two percent each, effective January 1, 1985, and July 1, 1985.

After preliminary negotiations between the parties had failed to result in a renewal agreement, the Union on January 10, 1985, filed a request with the Wisconsin Employment Relations Commission, requesting final and binding interest arbitration of the dispute. After unsuccessful mediation of the dispute by the assigned investigator, the Commission on April 18, 1985, issued certain findings of fact, conclusions of law, a certification of the results of its investigation, and an order requiring arbitration of the matter. On May 8, 1985, the commission issued an order appointing the undersigned to hear and decide the dispute.

On July 10, 1985, a hearing took place in Beloit, Wisconsin at which time all parties received a full opportunity to present evidence and argument in support of their respective positions. Pursuant to the agreement of the parties the record was kept open for the limited purpose of verifying the accuracy of certain exhibits and for offering correction, if needed. Pursuant to the request of the Union and in accordance with the provisions of Section 111.77(6)(g) of the Wisconsin Statutes, the Arbitrator on December 27, 1985, accepted into the record two interim interest arbitration decisions of other arbitrators, rendered in connection with other City of Beloit bargaining units. After considerable delay in the availability of the transcript of the hearing in this matter, each of the parties filed briefs and reply briefs, and the record was closed by the Arbitrator effective January 17, 1986.

### The Statutory Framework for the Proceedings

The resolution of the dispute is governed by the provisions of Section 111.77 of the Wisconsin Statutes, which provide in pertinent part as follows:

- "(6) In reaching a decision the arbitrator shall 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 employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees 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 employees, 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 FINAL OFFERS OF THE PARTIES

In accordance with the provisions of Section 111.77(4) (b) and (5), the Impartial Arbitrator is limited in authority to the selection of the final offer of either one of the parties without modification.

The final offer of the Employer was dated and signed on April 4, 1985 at 3:10 PM, and provides in pertinent part as follows:

- "1. Wage Schedule - Appendix A to remain in effect for 1985 as it was on 12-31-84 i.e. schedule to be frozen."

The final offer of the Union was also dated and signed on April 4, 1985, and provides in pertinent part as follows:

- "Relative to Article VIII Wages, adjust wage schedule to reflect 2% increase on base for all ranks (steps) effective 1-1-85, and effective 7-1-85, an additional 2% increase on the 1984 base, for all ranks (steps)."

#### POSITION OF THE ASSOCIATION

In support of its position in these proceedings, the Association emphasized the following principal arguments.

- (1) In connection with consideration of comparables, that the Arbitrator should address primary attention to the City of Beloit as against the cities of Janesville, Oshkosh, LaCrosse, Sheboygan, and Fond du Lac and against Rock County.
  - (a) That the above comparables were utilized by Arbitrator Kerkman in a 1978 interest arbitration involving the City of Beloit, and were accepted as precedent by Arbitrator Malamud in his recent decision involving the City of Beloit and AFSCME Local #643.
  - (b) That considerations of arbitral consistency indicate strongly that consistent comparisons be utilized.
  - (c) That the City of Eau Claire should not be utilized, despite its prior utilization by Arbitrator Kerkman, due to the fact that the City does not have a written collective agreement with its police officers. Despite this fact, that consideration of Eau Claire data would not alter the

Association's comparisons or the appropriate conclusions to be derived from these comparisons.

- (d) That while the City attempted to offer additional comparisons with the cities of Appleton and Wausau, no rational basis was offered to justify the inclusion of these jurisdictions in these proceedings. Additionally, that no basis has been established for the non-utilization of Rock County, which was used for comparison purposes in the earlier Kerkman, and in the more recent Malamud decision and award.
- (2) That the Association request for two 2% wage increases during 1985 is justified by a variety of considerations.
- (a) That an examination of base wage increases received in 82 Wisconsin cities for fiscal 1985 reflects that no police officers received a zero percent wage package; even though these cities are not directly comparable, they should be considered to the extent that they all provided some form of wage increases.
  - (b) That other City of Beloit employees in similar final offer arbitration proceedings for 1985, have prevailed in their arbitration cases.
  - (c) In comparing police wages between the City of Beloit and appropriate comparables, benchmark comparisons at the five year level should be utilized. That such a comparison is consistent with that used by other arbitrators in police disputes in Wisconsin, that out of 47 personnel in the bargaining unit, the pay step with the greatest number of officers is the 5th year step, and that the 10th, and the 15th and the 18th year pay steps of the City of Beloit police officer are really longevity pay steps as opposed to merit and/or normal progression steps found in other police departments.
  - (d) That the monthly base rate comparison data offered by the Association and covering the time frame 1980 through 1984, is remarkably consistent; that Beloit Police Officers consistently remained in third place among comparables during these years. That adoption of the Association's final offer would maintain officers in the bargaining unit in the third spot among comparables, but that selection of the Employer's final offer would drop Beloit officers to fifth place and would place them close to the three cities below them in ranking.
  - (e) That between 1980 and 1984, 5th year Beloit Officers remained between \$67 and \$93 per month above the average of comparable jurisdictions. That if the

Association's final offer is accepted, the wage comparison will be only \$59 per month above average, while if the City's final offer is accepted the average should drop to \$10 per month below the average of comparable jurisdictions.

