

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
: :
BROWN COUNTY DEPARTMENT OF : Case 432
SOCIAL SERVICES PROFESSIONAL : No. 44472
EMPLOYEES ASSOCIATION, : MA-6308
: :
: Case 433
BROWN COUNTY SHERIFF'S DEPARTMENT : No. 44473
NONSUPERVISORY EMPLOYEES ASSOCIATION, : MA-6309
: :
BROWN COUNTY MENTAL HEALTH CENTER : Case 434
PROFESSIONAL EMPLOYEES ASSOCIATION, : No. 44474
: MA-6310
BROWN COUNTY DEPARTMENT OF SOCIAL :
SERVICES PARAPROFESSIONAL : Case 435
EMPLOYEES ASSOCIATION, : No. 44500
: MA-6317
and :
: :
BROWN COUNTY :
: :

Appearances:

Mr. Frederick J. Mohr and Ms. Lise Lotte Gammeltoft, on behalf of the Associations.
Mr. Dennis W. Rader, Godfrey & Kahn, S.C., on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Associations and the County respectively, are signatories to collective bargaining agreements providing for final and binding arbitration. The parties requested consolidation of the above captioned cases and jointly requested the undersigned, a member of the Wisconsin Employment Relations Commission staff, to hear the instant dispute. Hearing was held in Green Bay, Wisconsin on January 31, 1991. A stenographic transcript was made and received on February 5, 1991. An additional deposition was received on February 20, 1991, pursuant to the agreement of all parties. The parties completed their briefing schedule on March 25, 1991. Based upon the record herein and the arguments of the parties, the undersigned issues the following award.

ISSUE:

The parties at hearing agreed to a partial framing of the issue as follows:

Did Brown County violate the collective bargaining agreements by failing to make reasonable attempts to find and provide equivalent alternate parking after the expiration of its lease with the parking utility? If so, what is the appropriate remedy?

The Associations also raise as an additional threshold issue the following:

Did Brown County violate its collective bargaining agreements by not providing parking to employes at a maximum rate of \$10.50 per month during the terms of its respective labor agreements? If not, what is the appropriate remedy?

The County also proposed an additional issue:

Did the County negotiate the cost differences incurred in the provision of parking spots during the term of the collective bargaining agreements?

RELEVANT CONTRACT LANGUAGE

MEMORANDUM OF AGREEMENT

WHEREAS, Brown County (hereinafter referred to as the "County") and Teamsters Local 75 (Courthouse Bargaining Unit), Sheriff's Non-Supervisory Bargaining Unit, Sheriff's Supervisory Bargaining Unit, Social Services Professional Bargaining Unit, Social Services Para-Professional Bargaining Unit, (hereinafter referred to as the "Bargaining Units") have a dispute in regard to employee parking as it affects members of the Bargaining Units; and,

WHEREAS, the County having filed for a Declaratory Ruling with the Wisconsin Employment Relations Commission, Case 291 No. 38081 DR(M)-421; and,

WHEREAS, it is the desire of the County and the Bargaining Units to reach an agreement in regard to their differences regarding the issue of employee parking.

NOW, THEREFORE, the parties do hereby agree to the terms and conditions set forth below.

It is agreed that:

