THE MATTER OF THE INTEREST ARBITRATION

PROCEEDINGS BETWEEN

MANITOWOC COUNTY SUPPORTIVE
SERVICES EMPLOYEES, LOCAL 986-A,
AFSCME, AFL-CIO,

Union,

and

ARBITRATOR'S AWARD
Case 331, No. 55903
INT/ARB 8351

MANITOWOC COUNTY (COURTHOUSE),

[Dec. No. 29451]

Union.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: James R. Korom, Esq.
von Briesen, Purtell & Roper

For the Union: Gerald D. Ugland, Staff Representative
Wisconsin Council 40, AFSCME

I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.70 of the Wisconsin Municipal Employment Relations Act for the purpose of resolving a bargaining impasse between Manitowoc County Supportive Services Employees, Local 986-A, AFSCME, AFL-CIO ("Union") and Manitowoc County ("County" or "Employer").

The County is a municipal employer within the meaning of the Act. The Union is the exclusive collective bargaining representative of certain County employees, including Courthouse and Human Services clerical and paraprofessional employees. This bargaining unit contains two distinct employment groups: The Courthouse Group and the Human Services Group. The bargaining unit was formed from the previously represented

Human Services Department and the previously represented Courthouse employees. The parties' collective bargaining agreement expired on December 31, 1997.

The Union filed a petition with the WERC requesting the WERC to initiate final and binding arbitration pursuant to Section 111.70 of the Wisconsin Municipal Employment Relations Act. Following an investigation, the WERC determined that an impasse within the meaning of Section 111.70, Wis.Stats., existed between the Union and the County. Thereafter, the parties submitted their final offers and the Commission issued an order on September 24, 1998, requiring that arbitration be initiated for the purpose of resolving the impasse arising in collective bargaining between the parties.

On October 13, 1998, the WERC issued an order appointing the undersigned as the arbitrator in this matter. The matter was brought for hearing before the Arbitrator on December 14, 1998, in Manitowoc, Wisconsin. The parties were given full opportunity to present all relevant evidence and arguments. The hearing was declared closed upon receipt of the parties' reply briefs on April 28, 1999.

Although the parties are in disagreement on some issues, they did reach tentative agreement on a number of other issues. (A copy of the parties' Tentative Agreements is attached as Exhibit A.) Both parties' final offers call for a three percent across-the board increase for all employees in 1998 and 1999. Both final offers include a provision giving employees access to a pre-tax vision insurance plan, expansion of funeral leave benefits, and an increase in the mileage allowance.

Both parties' final offers also include a side letter of agreement in which the county agreed not to opt out of any provision of the Health Insurance Portability and Accountability Act, the Mental Health Parity Act, or the Newborns' and Mothers' Health Protection Act. Two other side agreements in the parties' final offers are identical: one eliminating the fourth quarter deductible carryover provision in the health insurance program, and another allowing employees to utilize direct deposit at the financial institution of their choice. The parties also agreed to change the definition of temporary employees. In addition, the County agreed to the creation of the Jail Maintenance I position.

A copy of the Union's final offer is attached as Exhibit B. The County's final offer is attached as Exhibit C.

II. SUMMARY OF FINAL OFFERS

A. ALTERATION OF THE RECLASSIFICATION PROCESS

Both parties have made proposals with respect to the reclassification process. The County has proposed eliminating the present reclassification system (applicable only to the Courthouse Group at present) and implement a traditional salary grid. The Union has proposed making each employee's reclassification request subject to grievance arbitration.

B. SENIORITY

The Union has proposed that upon layoff an employee could bump the least senior employee in a different employment group; the County has proposed that the employee could bump the lowest paid. Bumping within an employee's own employment group would remain the same under both offers.

The County has proposed that an employee be allowed to keep the employee's old wage rate for three months upon bumping where the bumping results in a lower wage rate. The Union is asking that the higher wage be continued for six months.

C. WAGE ADJUSTMENT UPON TRANSFER

The County is proposing that a wage increase upon transfer be implemented 10 working days after award of the position, or the date the employee begins working the new position, whichever is earlier. The Union is proposing that the wage increase be implemented 14 calendar days after award of the position, or the date the employee begins working the new position, whichever is earlier. The Union offer also provides that, if an employee's wage was to decrease because of the transfer, the wage decrease would not take place until the employee actually begins work at the position.