- (f) That in looking only to Janesville, Rock County, and Beloit comparisons, the Association's 1985 offer would retain Beloit Officers in the same range which existed between 1980 and 1984, while adoption of the Employer's final offer would reduce the 5th year officer to \$124 per month below the average figure.
  - (g) That comparing average wage increases in comparable jurisdictions supports the position of the Association. Exclusive of Rock County, that the average increase for 1985 is 5.1%, well above the Association's final offer and well above the City's final offer of no general wage increase for 1985. That the average overall increase between 1980 and 1985 for the same group was 40.2%. That the Association's offer would result in a 37.4% figure for these years, while the Employer's offer would result in only a 32.7% increase.
  - (h) That cost of living considerations favor the adoption of the Association's rather than the City's final offer. That projected 3.2% increases in cost of living for small metropolitan areas in 1985 are closer to the Association's than the Employer's final offer.
  - (i) That in reviewing data relative to all 82 Wisconsin departments represented by the WPPA/LEER with 1985 settlements, only two received less than a 3% wage increase; even the three exceptions received either a 1% or a 2% increase.
  - (j) That in two other recent interest arbitration decisions for City of Beloit employees, Arbitrators Krinsky and Malamud approved 4% wage increases, in selecting the final offer of the Unions rather than the no increase final offer of the City. That it would be unfair to deny an increase for the Police Officers in light of these settlements, particularly in that internal comparisons are recognized in Wisconsin as an important criterion in the interest arbitration process.
- (3) That the Employer's arguments relating to ability to pay cannot be accorded significant weight in these proceedings. That there is sufficient money available to pay for the Association's final offer, and that the City has failed to meet ability to pay tests normally utilized in the interest arbitration process.
- (a) That not all City departments were asked to bear the burden of budget decreases in

1985, and that it is unfair to ask the Police Officers to be penalized when other programs and citizens are not asked to bear the same burden.

- (b) That the 1985 budget includes approval for capital fund borrowing of \$2,125,000 for various improvements, with principal and interest payments for 1985 of approximately \$200,000. That this action is inconsistent with any claimed inability to offer a wage increase to Police Officers.
  - (c) That the City's tax rate is 24th of 26 urban municipalities in the State of Wisconsin, thus indicating that the recent 16% tax rate increase is being applied against a smaller base.
  - (d) That the City of Beloit's financial affairs are not, by any reasonable measure, catastrophic. That there is no evidence of impaired short term or long term bargaining power, that there is no indication that it would need to borrow to meet the Association's wage demand, and that the budget shortfall was occasioned not by the unavailability of money but because of a political decision not to grant a wage increase for 1985.
- (4) That the private sector comparisons offered by the Employer should not be accorded significant weight in these proceedings.
- (a) That testimony relating to Beloit Corporation, cited difficulties arising from foreign competition and the strength of the dollar. That there is little valid comparison between a private manufacturer faced with market place difficulties and a public service employer such as the City of Beloit.
- Further, that when cost of living roll ups are included in two bargaining units within the Beloit Corporation, the settlements are not analogous to the no increase proposal of the City.
- (b) That testimony relating to Colt Industries should also receive little weight. That this company manufactures large diesel engines for marine and stationary applications, and has been forced into a layoff position due to market forces. That this picture is distinguishable from the City of Beloit which has not experienced workforce reductions in the City workforce.
- (5) That City offered comparisons with other public sector employees which extended to wages, clothing allowances, retirement, vacation, and education incentive should not be accorded significant weight. That the comparisons were insufficient to justify a zero percent wage package, and were not comprehensive in scope.

Based upon all of the above considerations, the Association submits that its final offer of two 2% wage increases during 1985 is justified and fair, while the Employer's offer is unjustified and would do serious damage to the economic well being of Police Officers and the bargaining ability of the Association.

POSITION OF THE EMPLOYER

In support of its position in these proceedings, the Employer emphasized the following principal arguments.