1. The County shall maintain those parking lots now in existence and used by members of the Bargaining Units for employee parking subject to paragraph 2 of this memorandum.
2. The County shall make reasonable attempts to find and provide equivalent alternate parking for members of the Bargaining Units in the event such Bargaining Units' members are displaced from their parking spaces. Any cost differences incurred in the provision of parking spots shall be negotiated by the parties.
3. Employees who are primarily assigned duties within the Courthouse Square Complex may request parking spots in outlying lots. Spaces are assigned to employees in the order that written requests are received by Personnel.
4. Available parking spots in the Courthouse lot shall be made available by means of county-wide longevity to employees who are primarily assigned duties within the Courthouse Square Complex from a list setting forth the longevity of such employees with the most senior employee being awarded first choice of available parking spots, except that;
 - a. A reasonable number of spaces will be made available to department heads and County employees who require the use of their vehicles during the course of their employment if said employees are primarily assigned to duties within the Courthouse Square Complex.
 - b. Thirty parking spaces shall be made available to the Department of Social Services in the Courthouse Square Complex, it being contemplated that said number of spaces shall constitute the number of employees of the Department of Social Services who are required to use their vehicles during the course of their employment.
 - c. The County shall, from time-to-time, monitor the use of County employees' vehicles during the tours of their employment, to insure that only individuals who are required to use their vehicles during the course of their employment are assigned parking spots as above defined.
 - d. Pursuant to No. 2 above, it is understood that the County is losing the parking spaces adjacent to the old Social Services Building and across from the old Social Services building as a result of the sale of such property.
5. Provided this memorandum becomes uniformly applicable to all referenced bargaining

units and such rates become uniform rates applicable to all County employees, effective no earlier than July 1, 1987, the County may increase parking rates to a maximum of eight dollars (\$8.00) per month and effective no earlier than January 1, 1988, the County may increase parking rates to a maximum of ten dollars and fifty-cents (\$10.50) per month. No rate increase under this Subsection 5 shall be applied on a retroactive basis.

FACTS:

From at least May of 1975, the County had provided parking to its employees. From May 1, 1975 until June of 1987, employees had been provided parking spaces in close proximity to the County Courthouse for a monthly fee of (\$5.00) five dollars per parking space.

In 1985, the County embarked upon a program to renovate/construct the Courthouse and Jail. As a result of this project a substantial number of parking spaces were eliminated. In response to the elimination of these spaces, the County on June 27, 1985, entered into a lease agreement with the City of Green Bay and the Green Bay Parking Utility for approximately one hundred and fifty (150) parking spaces in an area designated as Lot K. The cost of each space in Lot K under the terms of the lease was \$10.50 per month per space.

On July 23, 1987, Brown County entered into a Memorandum of Agreement with the Associations. This agreement has been applied to all of the subsequent collective bargaining agreements with all of the Associations.

Meanwhile in March of 1989, as a result of the sale of a portion of Lot K by the Parking Utility, half of these spaces were lost and employees were reassigned to alternate spaces in other lots owned by the Parking Utility. No employees were, however, displaced.

The lease between the County and the City and Parking Utility expired on October 1, 1990. From the summer of 1988 until June of 1990, the County Executive Thomas Cuene, County Personnel Manager Jerry Lang, and Corporation Counsel Kenneth Bukowski had many discussions and limited correspondence with several City and Parking Utility officials regarding the County's future parking space needs and the possibility of the County renewing the lease. During these discussions the County did not expressly offer to renew its lease but it did discuss its anticipated space needs both short and long term.

In June of 1990, in response to a letter from the City, Cuene advised the City of how many spaces the County needed, and requested lower rates because of the large number of spaces needed. The City advised Cuene that it could provide the spaces but at the current rates available to other customers. On Cuene's instructions, Lang attended a July 27 meeting of the Parking Utility Commission where he expressed concern that spaces offered be close to the Courthouse complex and requested a discounted rate for County employees. Lang also suggested that the Parking Utility Office work directly with County employees rather than with his office. At no time did the County offer to enter into a new lease with the Parking Utility. The County did not make any other attempts to secure parking spaces or a parking lease elsewhere.

When the lease expired on October 1, 1990, the County no longer provided parking for its employees. The individual rates assessed to employees dealing directly with the Parking Utility were in all cases significantly higher than the previous \$10.50 per month rate. Employees are now paying the "going" rate of \$27.00 for monthly parking near the Courthouse.

POSITION OF THE PARTIES:

Associations:

The Associations agree that the County failed to make reasonable attempts to find and to provide equivalent alternate parking for employees. Contending that a "reasonable attempt" is one with a likely possibility of success, they argue that the County has failed in its duty. Pointing to various exhibits introduced and admitted at the hearings, and the County Executive's testimony, the Associations stress that the County indicated its desire to be that of noninvolvement in employee parking, preferring that employees deal directly with the Parking Utility.