D. ACROSS THE BOARD IMPLEMENTATION DATE

Although the parties agreed on across the board increases in 1998 and 1999 of three percent each year, the County proposes February 8, 1998, as the retroactive date, while the Union has requested that the increase be implemented retroactively on January 1, 1998.

E. COMPENSATORY TIME

The County has proposed capping compensatory time accruals at 38 hours for both the Human Services and Courthouse groups. (At the present time the Human Services Group has a cap of 76 hours and the Courthouse Group has a cap of 38 hours.) The Union proposes retaining a cap of 76 hours for the Human Services Group.

F. LICENSED PRACTICE NURSE POSITION

The County has proposed increasing the wage of the Licensed Practical Nurse from $12.73 per hour to $12.95 per hour. The Union has proposed an increase to $13.15 per hour.

G. HOUSEKEEPING/LIGHT MAINTENANCE

The Union proposes changing this title to "Custodian" in order to eliminate a "culturally traditional sexist connotation."

III. STATUTORY CRITERIA

111.70(4)(cm)

. . .

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

IV. POSITIONS OF THE PARTIES

A. THE UNION

1. *Alteration of the Reclassification Process*

The Union stresses that the Employer is attempting to remove a system for reclassification that has existed since July 28, 1990, while it is proposing only that the present system be enforceable by setting a deadline for completion and making it grievable. The Union says that other employers, including the City of Manitowoc, Kewaunee County, and Calumet County have arbitrated reclassification grievances.

2. *Seniority*

The Union notes that currently employees being laid off can bump anywhere in the bargaining unit as long as the position into which they are bumping is paid at the same or a lower wage rate, have more seniority than the occupant and can do the work. The Union proposes that employees also be allowed to bump into the other group provided "the position occupied by the least senior employee in any department in the other Group, if that position is an equal or lower classification to the position they hold now or previously held, provided they have more seniority than the person they are bumping and can do the available work."

Noting that the County's proposal would limit the employee to the lowest paid position in the department in which the employee is bumping, the Union argues that the County's proposal virtually assures an economic dilemma for the laid off person. The Union says that its proposal recognizes that the least senior person in some departments may not be the least paid.

According to the Union, the County's proposal is a drastic and unwarranted change in the status quo. It claims that the County has been unable to justify its proposed change. The Union says that it wants its members to have the security of knowing that its procedure for reclassification continues to accurately gauge the responsibility and training required for their position and that it is reliably applied, on time, without politically based second guessing and manipulative revision. The Union asserts that none of the bargaining units have agreed to limit bumping to bumping the employee in a unit who is paid the least.

With respect to the delay in implementation of a lower wage rate upon bumping, the Union argues that because under its proposal the employee is able to choose a higher paid position the amount of the grace period wage differential is likely to be smaller than under the County's proposal.

3. ***Wage Adjustment Upon Transfer***

Because its proposal that the employee be able to choose a higher paid position lessens the likely wage differential between the bumped position and the employee's former position, the Union argues that the amount of grace period wage differential is likely to be smaller than under the Employer's proposal.

The Union claims that after the posting and award of a position, the Employer has a tendency to hold an employee back in order to train a replacement. While the employee is training the replacement, the employee is denied the new wage rate. The Union contends that the employee should be entitled to the new wage rates 14 days after the posting period or when the employee begins working the new positions, whichever is earlier. However, if

4. ***Across the Board Implementation Date***

The Union sees no reason for a delayed application of the across-the-board wage increase effective 1998. It states that settlements in other units are so varied that there is no clear pattern.

5. ***Compensatory Time***

The Union claims that the County's proposal to reduce the compensatory time accrual maximum for Human Services Group employees from 76 hours to 36 hours is without basis. The Union declares that the Employer has failed to articulate a compelling reason for limitation of this method of overtime compensation. It points out that among the external comparables illustrated by the Employer, there is no limit in two situations, 240 hours in two cases, and 80 hours in a fifth case.

The Union points out that the only employees who have accrued more than the Courthouse limit of 38 hours are three Social Service Aides. The Union explains that

those positions are more similar in duties to the professional counselors in the same department. Those professionals are allowed to accrue 240 hours.

6. *Licensed Practice Nurse Position*

The Union asserts that this wage proposal is justified because the LPN is performing additional duties requiring training and requiring her to make independent judgments beyond that of an LPN. The Union stresses that 20 percent of the LPN's work is now involved in inspection and risk assessment.