- (1) That consideration of the public interest and welfare, and the ability to pay criteria favor the renewal of the labor agreement for 1985 without a wage increase.
  - (a) That Section 62.11(5) of the Wisconsin Statutes confers the power upon the City Council of the City of Beloit to manage and control the city property, finances and public service, and the power to act for the government and good order of the City, for its commercial benefit, and for the health, safety and welfare of the public; that the City may carry out its powers by the borrowing of money, by tax levy, or by appropriate other means.
  - (b) Pursuant to the above, that the 1985 budgeting process has been completed on the basis of competing interests for public funds, appropriations for each department have been approved, and property taxes have been levied in a sufficient amount; that the budgetary actions of the City Council are the expression of the interests and welfare of the public as a matter of law.
  - (c) That the City departmental appropriations for 1985 assume no increase in the wage schedules, with pay increases coming only through the step progressions in the wage schedule. That the City bargains with four unions, and that it has made the same no wage increase offer to each of the four unions.
  - (d) That the financial condition and ability to pay of the City was described in the testimony of the City Finance Director, and in various exhibits introduced by the City.

That non-property tax revenues dropped approximately \$800,000 in 1985, due to the declining amount of surplus fund balance applied. That this reduction in non-property tax revenues resulted in a 16% increase in the property tax levy in 1985, increasing revenue in the approximate amount of \$700,000.

- (e) Despite inflation, that the property tax base for the City of Beloit has remained virtually unchanged in recent years. That the City has a relatively high tax rate among comparable cities, and it had the

greatest dollar amount of equalized net tax rate increase for all purposes from 1983 to 1984.

- (f) That expert testimony from Professor L. Emil Kreider indicated that when the 1984 full value of various cities is compared on the basis of population, the City of Beloit has the absolute lowest property value per capita of \$16,033; that in looking to 1983 adjusted gross income per capita, the City has the fourth lowest figure for 24 Wisconsin cities, at \$7,026. That the property tax effort by the taxpayers of the City of Beloit is particularly remarkable when analyzed in terms of Beloit taxpayers' income.
  - (g) That a financial crisis exists that may portend a local economic disaster. If the population continues to fall, if there are fewer jobs, if there is a continuing relative reduction in income levels and property values, many questions are generated, including possible elimination or reduction of municipal services, budgetary cutbacks and layoffs of personnel. That such actions carry significant implications with respect to the interests and needs of the public and the continued delivery of municipal services.
- (2) That consideration of internal comparables favors the adoption of the final offer of the City in these proceedings.
- (a) That the Employer has offered no wage increase within any of the four bargaining units.
  - (b) That an arbitration award based upon selection of the Union position on wages would have a domino effect through use of the internal comparison analysis, and would result in wage increases for other bargaining units.
  - (c) That police officers within the bargaining unit are already the highest paid city employees within the four bargaining units.
- (3) That consideration of certain external public sector comparisons favors the adoption of the final offer of the City in these proceedings.
- (a) That while the City of Beloit in 1984 is low at the entry level in comparison with other municipalities, Beloit Officers' wages become more attractive with long service, and at the tenth and the eighteenth year Beloit is second highest among comparable cities (i.e., Appleton, Eau Claire, Fond du Lac, Janesville, LaCrosse, Oshkosh, Sheboygan, Wausau, and Beloit).
  - (b) That if the 1984 schedule is left in place, Beloit would rank lowest among the comparable cities in Police Officer wages at the entry level, but would rank fourth of ten at the



tenth year and fourth of eight at the eighteenth year.

- (4) That consideration of the overall compensation criterion also favors the adoption of the final offer of the City. In this connection, that the Arbitrator should consider health, dental and life insurance, retirement insurance benefits, vacation allowance, clothing allowance, and the educational incentive program.
- (a) That the attractive level of other compensation is reflected in the marketplace, and that a position as a City of Beloit Police Officer is greatly desired. That in 1982, 490 applications were received for entry level positions and 60 were placed on the eligibility list; that in 1984, 655 applications were received and 83 were placed on the eligibility list; that since 1980, only a total of seven officers have left to take other employment.
- (b) That the City's health, dental and life insurance must be particularly considered. That Beloit pays 100% of health insurance costs with only a \$25.00 deductible per illness per life; that of nine municipalities surveyed, Beloit is one of four which provides dental insurance for police officers, and has the most generous plan, paying 100% of the costs with no deductible. That the City also has the most generous life insurance program.
- (c) That the Beloit insurance program for retirees has one of the better programs. That the City pays 100% of the cost of health and dental insurance, including dependents and widows, while many other cities provide less.
- (d) That after twenty-five years of service, a Beloit Police Officer has the third highest number of vacation days of nine other municipalities (i.e. Sheboygan, Eau Claire, Beloit, LaCrosse, Oshkosh, Fond du Lac, Janesville, Wausau, and Appleton).
- (e) That the City's clothing allowance at \$300 is more generous than any other city surveyed except Wausau (i.e. versus Beloit, Wausau, Appleton, LaCrosse, Sheboygan, and Fond du Lac).
- (f) That the comparison of payments to officers for educational incentives by nine municipalities shows that Beloit ranks very well, and seems to be the highest.
- (5) That consideration of external private sector comparisons favors the adoption of the final offer of the City in these proceedings.
- (a) That Colt Industries, a major local employer, negotiated a renewal agreement dated August 16, 1984, which provided for

no wage increase the first year and 4% increases during the second and third years; that the new agreement also provides for a prospective two tiered wage system.

