
BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between:

MONROE COUNTY

and

WISCONSIN COUNCIL #40, AFSCME, AFL-CIO

Appearance: Daniel R. Pfeifer, Staff representative for the Union
Ken Kittleson, Personnel Director for the Employer

Wisconsin Council, #40, AFSCME, AFL-CIO, hereinafter referred to as the “Union,” filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the “Commission,” where in it alleged that an impasse existed between it and Monroe County, hereinafter referred to as the “Employer”, in their Collective Bargaining. The Union requested the Commission to initiate arbitration pursuant to Section 111.70(4) (cm)6 of the Municipal Employment Relations act. A member of the Commission’s staff conducted an investigation in the matter and submitted a report to the Commission.

The Commission found that the Union has been and is the exclusive collective bargaining representative of certain employees of the Employer in a Collective Bargaining unit consisting of courthouse employees. The Union and the Employer have been parties to a Collective Bargaining Agreement covering wages, hours and working conditions of the employees in the unit. The Commission issued an Order on June 15, 2003 requiring that arbitration be initiated for the purpose of resolving the impasse arising in the Collective Bargaining between Wisconsin Council #40 AFSCME, AFL-CIO and Monroe County on matters affecting wages, hours and conditions of employment of certain employees. On the same day the Commission furnished the parties a panel of arbitrators for the purposes of selecting a single arbitrator to resolve said impasse and the Commission, was advised on June 23, 2003, that the parties had selected Zel S. Rice II as the arbitrator. On the 26th day of June, 2003, the Commission issued an Order appointing Zel S. Rice II as the arbitrator, 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 said impasse by selecting either the total final offer of the Wisconsin Council #40 or the total final offer of Monroe County.

ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to use the following criteria in arriving at a decision and rendering an award. In making any decision under the arbitration proceedings as authorized, the arbitrator shall consider and give greatest weight to any state law or directive lawfully issued by the state legislature, which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The Arbitrator shall give an accounting of the consideration of this factor in the Arbitrator's decision.

In making any decision under the Arbitration procedures authorized, the Arbitrator shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subsection 7r. In making any decision under the arbitration procedures authorized, the Arbitrator shall give weight to the lawful authority of the municipal employer, stipulations of the parties, the interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement, comparison of wages, hours and conditions of employment of the municipal employees involved in arbitration proceedings with wages, hours and conditions of employment of other employees performing similar services, comparison of the hours, wages and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of other employees generally in public employment in the same community and in comparable communities, and comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities, the average consumer price for goods and services, commonly known as the cost-of-living, the overall compensation presently received by the municipal employees including direct wages, compensation, vacation, holidays, and excused time, insurance and pension, medical and hospitalization benefits, the continuity and benefit of employment and all other benefits received, changes in any of the foregoing circumstances during the pendency of the arbitration, 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.

COMPARABLES

The parties are in agreement regarding the comparables in this proceeding. The eleven comparable counties in alphabetical order include Buffalo, Crawford, Jackson, Juneau, LaCrosse, Pepin, Richland, Sauk, Trempealeau, Vernon and Wood counties. The same eleven have been long established for Monroe County for other AFSCME represented bargaining units.

Both parties have agreed to a 2/2 wage splits for each of the two years, and minor plan modifications in health insurance coverage.

The Union primarily uses the Zeidler award as a guide to fashion it's final offer. It has only included issues in which Arbitrator Zeidler favored the Union's position in a prior arbitration.