7. *Housekeeping/Light Maintenance*

The Union proposes changing this title to "Custodian" in order to eliminate a "culturally traditional sexist connotation."

B. THE COUNTY

The County contends that in comparison with other comparable communities, the wages that the County offers its employees in this unit are nothing less than astonishing. The County asks that the Arbitrator consider the "overall compensation" of the employees, especially the direct compensation, when considering the reasonableness of the County's final offer.

1. *Alteration of the Reclassification Process*

The County points out that both parties are proposing changes in the reclassification process. The County argues that it has proposed a more traditional system that would eliminate the confusion, bias, and time consuming nature of the reclassification system. The County characterizes its system as providing a system with a more objective and traditional process than the existing reclassification system. According to the County, the Union's proposal permits an employee to force a hearing on whether or not he or she should have been reclassified.

The County contends that its position is supported by the external and internal comparables. It says that Brown, Calumet, Dodge, and Sheboygan County negotiate individual reclassifications directly with the Union. In Ozaukee County the decision to reclassify an employee is left to a personnel committee with no right of appeal.

It is the County's position that under its proposal all employees will make the same or a higher hourly wage. In implementing a universal wage grid, the County says it will place each employee at his or her same wage, or if there is no comparable wage on the grid, at a higher rate than the employee was previously making. According to the County, under its proposal 28 out of the Courthouse's 79 employees will receive a higher wage effective January 1, 1999.

The County concludes that its proposed methodology for handing reclassification (i.e. use of the bargaining table coupled with a guaranteed wage grid and salary progression) is completely consistent with external and internal comparability data and is bringing the employees "into the comparable mainstream."

2. *Seniority*

With respect to the parties' proposals on this issue, the Employer says that generally, if not always, the results will be the same under either offer. It observes that in rare cases, the laid-off employee may earn a slightly lower wage.

Pointing out that the status quo is to move an employee to the lower wage rate immediately, the County argues that its proposal for a three-month delay in a lower wage change is more reasonable than the Union's six-month delay. The County asserts that other units and employees in the comparables do not have a wage delay provision such as that proposed by the Union. The County says that the Union has offered no justification for its six-month proposal.

3. *Wage Adjustment Upon Transfer*

With respect to the timing of a wage increase when an employee is awarded a posted position, the County asserts that there is no significant difference between the Employer's proposal of 10 working days and the Union's proposal of 14 calendar days. The County argues that this timetable should also be applied when an employee's wage rate would go down as a result of the transfer. It says the employees should take the bitter along with the sweet.

4. *Across the Board Implementation Date*

The County points out that every unit in the County that has settled has settled for one of two basic economic packages. All those units accepting elimination of the fourth quarter deductible and the 80/20 co-pay for non-PPO services accepted three percent on January 1, 1998, and 3.25 percent on January 1, 1999. The other three units, which agreed only to elimination of the fourth quarter deductible, accepted three percent on February 8, 1998, and three percent on January 1, 1999. The County declares that this bargaining unit stands alone in its demand for a three percent increase on January 1, 1998.

5. *Compensatory Time*

According to the County, its proposal creates parity between the Human Services and Courthouse groups by capping both compensatory time accruals at 38 hours. It states that the different levels of compensatory time are remnants of the merger of the two units.

The County also argues that because of the source of the funding of the Human Services Department it is important that the costs are realized as they are incurred. It also points out that Human Services employees often work under direct orders of the courts and the County has little power to stop those employees from working overtime.

The County notes that only three of the 37 employees in the Health Services Group would be affected by the change. It also points out that 24 of these employees have no compensatory time accrued at all and that the average accrued time is less than six hours. The County says that only one employee will not be able to use the additional compensatory time and she will receive that time in the form of cash at overtime rates.

6. *Licensed Practice Nurse Position*

The County argues that the Union's proposal of a 42 cents per hour wage increase is excessive and would place the Support Service LPN's wage above that of the wage rate for the nursing home LPNs. According to the County, the current health department LPN position is basically a "created" job. It says that the position does not require someone as highly trained as an LPN to perform it. The County explains that upon merger of some City and County services, the County promised that it would not let any City employee go. Thus, it says work was made for the LPN position. Once this particular individual leaves the County, the position will not be filled with another LPN.

V. FINDINGS OF FACT

A. THE LAWFUL AUTHORITY OF THE EMPLOYER

There is no contention that the County lacks the lawful authority to implement either offer.