They claim that the County was being solicited by the City to enter into long-term leases and that instead of negotiating for the extension of the existing leases, the County made every attempt to avoid being a party to such a lease.

Conceding that employees were not displaced from their parking spots, the Associations maintain that the cost of parking dramatically increased after the

expiration of the lease and the County had no involvement in providing parking.

Noting that as early as February of 1988, the City was soliciting a long-term lease from the County and the County had notice that upon expiration of the Lot K lease, the cost of parking was going to increase substantially in the Parking Utility lots, the Associations point out that the County made no attempt to inform the Associations during the next round of contract negotiations of these facts. Moreover, the County had no intention of renewing the expiring leases. In essence, they aver, the County concealed material facts regarding the expiration of the lease and the enormous increase in the cost of parking.

The Associations' second argument is that the County violated the collective bargaining agreements by not providing parking to employes at a maximum rate of \$10.50 per month during the entire term of the respective collective bargaining agreements. They aver that the County knew that if it renewed the lease it would be bound by the labor agreements to a maximum rate of ten dollars and fifty cents per month. Inasmuch as the County did not care to subsidize employe parking, it concealed the fact that rates were going up and ultimately failed to renew the lease in the hopes that employes would not complain because the County was no longer a party to the parking arrangements. This action is a classic example of "surface bargaining."

The Associations note that by the time the County saw fit to meet with the Associations to discuss the expiration of the parking lease, over two years had passed since the County had direct knowledge of a substantial increase in the rates.

In response to County arguments that it made every reasonable attempt to provide equivalent alternate parking, the Associations argue that a parking space which costs twenty-seven dollars a month is not equivalent to a parking space which costs \$10.50 even if it is in the same location.

Pointing out that all City Council members also sit on the County Board, the Associations stress that the County argument that it has no authority to demand performance by the City is absurd. In the least, the Associations insist, the best effort of the County would have required all of its supervisors to vote in favor of renewing the lease under the previously existing terms and conditions.

Asserting that the County was fully aware of the potential parking increase at the time it negotiated the Memorandum of Agreement in the successor parking agreements and deliberately failed to disclose this information, the Associations stress that the County is either guilty of bad faith bargaining or gave the agreements the same interpretation as the Associations regarding the continuation of the \$10.50 rate until the end of the existing agreements.

In response to County arguments that it has fulfilled its duty to negotiate cost differences incurred in the provision of parking spots by its meetings with the Associations, the Associations strenuously maintain that the County was obligated to continue to provide parking for employes at the maximum rate of \$10.50 per month and that the Associations were under no duty to negotiate with the County for a change of the rate during the term of the agreement.

As a remedy, the Associations request reimbursement to the employes of parking costs exceeding \$10.50 a month during the relevant terms of the agreements.

County

The County stresses that it exercised every reasonable effort to provide equivalent alternate parking. It submits that no Association member has been displaced and the issue of equivalent alternate parking is one of money. According to the County, it does not unilaterally set the rate but said rate is the product of negotiations between the County, the Parking Utility and the City of Green Bay. In attempting to negotiate a new lease, the County was quickly, emphatically and repeatedly told by the City and Parking Utility that only the market rate would be accepted.

The County maintains that once it realized that the monthly parking rate would be substantially more than the \$10.50, it engaged in two separate negotiations with the Associations to negotiate a rate which would be paid by the employes. Consistent with its previous position, the County sought to have employes assume the cost of the entire monthly rate. According to the County, the Association did not agree and the parties mutually agreed that they were at impasse. The County now argues that where negotiations were unable to produce agreement, the Arbitrator should not now impose her unilateral version of what the agreement should have been.

