

FEB 02 1988

BEFORE THE ARBITRATOR

In the Matter of the Petition of
 CITY OF NEW BERLIN
 For Final and Binding Arbitration
 involving Law Enforcement Personnel
 in the employ of
 CITY OF NEW BERLIN
 (POLICE DEPARTMENT)

WISCONSIN EMPLOYMENT
 RELATIONS COMMISSION
 Case No. 58
 No. 38056 MIA-1171
 Decision No. 24472-A
 Stanley H. Michelstetter II
 Arbitrator

Appearances:

Lindner & Marsack, S.C., Attorneys at Law, by Roger E. Walsh,
 appearing on behalf of the Employer.

Vanden Heuvel & Dineen, Attorneys at Law, by Linda S. Vanden
 Heuvel, appearing on behalf of the Association.

ARBITRATION AWARD

City of New Berlin, herein referred to as the "Employer" having petitioned the Wisconsin Employment Relations Commission to initiate Arbitration, pursuant to Sec. 111.77, Wis. stats., between it and New Berlin Professional Police Association, Inc., herein referred to as the "Association", and the Commission having appointed the Undersigned as Arbitrator on June 1, 1987; and the Undersigned having conducted hearing on September 3 and 8, 1987, in the City of New Berlin, Wisconsin, and the parties having each filed post hearing briefs, the last of which was received November 30, 1987.

ISSUES

The issues in dispute for the parties calendar 1987 and 1988 collective bargaining agreement are:

1. Wages: General Wage Increase

Employer		Association
1/1/87	3.0%	4.0%
1/1/88	3.0%	4.0%

2. The Association has not proposed a long term disability insurance plan. The Employer proposes to add a long term disability plan effective as soon as possible after the execution of the agreement, providing long term disability coverage for all full-time employees of the Employer who have completed 6 months of employment, who have elected the coverage and who pay 50% of the premium up to a monthly maximum deduction of \$10 per month. The benefit is 60% of salary coordinated with other disability benefits after a 90 day waiting period.

POSITIONS OF THE PARTIES

The Employer takes the position that it is in the midst of a tax revolt which requires moderation in collective bargaining. The Employer's property tax rate increased by 24.6% over the last two years as a result of the Employer's having hired additional personnel and a very substantial reduction in federal and state aid to the Employer. This resulted in a tax revolt. Four of the city's seven aldermen were up for election were challenged at the election in the spring of 1987. The tax increase was the focus of the election. As a result, 2 incumbents lost their aldermanic seats, the third won re-election narrowly and the fourth vacancy was filled on the basis of this issue. It notes that the Employer spends about what other cities in this area spend on police protection. It argues that the New Berlin tax rate rose 15.8% from 1986 to 1987, well over the average 9.3% in the 25 communities in the Milwaukee area. For the years 1985-7, the New Berlin increase was the third highest among the 25 Milwaukee area communities. Overall it argues that the City of New Berlin is now paying approximately what other communities are paying for police protection in a department which is staffed per capita of population comparably to other departments. Thus, it argues that additional wage increases will inordinately increase its cost of protection.

The Employer relies heavily on the internal comparison to the highway/water and sewer unit. This bargaining unit accepted an offer identical to that offered by the Employer herein. The Employer argues that that other unit was, also, comparatively poorly compared by comparison to other public works units, but accepted the Employer's offer therein to accommodate the Employer's special needs. It argues that if the arbitrator fails to enforce this as a pattern for settlements, no unit in New Berlin will want to be the first to settle. It notes that it has consistently taken this position with the other bargaining units and with non represented employees.

The Employer, also, argues that its offer is more consistent with the cost of living, in that the average annual increase in the CPI was 1.175% which is far less than the Employer's 3.3% total cost offer.

