STATE OF WISCONSIN

****

In the Matter of Interest Arbitration

between

CITY OF COLUMBUS LIBRARY

Case 30
No. 55186
INT/ARB-8162

Decision No. 29368-A

and

TEAMSTERS UNION LOCAL NO. 695

****

Appearances

On Behalf of the City: James R. Korom, Attorney - von Briesen, Purtell & Roper, S.C.

On Behalf of the Union: Andrea F. Hoeschen, Attorney - Previant, Goldberg, Uelmen, Gratz, Miller & Brueggman, S.C.

I. BACKGROUND

On November 20, 1996, the parties exchanged their initial proposals on matters to be included in an initial collective bargaining agreement. Thereafter the parties met on four occasions in efforts to reach an accord on a new collective bargaining agreement. On May 15, 1997, the Union filed a petition requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On October 14, November 14, and December 11, 1997, a member of the Commission's staff, conducted an investigation which reflected that the parties were deadlocked in their negotiations, and, by March 23, 1998, the parties submitted to said Investigator their final offers, positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon, and thereupon the Investigator notified the parties that the investigation was closed (and advised the Commission that the

parties remain at impasse). On May 5, 1998, the Commission ordered the parties to select an arbitrator to resolve their impasse by selecting one of their final offers. The undersigned was selected and his appointment was ordered by the Commission on May 28, 1998.

A hearing was scheduled and held on October 14, 1998. Post Hearing Briefs and Reply Briefs were filed. The final exchange occurred January 20, 1999.

II. FINAL OFFERS AND ISSUES

The parties final offers are identical or essentially the same on several issues. The issues not in dispute include: longevity pay, new hire rate, the number of subject matters to be covered in any one grievance, the Library's responsibility to pay for continuing education when it directs an employee to attend training, and wage rates for the full-time Assistant Librarian I position and the Custodian position.

The Union's final offer on the disputed items is as follows:

1. *"Add the following language to Article 10:*

   10.03 The employer shall not employ part-time employee(s) [defined herein as an employee scheduled to work less than thirty (30) hours] unless there are insufficient full-time employee(s) [defined herein as an employee scheduled to work thirty (30) or more hours] to perform the available work within the regular workweek.

   The regular workweek shall be defined as thirty (30) hours or more; provided, however, this clause shall not be used to reduce the hours of any employee currently working more than thirty (30) hours per week."

2. *"Add the following language to Article 12:*

   12.03 Observance. If any of the foregoing holidays fall on a Sunday, it shall be observed on the following Monday, and in the event any of the holidays shall fall on a Saturday, Friday shall be considered as a holiday.

   When a holiday falls during an employee's vacation period, the employee shall be granted an additional day of leave as vacation or an additional day's pay at the employee's option.

12.04 Premium Pay. Employees who work on a holiday shall be entitled to receive pay at time and one-half (1-1/2) of their regular rate, in addition to holiday pay, for all hours worked on the holiday."

3. *"Add the following language to Section 13.06:*

13.06 The Employer shall fill any such opening with an existing employee who has the seniority and qualifications prior to filling the vacancy from outside the bargaining unit."

4. *"Add the following language to Article 22:*

22.02 Employees will be fully trained/educated at Employer expense in the proper use and instruction of all equipment located within the Library facility."

5. "**22.03 Maintenance of Standards.** The Employer agrees that all conditions of employment relating to wages, hours, terms and conditions of employment shall be maintained and the conditions of employment shall be modified wherever specific provisions for modification are made elsewhere in this Agreement."

6. "Wage Rates 1/1/97 1/1/98

Librarian I	$6.50	$6.70
Children's	$7.25	$7.47"

The City's final offer on the disputed items reads as follows:

1. "Add the following sentence to the Preamble:

The Phrase 'the City of Columbus (Library)' shall only have the meaning contained in the Unit Certification in Case 28, No. 54206, ME-3538, as such certification may be amended from time to time."

2. "Add to Article 10:

10.03 During the term of this agreement, the normal work week of the full-time employee shall be 37.5 hours per week, and the normal work week of part-time employees shall be an average of 28 hours per week."

3. "Add the following language to Section 12.03:

The holidays enumerated in Article 12.01 shall be observed on the day they occur, unless they occur on a Saturday, when they will be observed on the preceding Friday, or on a Sunday, when they will be observed the following Monday. Full-time employees shall receive their normal pay on the holiday, and shall not be scheduled to work on those holidays. Part-time employees shall be entitled to receive pay at time and one-half of their regular rate for all hours worked on the holiday."

