BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
CITY OF MADISON	:Decision No. 29993-A
and	
CITY EMPLOYEES LOCAL NO. 236 LABORERS INTERNATIONAL UNION OF NORTH AMERICA	

Appearances:

Shneidman Myers Dowling Blumenfield Ehlke Hawks & Domer, Attorneys at Law, by Bruce F. Ehlke, for the Union.

Michael G. Dieters, Labor Relations Manager, for the Municipal Employer.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed, the undersigned Arbitrator (Case 231, No. 59256, INT/ARB-9096, Dec. No. 29993-A, 11/27/00) to issue a final and binding award pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act to resolve an impasse found to exist in collective bargaining between said parties by selecting either the total final offer of the Municipal Employer or the total final offer of the Union.

A hearing was held in Madison, Wisconsin, on January 18, 2001. A transcript was made. Briefs were exchanged on April 9, 2001, and April 30, 2001.

The collective bargaining unit in this proceeding consists of certain public works and other employees specified in recognition agreements and certifications.

The final offers from which the Arbitrator must select are as follows.

THE UNION'S FINAL OFFER

> Amend Art. 6.1. par. L as follows - The City retains the right to establish reasonable work rules and rules of conduct relating to non-mandatory subjects of bargaining. The establishment of any work rules primarily affecting wages, hours of work, or conditions of employment shall be subject to negotiations and mutual agreement.

In consideration for the above language the Union accepts the City of Madison's Statement of Interest Language. (Applies to Construction Inspectors 1 & 2.

THE CITY'S FINAL OFFER

16.12 Statement of Interest: All employees within the classifications required shall fill-out the Statement of Interest form.

Appendix C, L: Employees covered by this appendix shall not be restricted in their right to choose their place of residency.

THE 1998-1999 AGREEMENT

Article 6, L of the parties' 1998-1999 collective bargaining agreement, which the Union proposes to revise, provided, "The City retains the right to establish reasonable work rules and rules of conduct. Any dispute with respect to these work rules shall not in any way be subject to arbitration of any kind, but any dispute with respect to reasonableness of the application of said rules may be subject to the grievance procedure as set forth in Article 7 of this Agreement."

The parties' 1998-1999 agreement had no counterpart of the City's proposed sec. 16.12.

The parties' 1998-1999 agreement provided at sec. 16.11 that, "Employees covered by the terms of this Labor Agreement shall not be restricted in their right to choose their place of residency." The City's final offer would extend this coverage to certain seasonal and hourly employees.

THE WORK RULES ISSUE

In summary, the Union's proposal is grounded upon concern over more expansive promulgation of work rules in recent years to regulate areas that are mandatory subjects of bargaining such as the management of compensatory time, wearing uniforms as a condition of employment, and discipline.

The Union accepts that the Employer's actions, which it seeks to prohibit by this proposal, were within the Employer's rights under past contracts. Moreover, the Union seems to recognize that the contractual terms that permitted those actions also constituted a waiver by the Union of any statutory obligation the City otherwise may have had to negotiate over actions affecting wages, hours and working conditions during the terms of those past contracts. Now the Union seeks such negotiations by creating a contractual obligation.

A serious deficit in such an arrangement, as the City contends, is that there is no obvious means for moving beyond an impasse in such contractually required negotiations. The grievance procedure and arbitration may determine whether the required process has been followed. They may address whether a new or revised work rule is covered by this requirement. But there is no contractual arbitration to settle the dispute over the proper outcome of negotiations. The statutory impasse procedure under which the present case is conducted is only applicable to "new contracts." Perhaps unilateral implementation of an offered rule would be allowed by some forum. More likely, the Union's offer would allow it to veto proposed new or revised work rules. This suggests that adoption of the Union's proposal is not so much a problem-solving strategy as an invitation to future conflicts and disputes.

This may underlie the fact that only one other labor agreement to which either party compares the Union's proposed terms is similar. All of the others, including City of Madison, Dane County, and the other large Wisconsin cities' agreements, allow employer promulgation of reasonable rules.

The Arbitrator would observe that it is very common for labor agreements that contemplate unilateral work rule promulgation to also allow grievances over the reasonableness of such work rules, not just their application as under the parties' past agreements. This offers substantial protection to the Union and bargaining unit employees, without the aforesaid potential for impasses. Other protection may be found in addressing the substance of work rules in bargaining for a new agreement and, if necessary, statutory interest arbitration.

The City's agreement with the Union representing its firefighters is the exception in that its terms are similar to those proposed by the Union herein. The City explains that statutory and other factors that are peculiar to firefighter employment make this comparison unpersuasive. The Arbitrator is not certain of the distinctions suggested by the City, but does see the Union's proposal as clearly distinct from the great preponderance of contracts which are apt for comparison.

THE STATEMENT OF INTEREST ISSUE

The City's statement of interest proposal would cover certain Construction Inspectors who are responsible for certifying payments in excess of $200,000. It is offered as a method of insuring the ethical conduct of these employees by identifying matters in which they have a personal interest.

The Union, as the City emphasizes, finds this proposal acceptable when included with the Union's work rule proposal. The Union contends, alternatively, that this City proposal is not supported by adequate evidence of need for such an "impact (on) the privacy interests of the affected individual employees . . .."

The Arbitrator also would not raise this issue to a determinative level. There is no reason to believe that these employees have engaged in questionable practices. Exactly how this approach will operate is not specified. But the "invasion of privacy" perceived by the Union is easily seen as a conventional "Good Government" strategy to avoid impropriety or concerns of impropriety.

THE RESIDENCY ISSUE

The City urges that it is simply a matter of fairness and consistency to extend the same freedom of residency to seasonal and hourly employees that the parties maintain for regular full-time employees.

The Union, on the other hand, contends that the City's position is an economic one. It argues that labor costs can be reduced by hiring seasonal and hourly employees who live outside of the City, especially if those employees may look forward to subsequent regular employment. The Union objects on the basis that "the City has not made any showing whatsoever that it cannot afford to hire additional permanent, full-time employees, nor employ seasonals who, after a certain number of hours worked, could become permanent employees."

The Union's position would require the Arbitrator to prohibit an economical strategy allowed by the labor market by withholding from certain employees rights gained by others in a past interest arbitration.[1] In that Award the Arbitrator found in favor of the Union mainly on the basis of comparability criteria. He did not give weight to the "philosophical question balancing the rights of citizens to live where they wish with the right of the City to require its employees to live within City limits." In the judgment of the undersigned such a balance may favor residency restrictions where "response time" requirements are germane, which is not the case herein. To favor the Union's economics-based position over the employees' general rights as citizens seems unjustified.

AWARD

On the basis of the foregoing, and the record as a whole, and having fully considered all of the applicable factors specified at Section 111.70(4)(cm)7 of the Municipal Employment Relations Act, it is the determination of the undersigned Arbitrator that the total final offer of the Municipal Employer should be, and hereby is, selected.

Signed at Madison, Wisconsin, this 27th day of June, 2001.

Howard S. Bellman
Arbitrator

[1]City of Madison-Laborer's International Union of North America, Local 236, Case 159, No. 47414, INT/ARB-6458 (Arbitrator James L. Stern).