Finally, it argues that its offer is more consistent with the general increase granted by comparable communities to their police officer, whether using the Association's comparisons or the Employer's list of 23 Milwaukee area communities. However, it notes that using either party's set of comparison communities has similar results when properly computed. In its comparison group it concludes that its 3.3% offer (including LTD) compares more favorably to the 3.7% average of its group than the Association's 4.0%.

The Association takes the position that the interests and welfare of the public supports the position of the Association. There is no dispute in this case that the police are providing the highest quality police work, but getting less than other

police officers elsewhere for doing the same work. The offer of the Employer would accentuate that disparity and, thus, would chill the quality of service received by the public.

The Association, also, contends that the Employer has the financial ability to meet the the cost of the Association's offer, in that the Employer has not demonstrated an inability to meet the Association's offer. It denies that the wage increase it proposes would be burdensome to the local taxpayer because unit employees are already receiving less than comparable employees in other police departments, New Berlin already spends less than comparable communities in public services and that New Berlin Residents are already among the lowest taxed of its surrounding communities. It asserts that its offer is reasonable under all of the circumstances.

The Association believes that the comparison of its offer and wage rates to similar police departments in other similar communities heavily favors the Association's position. It strenuously argues that the long term disability insurance offered by the Employer should not be treated as a cost item since the coverage is optional, the benefit has offsets tied to coverage and employees have already have most of the benefit under Ch. 40, Wis. Stats. It selects for comparison, the cities of West Allis, Waukesha, Wauwatosa, Brookfield, Greenfield, Menomonee Falls, Franklin and Muskego, the Village Hales Corners and Waukesha County, based upon their proximity and size. It argues that since 1977 the base wage rate of the top patrolman has dropped from 7th among 11 comparables to 9th (with very little difference with the next higher and lower comparison) among the same group and that its offer. It notes that unit employees do not receive benefits which other employees receive in other departments. It notes its offer would leave it 9th, while the Employers would lower the Association to 10th. It, also, argues that the general increase it proposes is more nearly comparable to the size of increases granted to similar employees in comparable communities for 1987. It, also, notes that New Berlin police officers perform duties not ordinarily performed by officers in comparable departments such as being the primary responders on ambulance calls (many existing officers are Emergency Medical Technicians and all new officers must become EMT's.).

Finally, the Association argues that its offer is more consistent with the rate of inflation than the Employer's because the projected rate of inflation will be about 4.5% for 1987 and 1988 each.

DISCUSSION-WAGE INCREASE

COST OF LIVING

The Urban Wage Earner and Clerical CPI index for Milwaukee changed 2.8% from July, 1986 to July, 1987. This factor tends to support the offer of the Employer in the first year. Either offer for 1988 is consistent with anticipated inflation for 1987,

however, it appears the offer of the Association is closer to this figure.

COMPARISON

1. External

Unit employees perform police duties much as other police officers do throughout the Milwaukee area. New Berlin has a volunteer fire department. Many current police officers are Emergency Medical Technicians and all new police officers are required to be EMT's. Police officers provide primary response for ambulance runs.

There is no serious dispute that New Berlin police officers have been among the lowest paid police officers in the Milwaukee area for many years. Among the 29 communities and Waukesha County offered by the Association for comparison, in 1986, New Berlin ranked 28. Since 1977, New Berlin has maintained a low ranking among the comparison group, varying from 20th to 28th. (It should be noted that there is a small difference in wages between 20th place in 1986 and 28th place, \$36 per month. The difference between 28th and 25th place is \$13 per month). Further, there is no dispute that the parties have voluntarily settled in all, but one year. This may be moderated because the Employer maintains an unusual educational incentive plan which pays employees an average of \$578 per year. New Berlin does not have some benefits other departments have.