- (b) That Beloit Corporation, a major local employer, has negotiated renewal agreements within three bargaining units. That the Machinists unit retained COLA in the first year and will receive 4% and 9% deferred wage increases during the second and the third year of the renewal agreement. That the Molders received a renewal agreement with no wage increases for the four year period between 1984-1988, with suspension of COLA and pro-rata restoration of it in 1986-1987, and with a prospective two tiered wage system. That the Patternmakers agreement provided for no wage increase for the three year period covering 1984-1987, with only a limited restoration of COLA during the term of the agreement.
- (c) That retirement benefits for the City's Police Officers are substantially greater than similar benefits for major local industries. That the City pays the employers and the employees contribution to the Wisconsin Retirement Fund, and upon completion of thirty years of service, an officer will receive a monthly benefit of \$856.17, versus 30 year pensions at Beloit Corporation and Colt Industries of \$420.00 and \$375.00 respectively.
- (d) That health insurance benefits provided to Police Officers are more generous than those provided by Beloit Corporation and Colt Industries.
- (6) That the total package costs of the Association proposal would be \$72,909, representing a 6.43% annual increase. That the total cost of the City's proposal would be \$28,165, representing a 2.48% annual increase.
- (7) That stability of employment is one of the chief advantages of public employment and is characteristic of the City of Beloit. That the rate of job applicants for Police Officer positions is very high, that average W-2 wages within the bargaining unit for 1984 was \$26,343.55, and that these positions are highly desirable.
- (8) That certain other factors favor the selection of the final offer of the City in these proceedings.
  - (a) That the state of the local economy in the City of Beloit must be considered, and that there have been recent major reductions in employment by local employers.
  - (b) That average weekly and hourly wages in Beloit are lower than national, state, area, and City of Janesville comparisons.

- (c) That unemployment in the Beloit area has been higher than Wisconsin averages for 1980 through 1984.
  - (d) That no wage increase contracts are no longer an unheard-of phenomenon. That 23% of workers subject to certain surveyed wage settlements for 1984 had either no change or experienced decreases in wages in 1984; that private sector wage increases for 1980 averaged only 2.4%; and that negotiated settlements with wage decreases ranged from 8.7% to 12.6% decreases.
  - (e) That the state of the economy nationally and locally supports the position of the City, and that favorable local living costs support no wage increase for 1985.
- (9) That consideration of cost of living criterion favors the adoption of the final offer of the City.
- (a) That the relative cost of living in the Janesville and Beloit area is only 89.5% of the national average.
  - (b) That local cost of living is lowest among the significant cities in the State of Wisconsin.
  - (c) That since health care provides such a significant element in cost of living computations, and since the City of Beloit provides the fullest possible health care coverage, that the significance of the cost of living index increases is further diminished.

In summary and conclusion, the City emphasized that no change in the wage schedule for 1985 has been offered to any bargaining unit, that the City has already imposed a 16% property tax increase to fund the 1985 budget, that the full value of assessable property per capita in Beloit is lowest among comparable cities in the State, that the average per capita income in Beloit is substantially lower than the national, state, local, and Janesville averages, that the cost of living is lower in the City of Beloit, that the total compensation package compares favorably with other public and private sector employees, that individual wage progression would continue under the Employer's proposal, that City pension benefits are generous, that the local economy is distressed and marked by reduced employment, layoffs, wage freezes, and the introduction of two tiered wage systems, and that City employment is stable and provides for job security. On the basis of all of the above, the City urges the selection of its final offer.

#### FINDINGS AND CONCLUSIONS

In arguing their respective cases, each of the parties cited a variety of the arbitral criteria in support of the adoption of their final offers.

- (1) The Employer particularly emphasized the interests and welfare of the public and the ability to pay, internal comparisons, external public sector comparisons, the overall level of compensation in the bargaining unit, external private sector comparisons,

cost of living considerations, and other factors such as the state of the local economy, average weekly and hourly wages in Beloit versus elsewhere, current levels of unemployment, and the use of no-increase contracts by other employers.