4. "Add to Section 13.06:

When the skills, ability and qualifications of the applicants are relatively equal, the most senior in-house applicant shall receive the position."

5. "Add a new Article 22.10, entitled "Part-Time Employees" to read as follows:

Part-time employees are those employees in the bargaining unit who are regularly scheduled to work fewer than 37.5 hours per week. Part-time employees shall not be entitled to the non-wage economic provisions of this Agreement, including, but not limited to, Articles 12.01, 14.01, 14.02, 15.01, 16.05, and 17.01."

6.

Wage Rates	1/1/97	1/1/98
Part Time Librarian I	$6.76	$7.76
Children's Librarian	$7.50	$8.50

Clearly the major issues separating the parties is the matter of part-time employees and fringe benefits. The Employer proposes the cut-off point between full-time and part-time should be 37.5 hours per week. Employees working less than this would not be entitled to fringe benefits as set forth in the final offer. The cut-off point between full-time and part-time in the Union's offer would be 30 hours per week. Employees working 30 hours or more would be considered full-time and would receive fringe benefits. Additionally, the Union's final offer would limit the Employer's ability to employ part-time employees. The Employer could not hire part-time employees unless there was insufficient full-time employees to perform the work.

Regarding holidays, the City proposes that full-time employees receive their normal pay on holidays, but not be scheduled to work. They also propose a provision which pays part-time employees at time and one-half for any holiday hours worked. The Union proposes that, in lieu of giving a full-time employee the day off on a holiday, that the employee receive pay at time and one-half the

employee's regular rate in addition to holiday pay if the employee works that holiday. The Union also proposes that, when a holiday falls during an employee's vacation period, that the employee would have the choice of either an additional day of vacation or an additional day of pay.

On the issue of filling vacant positions, the City proposes 'relatively equal' language which gives seniority to priority when qualifications are relatively equal. The Union proposes language which gives priority to existing employees on the basis of seniority if qualified.

On the issue of training, the parties have essentially the same language on the matter of Employer-directed training. The Union goes further and would require the Employer to train all employees on all equipment in use at the Library.

On the issue of wages concerning the two positions not agreed to, the Employer's offer is actually greater than the Union's offer.

There are two issues on which the parties don't have common offers. The Union proposes a maintenance of standards clause. There is no corresponding offer from the Employer. The Employer makes a proposed addition to the preamble referring to the unit clarification case number.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

It is the position of the Union that its offer is preferable because it will provide the employees with job security and benefits, at a cost that is less than the Employer's offer for this contract term. In this regard, it is agreed that the Employer's costing of the Union offer is flawed in five significant respects. First, the Employer incorrectly assumes that there will be a retroactive $105,247 liability for health insurance and benefits if the Union offer is awarded. Second, the Employer used an inaccurate wage for the Children's Librarian, inflating its wage obligations for this position under either final offer. The Employer did not account for the fact that a new Children's Librarian was hired in May of 1997, and under the new hire rates would earn less than the full rate for one year. The Employer used the full rate in its costing.

The third and fourth flaws in the Employer's costing are that they costed too many employees and costed too many hours. In regard to the last of these respects, the Employer incorrectly assumes that the Union will force it to employ every employee for 30 hours per week or more. This is untrue. The Union does not require the Employer to create work that does not exist. It merely prohibits the Employer from resorting to part-time employees unless there are insufficient full-time employees to perform the available work within the regular 30-hour workweek. Thus, the Employer has erroneously added at least $33,675.12 to its costing of the Union's final offer.

The next and last flaw highlighted by the Union relates to the Employer's 'cast-forward method.' By casting forward with no regard for actual staffing levels, actual hours worked, and actual wages paid under the Union's offer, the Employer has grossly exaggerated the cost of the Union's offer. In summary, because the contract term is almost over, the Employer will have no fringe benefit costs for the 1997-1998 contract term over and above what it has already paid. Instead, the Employer's entire cost will be in the form of retroactive wage increases. Since the Union has proposed a lower wage increase, the Employer's costs for the 1997-1998 contract term will be much higher under the Employer's offer. The Union's offer costs $15,467.08 less than the Employer's for the contract term, and will not cost significantly more in the future.