B. STIPULATIONS OF THE PARTIES

While the parties were in agreement on many of the facts, there were no stipulations with respect to the issues in dispute.

C. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINANCIAL ABILITY OF THE UNIT OF GOVERNMENT TO MEET THESE COSTS

This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of appropriate municipal services. There is no contention that the County lacks the financial ability to pay either offer.

The public has an interest in keeping the City in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable em-

ployees now serving the City. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

D. COMPARISON OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience.

Both parties have selected the same counties as their external comparables: Brown, Calumet, Dodge, Fond du Lac, Kewaunee, Outagamie, Ozaukee, Sheboygan, and Washington. The County has also proposed the cities of Manitowoc and Two Rivers as comparables because they lie within the county itself. These comparables have been used in prior arbitration cases between the parties.

E. CHANGES IN THE COST OF LIVING

Both offers would result in wage increases greater than the increase in the cost of living as measured by the Consumer Price Index for All Urban Consumers.

F. OVERALL COMPENSATION PRESENTLY RECEIVED BY THE EMPLOYEES

In addition to their salaries, employees represented by the Union receive a number of other benefits. While there are some differences in health and welfare benefits received by employees in comparable public employers, it appears that persons employed by the County generally receive benefits equivalent to those received by employees in the comparable municipalities.

G. CHANGES DURING THE PENDENCY OF THE ARBITRATION PROCEEDINGS

No material changes during the pendency of the arbitration proceedings have been brought to the attention of the Arbitrator.

H. OTHER FACTORS

This criterion recognizes that collective bargaining is not isolated from those factors which comprise the economic environment in which bargaining takes place. See, e.g., *Madison Schools*, Dec. No. 19133 (Fleischli 1982). There is no evidence that the City has had to or will have to reduce or eliminate any services, that it will have to engage in long term borrowing, or that it will have to raise taxes if either offer is accepted.

VI. ANALYSIS

A. INTRODUCTION

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (See, e.g., *D.C. Everest Area School Dist. (Paraprofessionals)*, Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. The arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed on that offer, by applying the statutory criteria. In this case, there is no question regarding the ability of the Employer to pay either offer. The most significant criterion here is a comparison of wages, hours and conditions of employment.

B. DISCUSSION

1. *Alteration of the Reclassification Process*

Both parties have made proposals with respect to the reclassification process. The County has proposed eliminating the present reclassification system (applicable only to the Courthouse Group at present) and implement a traditional salary grid. The Union has proposed making each employee's reclassification request subject to grievance arbitration.

Although the County's proposal suggests a reclassification similar to that used in other bargaining units as well as used by other employers, the proposal is a drastic revision of the system in the parties' prior collective bargaining agreement. The Union's proposal is a more modest revision simply making reclassification decisions subject to the contractual grievance procedure.

Numerous collective bargaining agreements, including those of some of the comparable employers make reclassification decisions arbitrable. See generally, Kropp, *Compensation Systems and Job Evaluations*, in 2 LABOR AND EMPLOYMENT ARBITRATION §§ 34.01-34.07 (2d ed. 1997 Bornstein & Gosline eds.). The arbitrable standards for reviewing job classifications are fairly well established. See Elkouri & Elkouri, HOW ARBITRATION WORKS 690-710 (5th ed. 1997); Kropp, *Compensation Systems and Job Evaluations*, in 2 LABOR AND EMPLOYMENT ARBITRATION § 34.05 (2d ed. 1997 Bornstein & Gosline eds.).

Although the County argues in its brief that the wages received by the employees represented by the Union are "nothing less than astonishing," it asserts that under its reclassification proposal employees will make the same or a higher hourly wage. However, the Union contends that this assertion assumes that employees will stay in the same positions and that if they change positions many employees will make less money than they would under the Union's proposal.

The County's proposal represents a fundamental change in the collective bargaining agreement that should not be imposed through arbitration. While the current classification process is time consuming, the record does not establish that it is not workable. Under the current process, the employee completes a position analysis questionnaire obtained from the County's Personnel Department. Any reclassification system must be reviewed by the County's Personnel Committee based on a point system. Although it is true that other bargaining units use a different reclassification system than the parties here, this does not compel a conclusion that the parties' current reclassification system should be scrapped.