- (2) The Association particularly emphasized certain public sector comparisons, cost of living considerations, internal comparisons, particularly these reflected in two recent arbitration decisions, ability to pay, and private sector comparisons.

Initially, the City has urged that the City Council had been given the authority under Section 62.11(5) of the Wisconsin Statutes to provide for the health, safety and welfare of the public and, pursuant to this authority, that it had weighed all of the competing interests for public funds, had completed the budgetary process, and had appropriated funds and levied taxes in appropriate amounts. It submitted that local government functions in a representative, democratic manner, and urged that the budgetary actions of the City Council were the expressions of the interest and welfare of the public as a matter of law.

The relationship between elected representation, ability to pay, and inability to pay have frequently been addressed in the interest arbitration field, and some preliminary observations by the Arbitrator are in order. If a unit of government can establish that it is bereft of necessary funds and the ability to raise such funds, a true inability to pay would exist; an interest arbitrator faced with such conditions would have little choice but to deny any request for wage and salary increases which could not be funded! More typically, however, arbitrators are faced with ability to pay arguments which do not entail a true inability to pay, but rather reflect unwillingness to raise taxes, to reassess property, or to reconsider spending priorities in order to generate the necessary dollars to fund any increases in wages and benefits; in such situations, arbitrators will not assign conclusive weight to such ability to pay arguments. These considerations are rather well described in the following excerpt from an article by Arbitrator Howard Block: 1./

"...How does an arbitrator respond to a municipal government that says, 'We just don't have the money'?"

Pioneering decisions of interest neutrals have assigned no greater weight to such an assertion than they have to an inability to pay argument by private management. An arbitration panel constituted under Michigan's Public Act 312 rejected an argument by the City of Detroit which would have precluded the panel from awarding money because of an asserted inability to pay. What would be the point of an arbitration, the panel asks in effect, if its function were simply to rubber stamp the city's position that it had no money for salary increases? What employer could resist a claim of inability to pay if such claim would become, as a matter of course, the basis of a binding arbitration award that would relieve it of the grinding pressures of arduous negotiations? While the panel considered the city's argument on this point, it was not a controlling consideration.

Inability to pay may often be the result

of an unwillingness to bell the cat by raising local taxes or reassessing property to make more funds available...."

In his decision dated October 11, 1985, Arbitrator Krinsky indicated as follows with respect to the interests and welfare of the public and the ability to pay considerations, as well as the weight to be accorded City Council actions in these connections. 2./

"The statutory factor that remains is (c) 'the interest and welfare of the public and the financial ability of the unit of government to meet the cost of any proposed settlement.' Although the City argues that it should not be required by the arbitrator to incur costs beyond what it has offered, there is no question about the 'financial ability of the unit of government to meet the cost of any proposed settlement.' The Union's offer could be met by some combination of internal budget redistribution, use of additional reserves, further increases in taxation and further borrowing, and further spending reductions. The questions before the arbitrator is really not 'does the City have the financial ability' to pay more? Rather, it is 'is it in the interest and welfare of the public to require the City to pay more.

\* \* \* \* \*

In arguing that the arbitrator should support its actions as being in the interests and welfare of the public the City argues that, 'budgetary actions of the City Council are the expression of the interest and welfare of the public - as a matter of law.' The arbitrator does not wish to debate this point except to say that 'interests and welfare of the public' was one among several factors included in the statute by the legislature when it enumerated what the arbitrator must consider. Moreover, it is not a reasonable interpretation of that statute to construe it as a legislative mandate that actions of all City Councils in arbitration be upheld. That would eliminate the need for arbitration. Certainly the arbitrator views the City Council as attempting to represent the interests and welfare of the public, and he gives considerable weight to those actions, but he must balance the City Council's perspective with the Union's perspective and must weigh both in considering the statutory factors."

The undersigned is in full agreement with the distinguished arbitrators referenced above. Accordingly, it would be both highly unusual and illogical to conclude that the intent of the legislature in enacting the interest arbitration provisions of the Wisconsin Statutes was to require arbitrators, as a matter of law, to approve the budgetary actions of any city council. On the basis of the above, the Impartial Arbitrator has preliminarily concluded that no true question of inability to pay has been presented in these proceedings, and while the budgetary actions of the Beloit City Council must be given consideration, they cannot be accorded conclusive weight in this arbitration.

The Interests and Welfare of the Public and the  
Financial Condition of the City of Beloit

The City urged consideration by the Arbitrator of the City's overall financial condition and ability to pay. In this connection, it offered expert testimony and other evidence relative to a significant decline in non-property tax revenues, a significant increase in the property tax levy in 1985, a relatively unchanging property tax base, a low rate of property value per capita, and a very substantial property tax effort in the City, particularly when the latter is compared against taxpayer income in the City. It also spoke in terms of a potential financial crisis, population declines, fewer jobs, and relative reductions in income and property values.