The Union also argues that its offer is in the best interest of the public because it would improve the quality of service at the Library by reducing turnover. It is noted that of the eight employees who worked at the Library in July of 1996, five have since left, and one of those employees' successors has also left. The Union suggests that it takes little imagination to conclude that the complete lack of fringe benefits for all but one employee is likely a contributing factor to this turnover. The high turnover rate has been a factor in awarding final offers regarding health insurance. The Union's offer would require the Employer to staff the library primarily, but not exclusively, with full-time employees. The predominance of full-time employees in the workforce is likely to result in more experienced workers, with a greater vested interest in maintaining their employment.

Anticipating an argument from the Employer, the Union contends its offer does not intrude on the Employer's Management rights. It is not true that the Union's offer will cause a scheduling "debacle." Four out of seven members of

the bargaining unit already work 30 hours per week. The remaining employees work 28.25, 26.5, and 4 hours per week. One of those employees can be made full-time simply by reassigning the substitute's four hours of work to either or both employees. They also ask the arbitrator to read its proposal in conjunction with other contract provisions. For instance, the Management rights clause preserves the Employer's right to schedule working hours and assign overtime, and to relieve a person for lack of work. Article 10.01 states that "the hours of work are subject to change at the discretion of the Department Head." The Union's proposal also recognizes the Assistant Librarian, Librarian 1, Children's Librarian and Custodian as separate classifications with separate wage rates, and nothing in the Union's proposal requires the Employer to transfer employees between classifications to maintain a certain level of employment. The only thing the Employer cannot do is use part-time employees to do work when there are available full-time employees in the classification to do the work. In support of their position, the Union cites Marathon County Library, Case No. 27714-A (Weisberger 3/7/94). It is also significant in the Union's opinion that the Employer doesn't even provide pro-rata benefits for part-time employees. Moreover, the Employer's offer does not even protect the hours and benefits of the lone full-time employee currently in the department.

The Union next argues that the Union's offer most closely resembles the terms and conditions of employment at comparable libraries. According to a state-wide survey, a majority of comparable libraries provide at least some benefits for their part-time librarians. For example, in 1997, 18 of the 21 comparables provided pro-rata benefits for librarians. Thirteen of those provided health insurance. Additionally, in the past, the Employer has not made up this difference in fringe benefits with greater pay. Out of 22 libraries surveyed, the Employer ranked 17th in the mean average hourly rate in 1995 and 15th in 1996. The Employer's final offer would result in a mean average rate of $7.52 in 1997 and $8.14 in 1998, placing Columbus Library employees 16th and 10th in 1997 and 1998 amongst the comparables. This was in spite of the fact that the Employer's operating budget for the Library was the 8th, 5th, 4th and 7th largest among the 22 comparables in 1995 through 1998.

Also addressed in the Union's Brief is the matter of internal comparables. These comparisons are particularly important on the issue of fringe benefits. The Union's offer should be preferred on this basis because the Union's offer closely tracks the collective bargaining agreement between the City and the Public Works

employees, and thus would bring librarians a little closer to the standards enjoyed by other City of Columbus employees. Their proposal on holidays and postings are consistent with the Public Works Collective Bargaining Agreement.

The Dispatchers' collective bargaining agreement also includes identical longevity benefits. Also, like the Union's proposal, both the Public Works and Dispatchers agreements have a clause defining the regular workweek. Those agreements define the regular workweek as 40 hours per week for all employees, and do not recognize a different workweek for part-time employees. Even the non-represented employees have better benefits than the Employer is proposing.

The Union has also proposed a maintenance of standards clause in response to what they term the Employer's continued refusal to guarantee any security of benefits or hours. The Employer's otherwise regrettable proposals are meaningless if the Employer maintains the current system of employing only one out of eight workers at full-time employment. The Employer's offer also reveals an intent to reduce some benefits the Employer had unilaterally given the unit prior to unionization. Librarians are currently considered full-time and eligible for benefits if they work 30 hours per week. The Employer's offer raises the eligibility bar to 37.5 hours per week, with no guarantee that any employee will ever work that many hours. The Employer's offer would also take away part-time employees' current entitlement to life insurance. This erosion justifies their maintenance of standards language.

B. The Employer

At the outset, the Employer stresses that the contract before the arbitrator will be the initial agreement of the parties. They view their offer as preserving the status quo. In many respects it offers wage increases that exceed those requested by the Union by, in some cases, more than one dollar an hour. The Employer not only offers holiday pay for part-time employees, it has already agreed to a grievance procedure, seniority, holiday pay, floating holidays, sick leave accrual, leaves of absence, vacation, and Union security. They term these as major steps over a short period. In contrast, the Union wants all its wishes to be satisfied in this first collective bargaining agreement. The Union has demanded full-time employment for all employees, which would include giving employees all benefits currently available only to full-time employees. They have also made the "illogical" proposal that all Library employees be trained on all Library equipment

regardless of whether they use such equipment. The Union's demands cannot be sustained.

