BEFORE THE ARBITRATOR

In the Matter of the Arbitration of an Impasse Between

CITY OF WAUPACA

and

WAUPACA CITY LAW ENFORCEMENT ASSOCIATION

Decision No. 26179-A

Appearances:
Melli, Walker, Pease & Ruhly, Attorneys-at-Law, by JoAnn M. Hart, for the Municipal Employer.
Herrling & Swain, Attorneys-at-Law, by John S. Williamson, Jr., for the Union.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Decision No. 26179-B, 11/2/89), the undersigned Arbitrator to issue a final and binding award pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act (MERA) to resolve an impasse arising in collective bargaining by selecting either the total final offer of the Municipal Employer or of the Union.

A hearing was held in Waupaca, Wisconsin on February 8, 1990. A transcript was made. Briefs were exchanged on March 27, 1990.

The collective bargaining unit covered in this proceeding consists of all non-supervisory law enforcement personnel employed by the Municipal Employer. There are approximately seven employees in this unit.

The parties are seeking an agreement for 1989 and 1990.

THE FINAL OFFERS:

The parties' offers differ materially only in that whereas the Union proposes 5% wage increases in both years of the new agreement, the Municipal Employer proposes a 55¢ per hour increase in the highest pay rate during the first year, and a provision to reopen negotiations in September, 1989 to negotiate wage rates and health insurance benefits for 1990. It is agreed that this 55¢ proposal is the equivalent of a 5% increase. The Employer also proposes a "Duration" provision which specifies the terms of such reopening. The parties have agreed that their 1989 health insurance terms will continue their 1988 terms. The Union would also continue those provisions during 1990.

DISCUSSION:

In the view of the Arbitrator this Award must confront at the threshold whether the policy underlying the Statute which provides for this proceeding is resisted by the Employer's offer, as contended by the Union. Particularly, should an award issued in the Spring of 1990 favor a retroactive wage increase and renewed negotiations for 1990 wages and benefits, or should it favor settling the terms of the parties' agreement for 1989 and 1990, keeping in mind that negotiations for 1991 are likely to begin within a few months? It is relevant that the parties have historically preferred two year agreements.

Clearly, the Employer's fundamental goal is "to address the serious problem of its rising health insurance costs" and its strategy is to do so by negotiating on wages and health insurance benefits for 1990 in the context of recent agreements covering other units which provide for greatly increased "deductibles". The Employer emphasizes that "the internal comparables of the two units of represented employees, and the nonrepresented employees (who have been subject to a new policy determination by the Employer) of the City of Waupaca, are appropriate comparables to which the arbitrator should give weight in this dispute".

The Municipal Employer also stresses comparison to certain other nearby municipal employers and local private sector employers. It argues that it has experienced substantial increases in its insurance costs, but that under the Union's proposal for 1990 it would, by comparison, bear a substantially greater cost burden than the other employers.

The Municipal Employer also contends that the Union's wage proposal is high compared to internal and external comparables and the Consumer Price Index.

Respecting its own proposal of a reopener provision, and the Union's response thereto, the Municipal Employer emphasizes the following legal factors. The Wisconsin Employment Relations Commission ruled that this reopener proposal was a mandatory subject of bargaining. (Decision No. 26121, 3/17/89) The MERA does not expressly favor two-year agreements for law enforcement employees as it does for other municipal employees.

The Arbitrator recognizes that the Employer's proposal does not, in and of itself, violate the MERA, and would not question the aforesaid WERC ruling. Rather, in determining which of the parties' offers should be selected, the undersigned asks whether it would be harmonious with the basic policies of the MERA to prefer negotiation of 1990 wages and health benefits only a few months before opening negotiations of the parties' 1991 agreement, given the Union's final offer.

Indeed, the Employer's desire to limit its health-care costs, as well as its views of internal and external comparability, are moderate and conventional. But neither is there any extreme or

exotic factor in the Union's offer, and that offer would provide finality to the deadlocked negotiations.

The Employer's strategy amounts to continuing the 1989-1990 negotiations in order to place 1990 in a context that is more favorable to the Employer's preferred outcome. Then, should negotiations reach an impasse, the Employer would be better positioned to propose a revised health insurance provision, which it was apparently unwilling to offer in this proceeding. There is a certain logic to that approach, and containing health-care costs is an appropriate goal, but a fundamental objective of the instant interest arbitration provisions of the MERA is to punctuate collective bargaining that would otherwise remain at impasse or continue indefinitely. Collective bargaining is conceived as a series of discrete negotiations and agreements, not endless uninterrupted negotiations. Wisconsin public policy has rejected the private sector method of breaking impasses and forcing conclusions and substituted interest arbitration. Thus, where impasse occurs and the parties' fail to end their bargaining by entering an agreement, the MERA provided for interest arbitration to give them an "agreement" for a certain interval of time.

If the Municipal Employer's offer were selected in this case at this time the Award would not overcome the impasse by providing the terms of a new agreement. It would simply return the parties to negotiations and, in effect, add 1990 issues to bargaining for 1991 terms. That would have also been a result had there been no arbitration.

AWARD

On the basis of the foregoing, the record as a whole, and due consideration of the "factors" specified in the Municipal Employment Relations Act, the undersigned Arbitrator selects and adopts the final offer of the Union.

Signed at Madison, Wisconsin, this 24th day of May, 1990.

Howard S. Bellman
Arbitrator

HSB/sf