The vast majority of police contracts have settled for 1987 in the Milwaukee area. Using the Employer's calculation from both its set of comparisons and the Association's, it is clear that the Association's proposed wage increase for 1987 is indeed very comparable to that of the Milwaukee area communities and the Employer's is simply somewhat low. Thus, the Employer computes the average percentage increase on its comparisons at 3.73% and the Association's at 3.98% (cost over the year, rather than year end lift). However, when one considers the fact that wage rates here are lower to begin with and the percentage is, thus, calculated on a lower base, as well as the fact that wage increases in some communities are split year increases, it is apparent that the Association's proposal for 1987 is about as comparable as one could find in this type of proceeding. The offer of the Employer is not unreasonably low, but represents the lower of the area settlements. 1/

About ten settlements are in for 1988. They average 3.9%. The Association's offer for 1988 is comparable and the Employer's offer is again low.

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The Employer has attempted to include the cost of its proposed long term disability with its wage adjustment figures. This is inappropriate. However, even if considered with that figure, it would not change the result in this case.

2. Internal Comparisons

The Employer has three bargaining units and a large number of unrepresented employees. AFSCME represents a unit of about 40 clerical employees in the city hall. Teamsters, Local 200, represents about 40 highway and water and sewer department blue collar workers. The instant unit consists of 53 professional police personnel. On March 31, 1987, the Employer and Teamsters General Local No. 200 settled for their April 1, 1987 to March 31, 1989 two year agreement. The terms are virtually identical to those the Employer is proposing here including LTD. The Employer unilaterally granted its 42 unrepresented employees a package which is essentially similar or less favorable to the employees than that it has offered herein. Both AFSCME and this unit petitioned for arbitration with identical positions for both employer and unions. There is no evidence in this case that there has ever been a history of pattern bargaining among the represented units, but it is obvious that AFSCME and the Association are cooperating with each other. This data favors the Employer's position.

WELFARE OF THE PUBLIC

There is no dispute in this case that New Berlin has the financial ability to meet the offer of the Employer. For 1986 and 1987, each, New Berlin had one of the highest property tax increases of Milwaukee area communities. The increase in its rate was 21.5% over the two years, which was the third highest two year increase behind Butler and Oak Creek. This resulted primarily from the Employer's loss of federal and state aid and, to some extent, because it added vitally needed personnel. There is no evidence of a history of inordinately large increases when the Employer received unusually high financial aid.

The increase led to a substantial and very vocal taxpayer revolt which revolt then resulted in the defeat of two of the three incumbent aldermen who were up for election and the very narrow re-election of the third. The comparison is made to Eastern Waukesha County communities and New Berlin's bordering Milwaukee suburban communities.

The following is a comparison of the change in net full value tax rates during this period.

1985 Net Full Value Tax Rates

19.72	1	Elm Grove
20.12	2	Muskego
20.62	3	Brookfield
20.70	4	City of Waukesha
23.03	5	Butler
23.35	6	New Berlin
23.37	7	Menomonee Falls
27.79	8	Franklin
27.97	9	Greenfield

30.50	10	Hales Corners
31.74	11	West Allis
24.56		average without New Berlin
-1.21		difference New Berlin

1987 Net Full Value Tax Rates

22.01	1	Elm Grove
23.14	2	Muskego
23.47	3	Brookfield
25.06	4	City of Waukesha
28.03	5	Menomonee Falls
28.37	6	New Berlin
30.44	7	Butler
30.91	8	Franklin
33.37	9	Hales Corners
31.02	10	Greenfield
32.77	11	West Allis
28.02		average without New Berlin
.35		difference New Berlin

While the figures indicate that New Berlin has maintained its rank, its relationship to particularly its Waukesha County comparables has changed significantly.

The Employer does not allege that the department is understaffed at this time and among the above nine municipalities listed above ^{2/} other than New Berlin, the average population per police personnel is 441, with a maximum of 568 in Muskego.

The evidence does not support the conclusion that New Berlin is experiencing unusual cost factors which make it different from those nine communities. In 1987, the average cost of police services per person in the nine communities was \$78 while New Berlin spent \$70. Only Muskego and Franklin spent less. This factor slightly favors the Employer's position.