In terms of comparables, the City notes that the Union relied on a survey conducted by the Wisconsin Association of Public Libraries. However, the survey notes that the information is not reliable and , according to the survey, should be verified through the individual library's director. Indeed, much of it was incomplete and/or inaccurate, as the Union conceded in the case of the Evansville public library wage data, as compared with its actual collective bargaining agreement. Additionally, the Union excluded many of the category B libraries simply because their data in the survey was not consistent over the years, and as directed by the survey, the Union did not confirm the data with any of the individual libraries. In contrast, the Employer did do a survey directly with these libraries of all of the category B libraries within an approximate 50 mile radius of the Library, on its own. They also included the Teamsters contracts for two of the City of Columbus' public employers, Department of Labor wage data for public employees, and the collective bargaining agreements for the Evansville and Mount Horeb Public Libraries. As a result, the Library submits that its data regarding comparable libraries and public employers is more credible than that of the Union.

The Employer argues that the kind of sweeping change proposed by the Union is not favored in arbitration. It should be done gradually by the parties in collective bargaining. Where arbitration does accept change, the Employer notes that the party proposing the change must clearly demonstrate a need for the change; show strong support among the comparables for the change; and show they have offered a reasonable quid pro quo for the change. In all these respects, the Union has failed.

The most significant issue, in the Employer's opinion, is the requirement in the Union's offer concerning full-time employment. The Union's evidence regarding this requirement is unpersuasive and contrary to Section 10.03 of its own proposal. For instance, the Union argued that two employees could work under thirty hours in its provision because the section would somehow only apply within the classification. However, Section 10.03 on its face does not distinguish how the section might apply to different classifications. On its face, the proposal would require full-time employment for all library employees. This ambiguity was not addressed by the Union; nor had the Union considered the practical implications of the proposal such as the fact that such a proposal would require the

Library to lay off staff and terminate such positions as the pages. The Union also did not consider what would happen under its proposal when, for example, a full-time employee goes on vacation or sick leave and a part-time employee fills in full time. The Employer argues these issues are best left to the parties to resolve in collective bargaining.

The Employer also contends the Union's requirement that all employees over 30 hours be considered full-time is inconsistent with comparable libraries and public employers. This is true with the City dispatchers and City public works as well as the Mount Horeb contract. All of these contracts define the regular full-time workweek as 40 hours per week, which is not only significantly more than the Union's proposal, but which also exceeds the Library's proposal of 37.5 hours per week. In comparison with other public libraries, the Library's proposal is, again, more reasonable as the average number of hours an employee of a comparable category B library must work in order to be considered full-time was an adjusted 36.8 hours.

Similarly, the Union's requirement that the Library employ all but possibly one full-time employee is unsupported. None of the libraries in the Employer's proposal have such a requirement. The same is true with the City of Columbus employees, Mount Horeb, or Evansville. There are serious problems posed, too, since it would require laying off a part-time librarian and terminating two pages. It also requires the Library to employ full-time librarians and would limit the flexibility of employees in scheduling.

The other shortcoming of the Union offer is that it would require all the present part-time employees to receive full benefits, such as health insurance, longevity pay, sick leave, jury duty pay, and vacation pay. No other part-time employee in the City of Columbus receives these benefits including the public works and police dispatch employees who are under a union contract with the Teamsters. Similarly, of the half of those part-time employees in other libraries who receive benefits, receive them on a pro-rated basis.

The Employer also argues that no other part-time employee in a comparable category B library receives the entire package of benefits which the Union is proposing. They estimate the increase in cost to be 78% in the first year alone. The Library cannot afford this "massive" increase in cost. The Union's proposal would require the Library to come up with an additional $40,000. This is a

staggering number considering its $200,000 budget. The Library also has no authority to tax, but rather receives discretionary funds from the city, county, state, and federal government. It can't meet this demand (a 25% increase in its budget) without cutting back on services which, in turn, would affect the hours of employees. The Union's offer would not be in the interest of the public.

Concerning wage rates, the City, where there is disagreement, actually proposes more than the Union. The Library's wage proposal represents a 17.3 percent increase in part-time Assistant Librarian's wage in 1997 and 14.8 percent in 1998. The Children's Librarian will also see an increase of 13.5 percent over the course of the agreement. These far exceed the cost of living and the increases enjoyed by other public workers.