The County further argues that the City of Green Bay and the Parking Utility are, for this purpose, "the only game in town," and that Brown County is captive to the City and Parking Utility for its parking needs. Given that there was no alternative source of parking and the City and Parking Utility's inflexible position on price, there was little or nothing for the County to do

beyond what it did.

The County argues that it did not violate the memorandum because Paragraph 2 clearly provides that any "cost differences incurred shall be negotiated by the parties." This language, it avers, was specifically included to deal with prospective situations where the cost to the County for the lease of spaces would be increased.

Pointing to Paragraph 5 of the Memorandum of Agreement, the County maintains that this paragraph by implication makes it clear the parties understood that there could be a rate increase in the future.

The County maintains that the Memorandum of Agreement is an open-ended document with no termination date and that the parties did not intend for the rates provided therein to remain in effect ad infinitum.

The County strenuously asserts that the Associations never believed that the \$10.50 monthly rate was something which would continue through the termination dates of the respective agreements. Had they held such a view, in the County's opinion, they would never have entered into mid-contract negotiations on the issue.

The County further asserts that the parties followed the Memorandum of Agreement's requirement that they negotiate the cost differences. The timing of said negotiations, it claims, was not tied to the expiration of any underlying collective bargaining agreement and the parties reached impasse.

The County argues that it was incumbent on the Associations to secure some manner of language assuring continuation of the benefit regardless of the change in cost pursuant to a new lease. Having failed to do so, the Associations cannot now through arbitration seek the benefit that they knew they would otherwise lose.

In response to Association arguments, the County makes a number of points. First, it points out that "reasonable attempts" do not necessarily result in success. Second, it maintains that the County's lack of immediate response to the Parking Utility was not unreasonable. Conversely, it stresses that the County did act in a timely manner in an effort to secure a new parking lease. According to the County, the facts do not bear out the Associations' assertion that as of June, 1990, the County was no longer interested in being in the parking business. The County also maintains that it had no ability to inform the Associations of anticipated parking increases during contract negotiations, because it was not until after July 27, 1990 that the County knew with certainty what the charge would be under a new lease.

The County disputes that it ever concealed any material fact from the Associations nor did it misrepresent any material item regarding parking during negotiations for the new agreements. It disputes Association contentions that the County was obligated to bear the entirety of any increase resulting from a new parking lease. According to the County, it did not bargain in bad faith and exerted all reasonable efforts to secure a new parking lease having benefit to the Associations' members.

It requests that the grievance be dismissed in its entirety.

DISCUSSION:

Any analysis of employe parking rights must begin with paragraph 2 of the Memorandum of Agreement, inasmuch as Paragraph 1 specifies that the County shall maintain those parking lots now in existence and used by members of the Bargaining Units for employe parking subject to paragraph 2 of the Memorandum.

Paragraph 2 states that "the County shall make reasonable attempts to find and provide equivalent alternate parking for members of the Bargaining Units in the event such Bargaining Unit members are displaced from their parking spaces. Any cost differences incurred in the provision of parking spots shall be negotiated by the parties." (emphasis added).

Thus, the first issue to be addressed is whether bargaining unit members were displaced from their parking spaces, because if they were not displaced then the County is under no obligation to make reasonable attempts to find and provide equivalent alternate parking.

The County argues and the Associations concede that employes were not physically displaced from their respective spaces. The County's arrangement with the Parking Utility and the employes' arrangements with the County were, however, terminated at the end of the County's lease. When the County failed to renew its lease and informed employes to deal directly with the Parking Utility at prices approximately three times higher than they were currently paying, this action constituted "displacement" pursuant to the provisions of paragraph 2 of the Memorandum. This sort of disruption was well within the contemplation of the parties who approved the Memorandum of Agreement and they set up certain other requisites to be fulfilled in the event that such a displacement occurred.