HOURS OF WORK, ARTICLE 8, SECTION 1

The Union has proposed standard work hours of 8:00am - 4:30pm. It also allows the Employer to modify the workday as "circumstances may warrant." The Employer has no standard work hours in it's final offer. The Union has a standard work week of Monday through Friday inclusive and the Employer has no standard work week. The hours of 8:00am to 4:30pm, Monday through Friday, are the standard work hours. The Union argues that it is unreasonable for the Employer not to have a standard work day or work week. The Union's final offer includes language permitting the Employer to amend the work schedule to meet it's operations. Exclusion to the standard workdays allows adjustments to the work day for both current employees who do not work the standard work day and for new employees who may need to work outside of the hours of 8:00am to 4:30pm. The Employer offer contains much more flexibility for it to schedule work day length than days of work. A principal difference with the Union's offer is the definition of a standard work week as advanced by the Union which would limit the great flexibility of the Employer in working hours scheduling. The Union offer names a standard work week of Monday through Friday. In internal comparables, this type of language-Monday through Friday as a standard work week- is found in 3 Monroe County contracts and in the case of the Rolling Hills contract, the standard work week language is also found, but in that case, from Sunday through Saturday. Internal comparables support the Union offer for hours of work. Both the internal and external comparables clearly support the Union's position in this regard. The Union's proposal specifically addresses the Employer's concerns and allows it to change hours as circumstances may warrant.

The Arbitrator finds the Union's proposal to be preferable to the Employer's position.

COMPENSATORY TIME ARTICLE 8, SECTION 2

The Union proposes that all hours worked outside the standard work week should be paid at one and one half time times the Employer's regular rate of pay. It proposes that no overtime shall be authorized unless requested by the supervisor. Overtime performed without the approval of the Supervisor shall not be subject to pay or time off provisions. The Union proposes the optional use of compensatory time as payment for overtime. The Employer offer does not provide such a feature.

Internally in Monroe County in 2 other agreements, that of the Professional Employers and that of Clerical employees, have provisions for compensatory time. Among the external comparables, all but Vernon County, have provisions for obtaining compensatory time. The Arbitrator is satisfied that the Union's proposal is based on external comparables and is preferable to the position of the Employer.

COMPENSATORY TIME APPLIED TO HOLIDAYS, ARTICLES 9, SECTION 2

The Union is seeking to add " for purposes of this section, a combination of time worked and compensatory time equaling eight hours shall be counted as a day worked ." The Employer agrees that if the Union's final offer is awarded and compensatory time is allowed as an option, then this language should be included. The Employer objects to the provision to have compensatory time.

The validity of the Union's position on this matter is dependent on which offer here is accepted. This arbitrator has earlier concluded that the principal of compensatory time is suitable for an inclusion in an agreement between the parties for the reasons of external comparables and therefore, endorses the Union's proposal.

DONATION OF VACATION, ARTICLE 12, SECTION 6

The Union proposes that employees be allowed to donate an accumulated vacation of up to one week to another Monroe County employee who has a serious medical condition. The Employer voluntarily agreed to this provision for the bargaining units at Rolling Hills, Human Service professionals, and Monroe County Human Service clericals. The Union takes the position that the comparables support its position regarding this issue. The Employer contends that only three out of seven of its bargaining agreements contain vacation donation language and there is no provision in county personnel policy for non-represented employees to donate vacation. The Union's proposal is not supported by the status quo or by a majority of the internal comparables. The Arbitrator finds

that the Employer's position is preferable to that of the Union. The Union has not provided any evidence comparing its position with the external comparables. It is a new issue and the Employer is receiving nothing in return for making such a offer to the Union. The Union's proposal is not supported by a majority of the internal comparables. Accordingly, the Arbitrator agrees with the position of the Employer on this issue.

BUMPING FOR A HOUR'S REDUCTION, ARTICLE 16, SECTION 2

The Union proposes adding language that reduction in hours triggers displacement rights. The Employer rejected this proposal because some departments adjust hours periodically based on funding received from grants, federal and state governments and other funding streams. It contends that reduction in hours due to loss of funding would cause major disruptions and significant unbudgeted training costs for the Employer's operations if the reductions resulted in displacement change. The Employer's position is that an employee whose hours are reduced has the option to post to another position if the employee is dissatisfied with the hours reduction. The Union points out that under the Employer's proposal, an employee who worked for 40 hours per week and has worked for 20 years receives a notice that his position is going to be reduced to 8 hours per week. Under the Employer's proposal, the employee with 20 years of service would not have bumping rights, while an employee with only 6 months of service could retain a full-time, 40 hour-per-week position. The Union argues that this position is totally against the principal of seniority and certainly is not in the interest and welfare of the public. The Employer takes the position that the Union's proposal is not supported by the internal comparables and offers nothing in exchange for the costly and potentially disruptive change in the status quo. Some departments adjust hours periodically based on the funding received from grants, federal and state government and other funding streams. Reductions in hours due to loss of funding would cause major disruptions and significant unbudgeted training costs for these and other county operations if the reduction would result in displacement changes.