The Association cited the argument that there were sufficient available funds to support a wage increase, urged that all City Departments were not being asked to equally bear the burden of budget decreases in 1985, argued that the City's tax rate was relatively low in comparison to other communities, and submitted that the situation at hand was simply not catastrophic.

Although the City's evidence relating to its modest financial condition is quite persuasive, the Arbitrator shares the views of Arbitrators Malamud and Krinsky in their recent arbitrations, in which they refused to assign determinative weight to this consideration. Arbitrator Malamud cited the lack of evidence indicating that the City had apportioned the no increase goal to areas of operating budget other than personnel costs, and he concluded that while a smaller than average increase in wages may have been indicated, a persuasive case had not been made for a no wage increase renewal agreement for 1985. Arbitrator Krinsky also indicated that he was unconvinced that the City had made a persuasive case for a no wage increase contract renewal, and suggested that a modest increase could or should have been offered.

On the basis of the record in these proceedings, the Arbitrator has concluded that while the City has offered persuasive evidence and arguments relative to the Beloit economy, its current tax effort, and its relative ability to pay, it has fallen far short of justifying its proposal for no wage increase in 1985. In this connection it must be noted that the economic conditions external to the City of Beloit are already reflected in the sizes of the public and private sector labor settlements addressed elsewhere in this decision.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the financial condition of the City and the interests and welfare of the public criteria simply do not justify a no wage increase contract renewal for 1985.

The Comparisons Criterion

Without unnecessary elaboration and despite the fact that the legislature did not prioritize the arbitral criteria referenced in Section 111.77 of the Wisconsin Statutes, it is fair to conclude that comparisons are the most persuasive of the various criteria used in interest arbitration proceedings. Merely referencing the persuasive value of comparisons in general, however, does not address the sometimes critical questions of which comparisons to use. Each of the parties to interest proceedings will normally urge upon the arbitrator, the identity of those to be compared, and the specific type of comparisons which most favor its position in the proceedings. The comparisons most persuasive to arbitrators are normally those which have been used by the parties in their past negotiations and/or those selected for primary reliance in past interest arbitration proceedings.

In the case at hand, each of the parties offered various recommended comparisons in support of their position. While the Arbitrator would normally be required at this point to select the specific external and internal comparisons which are of most persuasive value, no such need exists in the case at hand, due to the nature of the final offers of the parties.

- (1) The statewide list of 1985 law enforcement settlements in the State of Wisconsin, referenced at pages 16 and 17 of Union Exhibit #1, shows that no other of the 82 bargaining units adopted a no wage increase settlement in 1985. While the list would be too general to indicate the appropriate amount of any 1985 wage adjustment for the parties to this proceeding, it strongly militates against the adoption of the no wage increase final offer of the Employer.
- (2) Internal comparisons with other units in the City of Beloit were cited by each of the parties to the proceeding. The City emphasized that it had consistently offered no increase renewals for each of the four bargaining units within the City of Beloit, and the Association emphasized the arbitral decisions in two other units where Arbitrators Malamud and Krinsky had adopted the final offers of the unions. The two arbitral decisions involved selection of two year agreements, with a 4% general wage increase effective January 1, 1985 and with two increases aggregating an additional 5% in 1986; neither of the arbitrators selected the no wage increase offer of the City of Beloit, and each selected union offers slightly higher for 1985, than the Association's final offer in these proceedings. On the above basis, it is clear that the internal comparisons rather strongly favor the selection of the Association's offer in these proceedings.
- (3) In addressing comparable communities, it makes little difference whether the Arbitrator looks primarily to Fond du Lac, Janesville, LaCrosse, Oshkosh, Sheboygan, Beloit and Rock County comparisons as urged by the Association, or whether Rock County is dropped from the list and Appleton and Eau Claire added, as urged by the Employer! In terms of which levels to use for comparison purposes, it is equally immaterial whether the Arbitrator looks to entry level, five years, ten years or 18 years, as there is no dispute that a no wage increase renewal of the agreement for 1985 would cause a large decline in relative earnings within the bargaining unit, whether measured in terms of rankings or comparative average earnings.
- (4) The Employer is quite correct in its observation that there has been a recent increase in the number of private sector settlements renewed with either no increases or with decreases in wages. Additionally, it specifically cited Colt Industries and Beloit Corporation as examples of Beloit area companies which had negotiated no increase contract renewals.