Paragraph 2 expressly provides that the County shall make "reasonable attempts" to find and provide equivalent alternate parking. The Union's contention that a "reasonable attempt" is one with a likely possibility of success is rejected as too narrow. "Reasonable attempts" in this context are efforts on the part of the County which go beyond pro forma or perfunctory action. While the County argues that it did exercise every reasonable effort to provide equivalent alternate parking, the facts of this case simply do not bear out this contention.

The County, by admission of the County Executive, desired to get out of the parking business. One appearance before the Parking Utility arguing for a rate reduction does not fulfill the County's duty to make "reasonable attempts," where there is no evidence that the County contacted any other parking lot owners. 1/

Because the County made no real attempt to find any alternate parking it is unnecessary to determine whether it tried to provide "alternate equivalent parking." It is also unnecessary to make a determination as to whether or not the County bargained in good faith with the Associations over the increase inasmuch as the County did not fulfill its initial duty to make reasonable attempts to find alternate parking. It is incumbent upon the County pursuant to paragraph 2 to provide the information as to cost differences prior to negotiations between the parties. The County by failing to make reasonable attempts to find alternate parking violated the first sentence of paragraph 2 of the Memorandum of Agreement.

The Union strenuously avers that if the County is found to have failed to make reasonable attempts to find and provide alternate equivalent parking, the County is obligated to continue to provide parking for employes at the maximum rate of \$10.50 per month. It further maintains that the Associations were under no duty to negotiate with the County for a change in the rate during the term of the agreement. These arguments are without merit. The last sentence of paragraph 2 expressly provides that "any cost differences incurred in the provision of parking spots shall be negotiated by the parties." This language makes it clear that in the event that alternate equivalent spaces are found any cost differences would be the subject of negotiation by the parties. Neither paragraph 5 nor any other provision of the Memorandum can be construed as guaranteeing the continuation of the \$10.50 per month fee then paid by employes for the entire term of the collective bargaining agreement. Paragraph 5 applies to rates the County could charge employes for parking in County parking facilities but this paragraph does not obligate the County to subsidize parking in other facilities to ensure that no employe pays more than \$10.50 per month for parking. Paragraph 2, in fact, expressly states the opposite, i.e., that the parties will negotiate in the event of cost differences.

Having concluded that the County did violate the Memorandum of Agreement by failing to make reasonable attempts to secure alternate equivalent parking but that the Associations are not entitled to limit employe costs to the \$10.50 per month for the duration of the collective bargaining agreements, the question of appropriate remedy for the County's violation remains.

REMEDY

The County is ordered to make reasonable attempts to find and provide equivalent alternate parking for members of the Bargaining units. It is further ordered to within 30 days of this award make reasonable inquiries as to the cost of any such alternate equivalent spaces from October 1, 1990, the date upon which its lease with the Parking Utility expired, to the expiration of the applicable collective bargaining agreements. The County is further ordered to commence negotiations with the Associations promptly upon receipt of said information. In the event that the information reveals the existence of alternate equivalent spaces for amounts less than \$27, the amount employes are currently paying, the County is obligated as follows: It must reimburse employes for the difference between the \$27 and the amount available for the alternate spaces from the expiration of the Parking Utility lease until the date it commences bargaining with the respective Associations as to the cost differences. The County is ordered to bargain with the respective Associations the cost differences of what, if any, alternatives are available since the expiration of the Parking Utility lease.

Jurisdiction solely as to the contractual remedy ordered herein is retained.

Accordingly, it is my decision and

AWARD

1. That Brown County did violate the collective bargaining agreements by

1/ In its brief, the County argued that the City Parking Utility is and was the only game in town. No evidence, however, was adduced to establish this contention and the undersigned cannot make a factual finding to this effect under the circumstances.

failing to make reasonable attempts to find and provide equivalent alternate parking after the expiration of its lease with the Parking Utility.

2. That remedy is ordered as set forth in the remedy paragraph above.

3. That jurisdiction as to the remedy portion of this award exclusively is retained.

Dated at Madison, Wisconsin this 25th day of June, 1991.

By _____
Mary Jo Schiavoni, Arbitrator