The Employer takes the position that an employee whose hours are reduced has the option to post to another position if the employee is dissatisfied with the hours reduction. The Union is pursuing this change through the grievance arbitration process and the issue can be handled there with an actual case. Accordingly, the Arbitrator finds the Employers position preferable to that of the Union.

VACANCY NOTICES, ARTICLE 16, SECTION 3

The Union proposes a sentence that the administration and financial burden of personally notifying all laid off employees of all vacancies whether the employee is qualified for the position or not be responsibility of the Employer. The parties have already agreed that vacancies would be subject to posting before recall and the Union proposes that laid off employees should be notified of said vacancies. The Employer takes the position that job posting addresses a concern of the Union and neither the internal comparables nor the status quo support the Union's proposal.

Only the Employer has the authority to unilaterally lay off employees and it is the keeper of records and knows who is on layoff and the employee's addresses and telephone numbers. It determines if a vacancy is going to be filled and when it is going to be filled. The Employer determines if an applicant meets the qualifications of the vacancy. The Employer unilaterally initiates a layoff and it should notify the employees on layoff of vacancies that exist.

The Arbitrator finds the Union's position is preferable to that of the Employer. The Employer knows what vacancies exist and the employees who are on layoff. The Union's request for a 2 week notice is reasonable. There is a sufficient degree of internal and external comparability on the subject to support the Union's offer. The Arbitrator finds the Union's proposal to be the preferable one.

LAYOFF NOTICE, ARTICLE 16, SECTION 8

The Union proposes that the Employer give employees a two week notice of termination. The Employer proposes no such provision.

Both of the Employer's Human Services bargaining units have this provision in their contracts. Seven of the external comparables require advance notice of lay off.

The Union points out that the employee is required to give notice of termination of employment and it is only reasonable for the Employer to give a prior notice of lay off to an employee.

There is a sufficient degree of internal and external comparability to support the Union proposal and the Arbitrator finds its proposal to be preferable.

PROMOTIONAL LANGUAGE

The Union proposes that the salary of an employee promoted to a higher pay grade shall be adjusted to that step in the higher salary grade that grants the employee an increase in pay. The Employer has not submitted any contractual language in regard to this. The Employer argues that the Union's proposal is essentially the Employer's policy in regard to the wage placement relative to promotions and this is not an issue in dispute. The Union argues that this is a matter of enforcement. If it's language is included in the Collective Bargaining Agreement, it can be enforced by the Union through the grievance procedure. The Union's proposal is supported by a majority of the external comparables and it is logical to include language in the Collective Bargaining Agreement that will permit the Union to have a method of enforcing what the Employer claims to be it's policy by utilizing the grievance procedure. The Union proposal is preferable.

ADJUSTMENTS IN PAY GRADE - JUDICIAL ASSISTANT

The Union exhibits addressed this request with a comparison of the judicial assistant to attorney legal positions. Only 5 of the external comparables have both positions. Of those 5 counties, only one pays the legal secretary more than the judicial assistant. Two of the 5 counties pay the positions at the same rate and 2 of the counties actually pay the judicial assistant more than the legal secretary. The wage comparables show that in Monroe county the legal secretary position is paid above the comparable rates. The Monroe County judicial assistants perform duties that are at least comparable to the positions of a District Attorney legal secretary and a Corporation Counsel secretary, who are both paid at grade 5 whereas the judicial assistant is paid at grade 4. The duties and qualifications required of the judicial assistant are at least similar and probably greater than those of the Corporation Counsel secretary and the District Attorney secretary. The Employer argues that it's proposal is preferable because it was crafted by an objective compensation professional and argues that the Union's proposal is based upon the evaluations of employees who have no compensation background, casting about for higher positions, for which to compare themselves. The two Monroe county Judges both support the position of the judicial assistants and they have first-hand knowledge of the significance of the role of the judicial assistants and how they have the responsibility of keeping the courts operating and moving along at a pace required to keep the judicial process moving. The responsibility of the judicial assistants is greater and more demanding than that of the Corporation Counsel secretary and the District Attorney secretary. Accordingly the Arbitrator finds the position of the Union to be preferable.