The economy wide data such as that contained in Employer Exhibit #12, are too general to be

persuasive in the impasse at hand and, additionally, they reflect the fact that a significant majority of contract renewals still provide for wage increases. As also observed by Arbitrators Krinsky and Malamud, the Beloit Corporation and Colt Industries settlements involved cost of living escalator provisions, different time frames, and different contract durations, which make it difficult to regard them as meaningful and persuasive in the dispute at hand.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that consideration of comparison criterion clearly favors the position of the Association in this dispute. Settlements in police units in the State of Wisconsin in general and/or within units traditionally compared with the City of Beloit, simply do not support the position of the City that the contract should be renewed on a no wage increase basis. Internal comparisons within the City of Beloit also strongly support the position of the Association; while consideration of some private sector comparisons support the conclusion that no wage increase contract renewals have become somewhat more common in recent years, more comprehensive private and public sector data would be necessary to develop a persuasive case for such an approach in the dispute at hand.

#### The Cost of Living Criterion

In connection with consideration of the cost of living criterion, the Association emphasized projected 1985 increases in cost of living of at least 3.2% for small metropolitan areas, and it argued that the Association's two 2% increases during the course of the year were much closer to the anticipated rate of increase in the consumer price index than the Employer's no wage increase offer. The Employer emphasized evidence indicating that relative cost of living in the City of Beloit was at approximately 90% of the average elsewhere, and it also urged consideration of the fact that employees were partially shielded from consumer price increases by the fact that the Employer paid the entire cost of very comprehensive health care coverage. The City of Beloit also offered certain exhibits dealing with the cost of living during 1984, and it offered expert testimony to the effect that anticipated cost of living increases for the County during 1985 would be in the range of 3.7% to 4%.

It would be rather difficult to conclude that a three to four percent increase in living costs during 1985 justified a no wage increase policy during the same time frame. While the Employer has argued that the City of Beloit currently has a relatively lower cost of living than other cities, it has presented no data to indicate that the 1985 rate of increase was relatively lower in the City of Beloit than elsewhere; it must be concluded that the parties have addressed the historical relative cost of living in the Beloit area in their past negotiations, and the primary cost of living consideration before the Arbitrator in these proceedings is the ongoing current rate of increase in consumer prices. The Employer is quite correct in arguing that medical components in the cost of living index do overstate the impact of increases in the index, upon those who are insulated from increases by medical and hospitalization insurance, but there is no definitive data in the record which would allow the exact quantification of this overstatement.

On an overall basis, the Arbitrator must conclude that consideration of the cost of living criterion favors the adoption of the Union's rather than the Employer's final wage offer. Certainly, the Union's offer of a 2% increase effective January 1, 1985, with a further 2% increase on July 1, 1985, is more



closely attuned to the anticipated increases of over three percent in consumer prices during 1985, than is the Employer's no wage increase proposal for 1985.

The Overall Level of Compensation Criterion

During the course of the hearing the Employer particularly emphasized the fact that officers in the bargaining unit have an advantageous overall level of compensation, and it urged that this should be strongly considered by the Arbitrator as a factor in the selection of its proposed no wage increase offer for 1985. In this connection, it particularly emphasized the life insurance, retirement, vacation allowances, clothing allowance and educational incentive programs presently available to City of Beloit officers. It submitted that the attractive overall level of compensation is reflected in both a low level of turnover and a high rate of applications for police officer openings.

The Association urged that the comparisons offered by the City were not complete and comprehensive, and that they were insufficient alone to justify the adoption of a no wage increase contract renewal for 1985.

While the Employer has presented substantial data indicating that Beloit Police Officers have an excellent overall level of compensation, similar data and overall cost comparison data was not available for the total benefits package for all comparable employers. Accordingly, and while the consideration of the overall level of compensation criterion may somewhat favor the position of the Employer in these proceedings, it cannot be assigned determinative weight by the Arbitrator.

Local Labor Market Considerations

What of the arguments advanced by the City which emphasized consideration of the Beloit local labor market in support of the City's proposed no wage increase contract renewal? It cited stability of employment and job security within the bargaining unit, as contrasted with relatively high private sector unemployment within the City of Beloit. It urged substantial arbitral consideration of the fact that local labor market conditions had produced both low turnover and a high rate of applications for bargaining unit jobs, and one of its expert witnesses, Professor L. Emil Kreider, at page 7 of Employer Exhibit #11 observed that: "It is not apparent why cities should have to pay wages substantially above those necessary to obtain fully qualified people."

Although employers have occasionally argued in interest arbitration proceedings that wages should not be set at levels above those necessary to attract and hold employees, rarely have arbitrators accorded substantial weight to such arguments. The normal arbitral approach to such arguments, and its underlying rationale, are rather well described in the following excerpt from an old but still highly regarded book by Professor Irving Bernstein: 3.