While raising genuine concerns about the current system, the County has failed to carry its burden of justifying such a fundamental change in the previously negotiated contract language. On the other hand, the Union's proposal simply provides for neutral review of reclassification decisions through the existing grievance procedure. Accordingly, it is concluded that the Union's proposal is more reasonable than the County's proposal.

2. *Seniority*

Seniority rather than pay rate is normally a criterion in determining bumping rights. See Bowers, *Layoffs, Bumping, and Recall,* in 1 LABOR AND EMPLOYMENT ARBITRATION § 28.03[1] (2d ed. 1997 Bornstein & Gosline eds.); Elkouri & Elkouri, HOW ARBITRATION WORKS 772 (5th ed. 1997). The County has failed to articulate compelling reasons from changing the status quo and departing from the normal method for determining bumping rights. The Union's proposal with respect to this issue is more reasonable.

The County's proposal for a three-month delay in a lower wage change is more reasonable than the Union's six-month delay. No other bargaining units in the County have a wage delay provision such as that proposed by the Union. The Union has offered no compelling justification for its six-month proposal. The County's proposal with respect to this issue is more reasonable.

The first issue relating to whether out of group bumping shall be based on wage rate rather than seniority involves a more fundamental change in the collective bargaining agreement than the parties' proposal regarding delay of the application of a lower wage rate. Accordingly, the Union's proposal with respect to this proposal is more slightly more reasonable than the County's.

3. *Wage Adjustment Upon Transfer*

With respect to implementation of an employee's wage increase upon transfer, there is no significant difference between the parties' offers. The County proposes implementation in 10 working days and the Union proposes implementing the increase in 14 days–both effectively provide for implementation of the increase within two weeks.

The significant difference between the two proposals is the timing of the implementation of the wage adjustment where the transfer results in a wage decrease. The Union proposes that implementation of the wage decrease be effective when the employee performs the work of the awarded position. The record indicates that when there is a delay in actually transferring the selected employee to the new position, the delay is usually the result of the County's keeping the employee in the former position until a trained replacement is available. Because the County has some control over when a transferred employee actually begins performance of the work in question, it is concluded that the Union's proposal is more reasonable than the County's.

4. ***Across the Board Implementation Date***

It is common, but not invariable, for a successor collective bargaining agreement to be retroactive to the expiration of the prior agreement. Here, the internal comparables suggest that implementing the new contract retroactive to February 8, 1998, is reasonable. The Employer's proposal on this issue is slightly more reasonable than the Union's.

5. ***Compensatory Time***

The County has failed to establish that there are significant problems with the method by which compensatory time is paid. The record shows that only three current employees would be affected by the change in language. While this shows that the impact on the bargaining unit is relatively minor, it also shows that the problem of compensatory time for members of the Health Services Group is not as serious as urged by the County.

In addition, there is a rational basis for the differential treatment here. The record establishes that the assignments resulting in overtime for the social workers generally emanate from the courts. Neither the County nor the employees in question have control over these situations. Accordingly, it is concluded that the Union's proposal is more reasonable than the Employer's.

6. ***Licensed Practice Nurse Position***

The County's proposal provides a wage rate for the LPN closer to the LPN wage rates in the internal and external comparables. While the LPN in question performs duties different than those performed by most of the other LPNs, these additional duties are not sufficiently difficult, complex or burdensome to justify the wage increase proposed by the Union. The County's proposal on this issue is more reasonable than the Union's proposal.

7. ***Housekeeping/Light Maintenance***

The change in title of this position is of no consequence in determining which party's final offer is the more reasonable. The change in title has no apparent economic

impact on the County or on the County's ability to direct the workforce in and efficient and economic manner.

C. CONCLUSION

The Arbitrator cannot divide the parties' offers, but must select one or the other of the parties' total offers. Of the issues before the Arbitrator, it appears that the reclassification issue is the most critical. As discussed above, the Union's proposal with respect to this issue is more reasonable than the County's. Additionally, the Union's proposals with respect to seniority rights and bumping, wage adjustment upon transfer, and accumulation of compensatory time are more reasonable than the County's. Accordingly, it is concluded that the Union's final offer is more reasonable than the County's.

VII. AWARD

Having considered all the relevant evidence and the arguments of the parties, it is concluded that the Union's final offer is the more reasonable final offer. The parties are directed to incorporate into their collective bargaining agreement the Union's final offer together with all previously agreed upon items.

Executed at Delafield, Wisconsin, this twenty-sixth day of June 1999.

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Jay E. Grenig