ADJUSTMENTS IN PAYGRADE, PAYROLL CLERK/BOOKKEEPER

The Union actually contacted the comparable counties to determine the comparable positions. When there was more than one position performing duties comparable to the Monroe County payroll clerk, the Union presented a combined rate. The Union exhibit shows that the requested rate would place the Monroe County payroll clerk/bookkeeper close to the average of the comparables. A review of the 2002 rates for the comparables indicates that the average of the comparable group was \$13.03 and the Employer's offer was \$13.64. Contrasting the Employer's offer of \$13.64 is much closer to the average of the comparable group than the Union's proposal of \$14.45. The Employer's final offer is much more reasonable in this situation.

The Highway payroll clerk/bookkeeper's position was reviewed following the implementation of the new salary plan and was determined to be appropriately classified. Accordingly, the Arbitrator finds that the Employer's proposal is closer to the position of the comparables than that of the Union. The Union's proposal would place the Monroe County Highway Clerk bookkeeper \$1.42 per hour above that of the comparables, while the Employer's proposal would still be at least \$.61 over the average. The Arbitrator finds that the Employer's final offer is more reasonable in this situation.

ADJUSTMENTS IN PAYGRADE, CLERK OF COURT'S OFFICE ASSISTANT

The Union argues that the Employer's offer shows that this position is \$1.00 per hour behind the average of the comparables. It points out that if its offer was selected the position would still be below the average of the comparables by \$.31 per hour. Evidence indicates that the current occupant of the position is deputized and the Employer's position is that the positions the Union deems comparable are paid at one grade higher than the Union request for the office assistant. The Union takes the position that there is justification for its request to upgrade the position of office assistant as a recognition of deputizing, although the work may not require the same responsibilities the Deputy Clerk position requires in other jurisdictions in the comparable group. The Employer evidence indicates that all other employees in the Clerk of Court's office are deputized and it only has one deputy Clerk of Court and she is not the office assistant. The Employer contends that only the Buffalo County, Jackson County, LaCrosse County and Wood County have positions comparable to those of Monroe County. The four positions that the Employer finds comparable to

that of the Union are Buffalo, Jackson, LaCrosse and Wood. Those positions have an average salary of \$12.44 per hour. The Union would propose that Monroe County pay that position \$12.89 per hour while the Employer would propose \$12.20 per hour. The Office assistant is a basic entry level clerical position. The fact that the office assistant is deputized has no particular significance because all of the employees in the Clerk of Court's office are deputized. The Employer has one Deputy Clerk of Court and it is not the office assistant. The Deputy Clerk of Court in Crawford, Jackson, LaCrosse, Richland, Sauk, Trempealeau and Wood counties are not comparable to that of Monroe County. The office assistant is a basic entry level clerical position and the Arbitrator finds no justification for re-classifying it.

RESIDENT SERVICES CO-ORDINATOR

When the Bjorklund study was done, Medicare work was deleted from the consideration of part of the job. However, the evidence indicates that Resident service continues to do Medicare work, which had previously been done by a registered nurse. A review of the job descriptions of the Resident Service Co-Ordinator indicates that the duties of the position are clerical in nature. The current pay grade established is appropriate for the position. Occasionally filling in as a backup for a higher grade position does not warrant a reclassification. The existing labor agreement proposal in Article 21, Section 6 provides that if an employee works in a higher rated job in excess of 60 calendar days the employee shall receive the rate of pay of the higher rated job retroactive to the first day of the assignment. That provision precludes the Employer from having an employee work for any length of time without receiving the regular rate of pay for the duties being performed. According ly the Arbitrator finds the Employer's position preferable.