The Employer also brands the Union's vacation and holiday proposals as too much too soon. The comparability data is inconclusive and it appears that the Employer's offer reasonably addresses the need for holiday pay.

The next subject addressed by the Employer is the Union's training proposal. It is unreasonable, in their opinion, to require employees to be trained on all equipment regardless if the employee uses it. None of the ten libraries surveyed has such a requirement. It is illogical and budgetarily not responsible.

The last two issues addressed by the Employer are the Union's proposal for a 'maintenance of standards provision' and their vacancy provision. Regarding the first of these issues, they argue (1) none of the Union contracts submitted by either party contain any such provision; (2) the language is ambiguous; and (3) such contract language should be bargained. They also argue that a provision that would require the Library to select a minimally qualified Union employee over an outside applicant, regardless of how qualified the outside applicant, is unreasonable. Such restrictive language is the result of "mature" bargaining contracts and is not appropriate for a first contract.

IV. DISCUSSION AND OPINION

There can be little debate that the most significant issues in this case are the definition of full-time versus part-time employees, as it relates to the threshold for fringe benefits such as health insurance and the Union's proposal for Section 10.03, which restricts the Employer's ability to employ part-time employees. It is

the combination of the Union's proposal of making 30 hours the threshold for full-time benefits and their proposal restricting the use of part-time employees which sinks their offer and compels the Arbitrator to conclude that the Employer's offer is the less unreasonable of the two final offers.

The Arbitrator understands the Union's ultimate goal. Most of the employees work slightly above or below 30 hours. The Union wants as many benefits for these employees as possible and they also want to prevent the Employer from scheduling employees for fewer hours than the threshold in order to avoid paying fringe benefits. Surely, from the Union's perspective, it does no good to negotiate a 30-hour benefits threshold if the Employer can schedule everybody for 29 hours. The Union's objective is not necessarily unreasonable.

The problem is the evidence in this record, as analyzed in the context of the statutory criteria, does not support the Union's two-pronged approach. First, the Union argued that its benefits proposal was in the interest and welfare of the public because it would reduce employee turnover. However, the evidence in this record is clearly insufficient to establish a causal nexus between employee turnover and the lack of full-time benefits.

Second, with respect to the comparative analysis under criteria 'd' (comparison to similar employees), 'e' (comparisons to public employees), and 'f' (comparisons to private employees), none of the evidence supports the Union's dual approach in a convincing fashion. The Union did rely on Library Association survey data, but this poses a problem in several respects: (1) there is a basis to question its accuracy; (2) the data fails to reveal the threshold cutoff for full-time benefits; (3) the data fails to show what the cutoff is for pro-rated part-time benefits where they exist; and (4) it fails to reveal that any of these employers are restricted in the same way as the Union proposes in the use of part-time employees.

There are two collective bargaining agreements covering library employees. However, neither of these fully support the Union's position. The contract in Evansville does use the 30-hour threshold, but it does not appear there is a restriction on the use of part-time employees. In Mount Horeb, the cutoff for full-time is 40 hours. Part-time employees between 20 and 40 hours get pro-rated health insurance contributions. This does not favor the Union's approach. Similarly, the comparisons to employees in the City of Columbus do not favor the

Union's proposal.

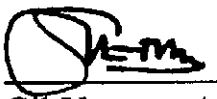
The Arbitrator views the proposal to restrict the Employer's ability to hire part-time employees as significant. It is significant not only because it is wholly unique to any employer in any comparison group, but it is also significant for its ambiguity. There is, at least, much potential for debate about the operational mechanics of the proposal. It is well documented that such potential for litigation is a negative factor in interest arbitration.

The Employer's offer leaves the Arbitrator unimpressed, as well, on the issue of benefits and part-time workers, for instance. Their offer raises the threshold that existed in Library policy and provides nothing to less than full-time workers in terms of health insurance, life insurance, sick leave, jury duty and vacation. This is unreasonable.

The Arbitrator would have preferred to see one of the offers take a more measured approach such as some type of proration for part-time workers at some reasonable cutoff, rather than the respective parties' all or nothing proposals. However, of the two unreasonable offers, the Employer's offer is preferred because it allows the parties to bargain this issue in a measured fashion with an eye toward evidence under the statutory criteria without imposing the unprecedented restriction on the Employer's right to manage the work force. The other non-resolved issues can also be addressed at that time.

AWARD

The final offer of the Employer is accepted.



Gil Vernon, Arbitrator

This 26th day of March, 1999.