LONG TERM DISABILITY

The Employer proposes a long term disability policy as specified in the statement of the issues of this case. The Association has not proposed the addition of this benefit primarily because it wishes to focus its package on wage increase rather than benefits. Because Ch. 40, Wis. Stats. provides a disability benefit for officers totally disabled in the line of duty, this benefit is of less value to officers than it might be in other units which operate under workers compensation. However, this insurance, also, covers less than total disability and occurrences other than duty incurred disability. The Employer has assumed everyone would take the benefit

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The Employer has attempted to include the cost of its proposed long term disability with its wage adjustment figures. This is inappropriate. However, even if considered with that figure, it would not change the result in this case.

and costed it at 3% of package. I am satisfied that the Employer's offer is of substantial economic value and its offer is given weight in this matter.

SUMMARY

Section 111.77 requires that the arbitrator select the final offer of the party closest to appropriate without modification, unless the parties agree otherwise. Section 111.77 sets forth the standards which must be considered in reaching that result, but leaves to the arbitrator the goal to be achieved (for example, whether the result should be that which is equitable, or that which is closest to what the parties would have done had there been no arbitration option). In addition, it leaves to the arbitrator the weight to be assigned any one issue or any one factor.

The Employer has relied heavily upon its special circumstances and the fact that the highway unit has already accepted the settlement it proposes. Contrary to the position of the Employer, this is not a situation in which there is an established pattern of settlements in its bargaining units. This is one of three co-equal units which are bargaining and the other two have sought arbitration.

Although there is no pattern, the settlement by the highway unit is evidence of what parties similarly situated might do in a voluntary settlement. It is obvious from the evidence in this case that this settlement resulted in an accommodation of the Employer under the circumstances discussed above. Since that unit chose not to pursue arbitration, it is strong evidence of what parties similarly situated would do under like circumstances. Interest arbitration equalizes the bargaining power of the parties and, to the extent it is predictable, it suggests likely terms of settlement. Nonetheless, collective bargaining is not a process of mathematics, but instead involves real people applying their best judgment to real circumstances. In many cases, when co-equal units bargain with the same employer, it is difficult for the various parties to achieve a settlement in any one of the units since there is no advantage in being the first labor organization to settle. For this reason, arbitrators have to be very careful to avoid frustrating the process of settlement. This situation is markedly different because different groups of employees legitimately can have substantially different interests and legitimately can respond differently to the Employer's position herein.

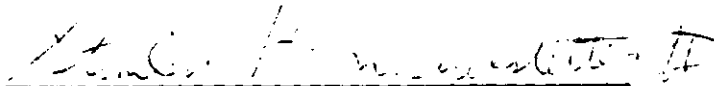
Unit employees are paid substantially less than comparable employees of similar employers. The offer of the Association in this case is an appropriate general increase. The Employer has presented circumstances in which its taxpayers are forced to make very difficult choices as a result of lost funding as to the level of services to be maintained and being forced to make up the loss by heavily increased property taxes. In this context, it made an offer which is uniform among its various groups of

employees^{3/}, but is substantially less than would be appropriate as to this unit. There is nothing in the record to suggest that unit employees ever received more than comparable police employees at any time in the past. Further, there is nothing in the Employer's offer or the evidence to suggest that employees would ever recover the difference if they accepted the Employer's position. Based upon the foregoing, I conclude that the position of the Association is closest to appropriate.

AWARD

That the final offer of the Association, be included in the collective bargaining agreement of the parties.

Dated at Milwaukee, Wisconsin, this 29th day of January, 1988.


Stanley H. Michelstetter II,
Arbitrator

^{3/} The Association has argued that the offer of long term disability to each unit, while on its face the same, has a disparate impact in favor of the unit which accepted it. While there is some difference in the impact, I am not satisfied that it is significant enough to treat the offers as substantially different. Were they substantially different, less weight ought to be afforded the internal settlement.