SUMMARY OF OVERALL CONCLUSIONS

A review of the conclusions of the Arbitrator with respect to the individual issues herein shows that the Employer's offer, attached hereto and marked Exhibit B, was considered more comparable or more reasonable in the matters of donation of vacations, bumping for hours reduction, reclassification of Payroll Clerk, Clerk of Court Assistant and Residential Services Coordinator.

The Union's proposal, attached hereto and marked Exhibit A, was found to be more comparable or reasonable in the matters of hours of work, compensatory time, vacancy notice, layoff notice, promotional language and reclassifications of the Judicial Assistants.

In giving weight to the various issues required by the statutes, there are no factors placing limitation on expenditures by the Employer. However there is need to give weight to the economic impact of the offer. The Employer argues that it should not have to meet the higher costs of the Union proposal.

A review of the findings indicates that the evidence is clear that the Employer's position would have less of a financial impact than that of the Union. For 2003-2004 upgrading of four of the five positions would have a financial impact of \$14,297.88 for wages alone. The Office Assistant requests a reclassification from Grade 2 to Grade 3 would have a financial impact of the Employer of \$3,033.92. The total cost of those adjustment would equal \$17,342.80 in wages alone. Adjustments for wage related benefits of Wisconsin Retirement, Social Security, Workers Compensation and the total price for reclassification makes \$20,560.63. The Arbitrator finds this a high price to pay when the evidence indicates that only the Judicial Assistants should be reclassified.

The Arbitrator had not heard about the Law of Continued Arbitrability referred to by the Employer in its brief but he is satisfied that the Union's position on hours of work, compensatory time, vacancy notices, layoff notices and promotional language have little financial impact on the Employer and probably should have been bargained out by the parties in exchange for some of the issues that do have financial impact, but the parties failed to do that. The Union's position on these issues would have made the contract easier to enforce and would have had very little financial impact on the Employer, but when the cost of the reclassification is tacked on the cost is too great during a period when the Governor is urging Municipal Employers to hold the line on their budgets. \$20,560.63 is not an overwhelming amount of money in a case like this, and had the evidence justified the reclassifications, the Arbitrator would probably have selected the Union's proposal. But it did not.

Accordingly the above facts and discussion here on supports the position of the Employer and Arbitrator issues the following AWARD.

The proposal of the Employer, attached here to and marked Exhibit B best meets the criteria required by Section 111.70(4)(cm).

Dated October 6, 2003

Zel S. Rice II, Arbitrator

MONROE COUNTY COURTHOUSE EMPLOYEES, LOCAL 138, AFSCME, AFL-CIO

Union's Amended Final Offer

1. Article 8, Section 1. The standard workday shall consist of eight (8) hours, 8:00 A.M. to 4:30 P.M., except for a one-half (1/2) hour unpaid lunch period. As circumstances may warrant, the County may implement needed modifications of this schedule. The standard workweek shall consist of five (5) workdays, Monday through Friday, inclusive. An employee may request a modification to the standard workday and/or workweek. Said request shall be subject to supervisory approval. There shall be no split shifts.

2. Article 8, Section 2. All hours worked outside the standard workweek shall be paid at one and one-half (1 1/2) times the employee's regular rate of pay or its equivalent in time off, up to 40.5 hours, which represents 27 hours actually worked, at the discretion of the supervisor. Overtime shall be measured in quarter (1/4) hour increments. No overtime is authorized unless requested by the supervisor. Overtime performed without approval shall not be subject to the pay or time-off provisions of this Section. For purposes of this Article, paid time off shall be considered as time worked. All overtime or compensatory time must be administered within the guidelines of the Fair Labor Standards Act.

3. Article 9, Section 2. To be eligible for holiday pay, the employee must work the day before and the day after the holiday, unless regularly scheduled off on either day. For purposes of this Section, time off for sick leave, vacation, or emergency leave shall be considered as time worked. Holidays falling during an employee's vacation shall be taken as an extra day of vacation at the start or end of said vacation at the discretion of the Supervisor. For purposes of this Section, a combination of time worked and compensatory time equaling eight (8) hours shall be counted as a day worked.

