

STATE OF WISCONSIN
BEFORE ARBITRATOR MILO FLATEN

In the Matter of the Petition of

PUBLIC EMPLOYEES' UNION
LOCAL 61 LIUNA, AFL-CIO, CLC

Case 565
No. 69506
INT/ARB-11480

To Initiate Arbitration Between Said Petitioner and

CITY OF MILWAUKEE

Arbitrator's Decision and Award
Milo G. Flaten, Arbitrator

Scope and Background

This arbitration was held pursuant to Wisconsin law which governs unresolved labor disputes between municipal government authorities and its organized employees called the Wisconsin Municipal Employment Act, Section 111.70 Wis. Stats. Under its provisions, the parties are directed to resolve its differences through collective bargaining. When their differences cannot be settled, the unresolved issues are submitted to the Wisconsin Employment Relations Commission which sends a representative to investigate. After the WERC representative is satisfied the parties actually are at an impasse, an impartial arbitrator is chosen to make a final and binding decision of their differences. The arbitrator is selected by the parties from a panel of experts submitted by the WERC.

The salient feature of the Wisconsin Municipal Employment Act is that the appointed arbitrator's Decision on the proposed contract provisions each side submits is that the Decision

will be final and binding in its entirety. Therefore, the law imposes on both parties unquestionably a burden to show that their entire final offer is their best.

Law enforcement employees and firefighters are not covered by this act.

For reasons not presented in this document, the term of the collective bargaining agreement to be decided in this case will be for the years 2007, 2008, and 2009.

Following the legal procedure set forth above, the parties in this case submitted their final offers to the Employment Relations Commission which passed the proposals along to the selected arbitrator, Milo G. Flaten of Madison, Wisconsin.

After phoning and corresponding with the arbitrator about a date, a hearing of three days duration was held in Milwaukee commencing on June 15, 2010.

Appearing for the Employer was Thomas J. Beamish, Assistant City Attorney, and for Local 61 LIUNA, AFL-CIO, CLC was Attorney M. Nicol Padway of Padway & Padway, Ltd. of Milwaukee.

Henceforth, the Employer will be referred to as “the City” and Local 61 as “the Union.”

The Facts

The Employer is a municipal corporation, a governmental entity of 604,600 people, the largest city in the State of Wisconsin. The Union represents employees in the sanitation division of the Employer’s Department of Public Works.

Broadly speaking, these Union employees collect the city residents’ garbage, and in a separate collection, the residents’ discarded items which are recyclable.

During the winter months, some members of the Union are also engaged in salting and snowplowing the city streets from salt trucks if the Department of Public Works deems it

necessary. In doing the salting and snowplowing, members of the Union team up with other Department of Public Works employees who are represented by a different union entitled District Council 48, AFSCME, the City's largest union.

In performing their garbage collection duties, the Union employees called "Operation Driver Worker" drive garbage trucks on 75 garbage routes throughout the city. The Driver Worker is assisted in each garbage truck by another Union employee.

During the months of December through March, the Driver Workers leave their trucks and fetch wheeled garbage carts from the residents backyards and garages to the trucks and return the empty carts. In the months of April through November, the citizens themselves bring their carts to the curb.

The City also has 34 recycling routes each handled by single union Driver Workers.

Garbage is scheduled to be picked up from each residence very five days whereas recycling materials are picked up once every three weeks.

The Union also has members called Sanitation Workers who routinely operate at garbage and recycling collection points throughout the city. Union workers also staff self-help stations where citizens can bring their garbage or recyclables if they don't want to wait for their next regular pickup.

The Union additionally has employees to repair broken garbage carts, respond to citizen complaints, facilitate dispatch communications on the job and perform multiple clerical duties at the various yards.

The collection crews work in all winter conditions if the temperature is warmer than 9 degrees below 0. There are no temperature limitations in the summer.

The difficult and often dangerous working conditions result in extremely high injury rates for Union employees.

There are a total of 19 different collective bargaining units in the City of Milwaukee representing more than 5,900 employees.

In the Department of Public Works, the Union represents from 280 to 310 employees. Other Department of Public Works employees belong to another union, District Council 48, AFSCME, AFL-CIO.

The City receives payment from its residents over and above real estate tax money for services provided by the Sanitation Section. This money is provided through the water bill sent to citizens which contains an additional levy for solid waste collection, recycling fees, and self-help fees. The total funds generated last year by the Sanitation Section amounted to \$42,367,835.

There has been a 22% decrease in the number of workers in the Union workforce in the past 10 years still performing the same services.

Virtually all of the hourly city employees have agreed to accept the same across-the-board percentage wage increases and the same changes in health insurance that the City has made in its final offer for this proceeding. That practice has been followed uniformly for the past 20 years.

The overall condition of the times including the massive economic recession beginning in 2007 shows that the unemployment level in Milwaukee now exceeds 12 percent.

Positions of Parties

The City points out that it has settled its labor contract with just about every single union of its general employees but this one. An award of its final offer to the Union at this late point would do damage to the traditional bargaining relationship between the City and the Unions, it goes on. Those other unions have recognized that the City's offer is fair, it claims. Those other unions would feel they had been penalized by accepting the revised three-year proposal argues the City.

This is especially true in view of the fact that the largest union, District Council 48, AFSCME, has members who share the actual job title Operation Driver Worker. The nature of those jobs is exactly the same. If the Union's offer is approved, the City claims it would certainly generate litigation and grievances. For instance, Department of Public Works Operations Drivers in the Union's proposal would differ from that already settled in District Council 48's contract regarding vacations, their routes, and their assignments.

