BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of an Impasse Between	:
CITY OF FENNIMORE	:
and	:
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 965	:

- -

Appearances:

Lawton & Cates, Attorneys at Law, by P. Scott Hassett and Christopher J. Blythe for the Union.

Kramer, Brownlee & Infield, by Eileen A. Brownlee, for the Municipal Employer.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission (WERC) appointed (Case 4, No. 61106, INT/ARB-9622, Dec. No. 30454-A, October 7, 2002) the undersigned Arbitrator to issue a final and binding Award pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act resolving an impasse between those parties by selecting either the final offer of the Municipal Employer or of the labor organization.

A hearing was held in Fennimore, Wisconsin, on December 3, 2002. No transcript was made. Briefing concluded on February 19, 2003.

On March 25, 2003, the Arbitrator sent the following letter to the parties and the WERC.

> I am presently studying the record and your briefs in this matter and have come upon two items that require clarification.
>
> First, the Union has asserted that a "typographical error" in its offer on longevity pay should be "corrected" by the Arbitrator. The Municipal Employer contends that "no authority exists permitting modification of the Union's final offer." In the face of these positions, it is my request that you obtain a ruling from the WERC as to my authority.

Second, the Union's final offer, at its hourly compensation schedule, specifies nine classifications. The Municipal Employer's final offer specifies thirteen classifications. The second paragraph of Article I of both parties' offers reads as follows.

> NEW POSITIONS: In the event new positions are created or existing positions are reclassified, the inclusion or exclusion of such positions from this collective bargaining unit may be determined by stipulation of the parties. If agreement is not reached, the matter shall be referred to the Wisconsin Employment Relations Commission for decision.

It seems that in this case there are "new positions" presented in the Employer's offer and that by adopting or rejecting that offer the Arbitrator will allow or disallow those classifications. However, the parties seem to have agreed already that such judgments are to be made by stipulation or the WERC.

Please instruct me on this issue; if necessary, by obtaining a WERC ruling.

Finally, I look forward to your prompt and, I hope, joint response. Should that not be received within two weeks of the date above, I will submit these matters to the WERC.

By a letter dated April 2, 2003, Counsel for the Union advised the Arbitrator, among other things, as follows:

> I am in receipt of your letter of March 25, 2003, in which you raised two issues that you believe require clarification. As a follow-up to a conversation I had yesterday with Atty. Brownlee for the City of Fennimore, please be advised of the following:
>
> 1) As regards the typographical error issue, the parties have not come to an agreement as to the authority of the Arbitrator. Therefore, it seems appropriate to seek such clarification from the WERC.
>
> 2) As regards the "new positions" issue, the parties do not feel that a WERC ruling is necessary. If the Union proposal is adopted by the Arbitrator, the issue will be moot, as that proposal

> does not create new positions. If the City's proposal is adopted by the Arbitrator, the Union has indicated to the City that it does not intend to contest the "new" positions and the rates for those positions contained in the City's proposal.

Following a hearing held on July 10, 2003, the WERC issued Findings of Fact, Conclusions of Law and Order (Dec. No. 30454-B) dated September 26, 2003. The Order specified that (1) the final offer of the Union is corrected to read:

> Longevity shall be paid as follows:
>
> | | |
> |---|---|
> | 0-4 years of service | none |
> | 5-11 years of service | $ 2.00 |
> | 12 or more years of service | $ 3.50 |
>
> Rates shall be per month times the years of service paid out annually.

And (2) "The City of Fennimore and Local 965 shall have the right to submit supplement evidence and argument to Arbitrator Bellman to address the impact of the correction."

By correspondence dated October 14, 2003, the Municipal Employer submitted revised exhibits.

On October 16, 2003, the Arbitrator notified the parties that the record was closed.

DISCUSSION

The collective bargaining unit covered by this proceeding consists of all regular full-time and regular part-time electric, water, generation and wastewater plant employees employed by the City of Fennimore; excluding public works, clerical, confidential, supervisory, managerial, executive, temporary, seasonal and substitute employees.

The parties are seeking an agreement for 2002 and 2003. This would be their initial collective bargaining agreement.

The parties' final offers cover an unusually large number of items including wage rates, several aspects of the sick leave program, hours, standby pay, layoff provisions, health insurance, subcontracting, longevity pay, definitions related to part-time and seasonal workers and others. They also disagree as to the municipal employers that should be considered comparable.

The Arbitrator has been particularly influenced by the considerations specified below respecting selected key disputed provisions. The parties' positions on other matters, not regarded as crucial, have been examined for factors that might render them prohibitive, but no such factors have been found. Thus, matters in dispute regarded as relatively minor have been resolved by their inclusion with the influential factors. This seems proper in that the statutory arbitration scheme is not an item-by-item approach but a "package" approach; and because the Arbitrator believes that the statute intends to encourage the parties to settle as many disputes as they can. There is no contention that any legal limitations on expenditures or revenue collections are relevant in this matter.

The Arbitrator agrees with the Municipal Employer's contention that the communities that it proposes as comparable are more persuasive than the Union's selections because the Employer's choices are geographically nearby and may constitute a labor market, whereas a few of the Union's are remote. On the other hand, the Employer's list of communities include some that do not have electric utility departments.

Respecting the major matter of wage rates, the Union's offer is higher, especially for 2003, and the City's proposal generally leaves the rates below the average of its own comparables. The Union's offer, in some cases, also provides for rates below the averages of the Employer's comparables. Moreover, the evidence is not convincing that the Union's proposal would have a material impact on economic conditions in the City or stress the Employer's financial capacity, although it speculates that utility consumer rates may be raised. This speculation is not impressive in that substandard wages are not a proper basis for consumer savings.

The Employer's offer would reduce longevity pay below the levels provided to the same employees as unorganized employees. The Union position maintains the provisions of the Employer's program for unorganized employees.

Regarding sick leave, among other differences, the parties disagree over the distribution of health insurance premium costs. The Employer would pay 93% of the premium beginning in 2003, while the Union proposes that employees pay the amounts of $20.00 and $40.00 per month for individual an family coverage, respectively. The Arbitrator agrees with the Union that employees should participate in these costs but are less able to bear their unpredictability.

The Arbitrator also prefers the Union's final offer because it maintains the Employer's definition of a normal work week; whereas the Employer would provide for any five days, thus allowing for weekend assignments without overtime compensation.

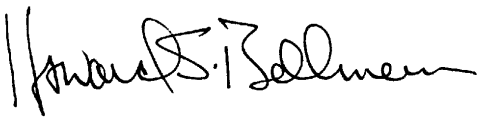
Similarly, while the Union's offer maintains the status quo which provides that employees may earn 6 sick leave days per year and be paid for as many as 60 unused sick leave days upon retirement, the Employer would raise the per year earnings to 10 days, but eliminate the pay-out provision.

These retrenchments proposed by the Employer may be grounded on policy considerations, but should be achieved in negotiations where trades are considered and accepted. Moreover, the City's proposal is not well supported by comparison to other communities.

AWARD

On the basis of the foregoing, and the record as a whole, as well as the "factors" specified by the Municipal Employment Relations Act as criteria for such determinations, it is the decision and Award of the undersigned Arbitrator that the final offer of the Union should be, and hereby is, selected.

Signed at Madison, Wisconsin, this 15th day of December, 2003.



Howard S. Bellman
Arbitrator