4. Article 12 - Vacations - Add "Section 6. Employees may donate up to forty (40) hours of accumulated vacation time to a Monroe County employee who has a serious health condition as defined by the Family and Medical Leave Act."

5. Article 16, Section 2. - Add - "Employees who are given a written notification of an hours reduction shall have the right to exercise the bumping procedure as set forth in this section."

6. Article 16, Section 3 - Amend to - "Whenever it becomes necessary to employ additional workers, former-qualified employees who have been laid off for lack of work, a lack of funds, the discontinuance of a position, or the downgrading of a position, within one (1) year prior thereto, shall be entitled to be reemployed in such vacancy or new position for which he/she may qualify, following the posting procedure as outlined in Article 17. The County shall notify all laid-off employees of bargaining unit position openings."

7. Article 16, Section 8. Employees must be given a two (2) week notice of any type of layoff as stated in Section 2. The notice shall be sent by certified mail with a return receipt. The employee must notify the employer in writing within two (2) weeks of the date of the receipt of the employer's notification to the employee of the layoff as to his/her intention to bump.

8. Article 18 – Insurance

- a. \$30 office visit copay.
- b. \$50 emergency room copay.
- c. \$10/15/30 Gundersen Lutheran HMO and \$10/20/30 Health Tradition HMO prescription drug copays.
- d. No other health insurance changes.

9. Article 25 – Duration – 1/1/03 – 12/31/04.

10. Add to wage schedules - "The salary of an employee promoted to a higher pay grade shall be adjusted to that step in the higher salary grade that grants, to the employee, an increase in pay."

11. Classification Adjustments:

- 1. Judicial Asst. (2) – 4 to 5
- 2. Payroll Clerk/Bookkeeper – 4 to 5
- 3. Clerk of Court – Office Assistant – 2 to 3
- 4. Resident Services Coordinator – 4 to 5

12. Wage Schedules – Modified as follows:

- a. Change grade 1 Police Receptionist to grade 3 Police Administrative Secretary, effective January 1, 2003.
- b. Add grade 7 Maintenance Technician, effective January 1, 2003.

13. Wages – Effective 1/1/03 – 2% increase ATB.
 Effective 8/1/03 – 2% increase ATB.
 Effective 1/1/04 – 2% increase ATB.
 Effective 8/1/04 – 2% increase ATB.

14. Provisions retroactive to 1/1/03.

15. All provisions not addressed in the Union's Final Offer to remain as in the 2001- 2002 collective bargaining agreement between the parties.

16. Continue Memorandums of Agreement currently in effect through December 31, 2004.

Dated this 17th day of April, 2003.

On Behalf of the Monroe County Courthouse Employees:

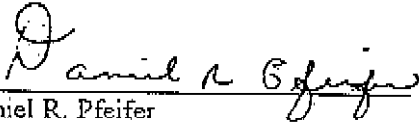

Daniel R. Pfeifer
Staff Representative

EXHIBIT "B"

MONROE COUNTY FINAL OFFER
to
COURTHOUSE UNION EMPLOYEES

April 4, 2003

1. HEALTH INSURANCE as agreed by other AFSCME unions:
 - a) \$30 office visit copay
 - b) \$50 emergency room copay
 - c) \$10/15/30 Gundersen Lutheran HMO and \$10/20/30 Health Tradition HMO prescription drug copays
2. WAGE INCREASES as agreed by other AFSCME unions:
 - a) 2% 1/1/03
 - b) 2% 8/1/03
 - c) 2% 1/1/04
 - d) 2% 8/1/04
3. WAGE SCHEDULES modified as follows:
 - a) change grade 1 Police Receptionist to grade 3 Police Administrative Secretary/Receptionist effective January 1, 2003
 - b) add grade 7 Maintenance Technician effective January 1, 2003
4. DURATION as two-year agreement, retroactive to January 1, 2003, and extending through December 31, 2004
5. CONTINUE Memorandums of Agreement currently in effect through December 31, 2004

Ken Kittleson
Personnel Director
Revised 4/4/03