The City then declares that it is in a financially "strapped" condition both from a standpoint of a municipal corporation as well as the financial plight of its residents. Not only that it points out the population of the city has dropped in addition to being faced with a relatively high level of poverty.

The City next argues that the abysmal performance of the stock market has caused it to scramble to even pay its contribution to its employees' retirement system.

For another example, the City had to go out and borrow when it was hit with an unanticipated high level of snowfall. It also was forced to involved its general employees to take four unpaid "furlough" days off.

The City then reiterates that it presently has an unemployment level exceeding 12 percent.

The Union's position on its final offer is that it deserves a wage increase for several reasons. First, the Union argues the City continues to require the same level of services even though its workforce has been markedly diminished in the past 10 years. Second, despite the increase in the expected level of productivity by the Union workforce, it has been losing ground in keeping up with the cost of living for the Milwaukee area. Next, the Union feels it is entitled to the same type of wage increases that its management personnel has been receiving.

The Union takes the position that the duties its members perform are very much akin to these of the protective services, the police and fire departments. Yet it is requesting a wage increase not nearly as substantive as that awarded the employees in those departments.

Finally, the Union points out it is one of the few areas in the public sector that actually pays its own way through the water and sewage fees the City collects from its residents.

Other Union positions in its final offer concern the manner of communicating between the parties be it by certified U.S. mail, e-mail, or fax for certain tasks. The notifications are especially important for response time in plowing and salting operations.

The Union next takes the position that, while it agrees to the City's changes in health insurance rates, it does have a concern about its wellness program. The Union's position is that the wellness program requires each individual to submit a wellness assessment in which every aspect of his/her health is laid bare. The Union's final offer in this regard wants the contract to provide an absolute prohibition on the City's Workers Compensation Division from disclosing health information found in the employee's "wellness" evaluations to other city departments.

The other health insurance concern of the Union in its final offer is about the timing of the premium payments.

The Union finally opposes the deletion of the Transitional Duty Program from the contract and claims it so states in its final offer.

Discussion

Both sides declare the arbitrator must decide in its favor if he is to follow the admonitory directions found in the law directing him to give “greater weight” to evidence on one side or the other. This addition to the original Wisconsin Municipal Employment Act provides such vague, contradictory commands that they are often quite puzzling to this observer. For example, the admonition that the greatest weight of the award should be a consideration of the economic condition of the area. But that consideration must include the fact that economic conditions which affect the city have an even greater impact on its employees.

The Union likens itself to the City’s protective services in that its member labor constantly on every city street and at every residence. It points out that its members are often in alleys, backyards, and places where other people do not ordinarily travel so they see activities that would otherwise to undetected. The Union then shows their final offer is less than the 9.25% wage increase paid to police and fire unions compared to their final offer of 2.5%, 3%, and 2.0% increase for those same years.

While the building inspectors and tax assessors would disagree with the union’s claim its members are the only ones to be in every nook and cranny of the city, this observer has to agree with the Union. For its members go on virtually every inch of the city’s streets and alleys at least once a week whereas inspectors and assessors only do so occasionally.

This observer would also have to agree with the provision of the Union's final offer concerning notice. It would require the City to communicate notices either through fax or e-mail to the Union. Those notices come in the form of alerts of various kinds. For example, alerts for weekend work, alerts for plowing operation or for salting operation. It certainly seems reasonable to require contract language to require alerts to be provided the Union at the same time as they are given to City supervisory personnel. That proposed language would clearly improved response time in the Midwest area where Milwaukee is located and sudden winter storms and blizzards are common.

Likewise, the Union's request to disallow disclosure by subpoena of information found in an employee's health assessment appears to be reasonable. While requiring information disclosure by subpoena in the courts can't be changed by a labor contract, it certainly seems reasonable to prohibit disclosure of individual confidential information by subpoena from one city agency to another.

The practice of assigning light duty to returning job injured employees is clearly reasonable and to codify it can't present a big problem to the City.

With regard to the Union's final offer on the three years of wages to be paid, there certainly was sufficient competent proof in the record to find that the Union's final offer was reasonable.

Further, this observer considered the factors which were to be given greatest weight by statute and the other factors that followed that provision of the statute following three days of hearing.

But it was with regard to the unique pattern of contract settlement the City has followed over the years that deserves the most attention in the mind of the undersigned. This is because

all the other 11 City unions have achieved a settlement of their contracts voluntarily across the board except this one.

If this were the first time a single union attempted to break the pattern of across-the-board settlements the City experienced, it could be overlooked. But this settlement pattern has been in existence for at least eight years. To break it penalizes employees who settled earlier.

Arbitrators should not issue awards that encourage the City's other unions to seek to resolve their labor disputes through arbitration rather than at the bargaining table. This is especially true because no unique, compelling evidence can be found in the four volumes of transcribed testimony following three days of hearing.

Furthermore, this observer cannot help but give great weight to the fact that the City is being squeezed financially by external forces beyond its control especially diminishing state aid and the dramatic deterioration of the economy.

Decision

For all the reasons stated above, it is the decision of the arbitrator that a single, rogue bargaining unit should not be rewarded when a clear internal pattern has been established.

Award

That the final offer of the City is selected and its terms shall be included in the three-year contract commencing January 1, 2007 and ending on December 31, 2009.

Dated September 27, 2010



Milo G. Flaten, Arbitrator