"d. Manpower attraction. The final criterion of wage determination is advanced only by employers. On rare occasions they argue that an increase should be denied because the firm is able to recruit an adequate labor force at the existing level of wages. An employer member of an arbitration board put it this way:

'The Company demonstrated conclusively that it has been able, at all times, to attract all of the employees that it needed, and, that once employed

such employees tend to remain with the Company for long periods of time unless removed for cause.

Therefore, no increase in wage rates is needed to attract and hold employees.'

Only one arbitrator has dealt explicitly with this contention, although the silence of others has constituted rejection. Simkin, in the Reading Street Railway case, recognized that the employer could recruit at the existing scale, in fact, that all war veterans had voluntarily resumed their old jobs. Nevertheless, he ruled that 'the fact that employees will remain in relatively low-paid industry is not in itself any sound reason for denying them a fair wage.' His notions of 'fairness in the circumstances of that dispute depended primarily upon the employers' claims in intraindustry and inter-industry comparisons and cost of living.

Beyond equity, there are several additional objections to the manpower standard. First, as framed by employers, it is exclusively negative; it does not permit wages to rise. Second, even if turned around in a rising market, there is no way to translate the recruitment factor precisely into cents per hour. Finally, if this criterion were generally accepted, it would create wage inequities and undermine those elements of rationality that the wage structure presently exhibits. Within the plant, for example, the availability of manpower might permit the elimination of differentials between skilled and unskilled workmen. Wide wage distortions between firms in the same industry would emerge because some were located in communities with tight and others in towns with loose labor markets."

For the reasons described above, the Undersigned is unable to assign determinative weight in these proceedings to those of the City's arguments which related to the above described local labor market conditions.

#### Summary of Preliminary Conclusions

As addressed in more significant detail above, the Impartial Arbitrator has reached the following summarized preliminary conclusions.

- (1) The record does not establish an inability to pay on the part of the Employer, whereby it could be concluded that the City of Beloit was bereft of the necessary resources to fund the wage increase included in the Union's final offer.
- (2) The budgetary actions of the Beloit City Council must be accorded consideration by the Arbitrator, but they cannot be assigned conclusive weight in these proceedings as a matter of law.
- (3) While the City has made a persuasive case for a lower than average wage increase due to the interests and welfare of the public and the overall financial condition of the City, it fell short of establishing a persuasive case for a no wage increase contract renewal on these bases.
- (4) Consideration of internal and external public sector comparisons clearly and strongly favor the selection of the final offer of the Association. While certain private sector comparisons somewhat favor the position of the Employer, they are distinguishable on various bases from the situation at hand.

- (5) Consideration of the 1985 rate of increase in consumer prices favors the selection of the final offer of the Association.
- (6) Consideration of the overall level of compensation within the bargaining unit somewhat favors the position of the Employer, but cannot be assigned determinative weight in these proceedings.
- (7) Local labor market conditions, including the low rate of turnover and the high rate of application for bargaining unit jobs, cannot appropriately be assigned determinative weight in these proceedings.
- (8) While the Impartial Arbitrator has carefully considered all of the remaining statutory criteria, none of them significantly support the selection of the final offer of either of the parties to these proceedings.

Selection of the Final Offer

After a full consideration of the entire record before me, including a careful review of all of the statutory criteria, the Arbitrator has determined that the final offer of the Association is the more appropriate of the two final offers.

While certain of the arguments of the City persuasively indicated the need for fiscal restraint in 1985 and may have justified a smaller than average wage increase, an overall consideration of the statutory criteria rather clearly favors the final offer of the Association. The position of the Association was particularly strengthened by consideration of internal and external public sector comparisons.


NOTES

- 1./ Howard S. Block, Criteria in Public Sector Interest Disputes, Institute of Industrial Relations, University of California Los Angeles, Page 171.
- 2./ Beloit City Employees Local 2537, AFSCME, AFL-CIO -and- City of Beloit, Case 60, No. 34404 MED/ARB 3145, Decision No. 22393-A, Pages 12,15.
- 3./ Irving Bernstein, The Arbitration of Wages, University of California Press - 1954, Page 105. (cited cases at 7 LA 835 and 6 LA 868)

AWARD

Based upon a careful consideration of all of the evidence and argument, and all of the various arbitral criteria provided in Section 111.77 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

- (1) The final offer of the Wisconsin Professional Police Association/LEER Division, Beloit Professional Police Association is the more appropriate of the two final offers before the Arbitrator.
- (2) Accordingly, the Association's final offer, hereby incorporated by reference into this award, is ordered implemented by the parties.

  
WILLIAM W. PETRIE  
Impartial Arbitrator

March 1, 1986