STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration between	
CITY OF ONALASKA	
and	Case No. 47 No. 65701 INT/ARB-10678 [Dec.No.31736-A]
SEIU LOCAL 150	

APPEARANCES:

O'Flaherty Heim Egan LTD by **Dawn Marie Harris**, appearing on behalf of the City of Onalaska, Wisconsin.

Prievant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, SC, by **Marianne Goldstein Robbins**, appearing on behalf of the Service Employees International Union and its Local 150.

JURISDICTION:

On July 25, 2006, the Wisconsin Employment Relations Commission, pursuant to Section 111.70 (4)(cm) (6) and (7) of the Municipal Employment Relations Act, appointed the undersigned to serve as the arbitrator in a dispute between the City of Onalaska, hereinafter referred to as the Employer or the City, and Service Employees International Union, Local 150, hereinafter referred to as the Union. A hearing was held in Onalaska, Wisconsin on October 25, 2006. At that time, the parties, both present, were given full opportunity to present oral and written evidence and to make relevant argument. Post hearing briefs and reply briefs were filed in this dispute, the last of which was received by the Arbitrator on November 14, 2006.

THE ISSUE:

The issue in dispute concerns the City's proposed changed in the collective bargaining agreement's disciplinary language. The City seeks to delete Sections 24.1, 24.2 and 24.3 from

Article 24 of the 2004-05 collective bargaining agreement in the successor 2006-07 contract while the Union proposes the status quo.

The 2004-05 language is as follows:

> Section 24.1 Any and all written reprimands and/or memos of reprimands for all disciplinary actions less than suspension shall be removed from the employee's personnel file two (2) years after the date of the reprimand.
>
> Section 24.2 Any and all other disciplinary actions shall cease to have any force and effect and shall be removed from the employee's personnel file three (3) years after the date of the disciplinary action.
>
> Section 24.3 It is the intention of the parties that any memorandum, notation or disciplinary action hereby removed from an employee's file shall not be used in any future disciplinary action.

The parties reached agreement on two other issues in dispute in the final offers and have entered into a stipulation regarding them and all other tentative agreements. Consequently, the other issues identified within the final offers (wages and street foreman pay) will not be considered in this decision.

STATUTORY CRITERIA:

Wis. Stats. 111.70 (4) (cm) (7) directs the Arbitrator to consider the factors cited there in deciding this dispute. Accordingly, this arbitration award will be rendered after considering these factors and the evidence and arguments advanced by the parties as it relates to these factors.

POSITIONS OF THE PARTIES AND DISCUSSION:

The City maintains that the statutory criteria most relevant to this dispute include the economic conditions of the municipality, the internal and external comparison of the wages, hours and conditions of employment of municipal employees involved in the arbitration with the wages, hours and conditions of employment of employees performing similar services and the overall compensation presently received by the municipal employees. The Union, also citing statutory criteria, asserts that factors 7 and 7g do not apply in this case since the City has presented no evidence that it cannot meet the Union's offer because of statutory or regulatory limitations and because the only disputed issue has "no necessary or quantifiable expenditure attached to it." Instead, it argues that external comparables are the most important consideration in this case.

External Comparables: The parties have been to arbitration twice before, once in 1991 and again in 2003. In both instances, the arbitrator identified Altoona, Baraboo, Chippewa Falls, Menomonie, Sparta, Tomah and Plover as appropriate external comparables and both parties have accepted these cities as appropriate comparables in this dispute. In addition, the Union provided information on Portage since it was identified by the 2003 arbitrator as an appropriate city in a secondary pool of comparables and since it appeared in the City's list of comparables in 1991. The City, however, urges that Portage not be considered as an appropriate external comparable stating that it's a Union attempt to "skew the analysis".

Discussion: Since the parties do not disagree in this dispute on which cities constitute the primary external comparables, the seven cities identified as comparables by both previous arbitrators will remain the appropriate set of comparables in this dispute. Further, since five of the seven cities identified as primary comparables have already settled their contracts for 2006-07 and since this dispute involves contract language rather than economic issues, the information available for these comparables is sufficient and there is no need to look beyond the primary comparables.

THE PARTIES' POSITIONS ON THE DISCIPLINARY LANGUAGE ISSUE:

The City states that it is ironic that the Union who has always argued that internal comparables are most significant when wage increases have been considered does not now wish to be held equally accountable as to performance and efficiency. It continues that the Union should not be allowed to retain language in its contract that protects poor performance and gives the Union a right that no other internal bargaining unit and/or non-union personnel has. Finally, it asserts that there is "no economic support" for this Union to be granted a pay increase comparable to that granted the other bargaining units while it refuses to take on "equal accountability".

The Union, however, maintains that the City "cannot claim support for its proposal from internal comparisons." Continuing, it states that the three other City agreements are with employees who are governed by statutory provisions and who cannot negotiate the type of language in question. Further, it states that the City's other comparison is with non-represented employees, a group whose benefits are generally considered less persuasive by arbitrators since these employees have no opportunity to negotiate the terms and benefits of their employment.

Addressing the external comparability factor, the City, citing each of the cities, states that none of the comparables have language as protective as that which this unit has and that only

Baraboo and Menomonie have language requiring removal of disciplinary documents. Further, it declares that when wage rates together with this benefit are considered, the evidence shows it has the "right to demand that the employees that work for them . . . should be held to performance standards and performance accountability."

While the Union believes the City must show a need for the proposed change, it also addresses comparability and declares that the external comparables do not support the City's position. Further, comparing contract language among the eight cities it considers comparable, it concludes that four of the eight have language similar to that which the City seeks to remove.

Continuing, the City rejects any Union argument that the City must offer a *quid pro quo* if it wishes to have the language deleted. As support for its position it argues that its proposal to remove this language has no "quantifiable benefit" and that it should not have to provide the Union with the same wage increase all other internal "union" comparables who do not have the right to expunge personnel documents received.

The Union, however, argues that the City has not met any of the prerequisites for proposing a change in contract language – a compelling justification for the change; a significant and unanticipated problem, that its proposed change reasonably addresses a problem or that the proposed change is accompanied by an appropriate *quid pro quo*. As support for its position, the Union declares that the City has failed to identify any problem with the existing provisions and that concomitant with that failure it has been unable to show how removing these provisions will address the problem.

In addition to arguing that the City has the burden to establish the need for a change, the Union asserts that the City must provide a *quid pro quo* even if it establishes the need for a change. Continuing, it states that the City has done neither and, therefore, its proposal should be rejected.

Finally, the City addresses the cost of the entire package and asserts that its proposal should be granted in light of its current economic constraints. Continuing, it states that because it has granted the Union a wage increase that is greater than the cost-of-living increases and more than many private sector employees receive its employees should be held accountable.

In this respect, the Union declares that the economic package the City provided is similar to the packages provided by the comparables and, therefore, it has no relevance to the language issue. Continuing, it reviews the wages granted; longevity pay; health insurance benefits and vacation and

sick leave benefits and concludes that the benefit packages among the comparables are similar and does not alter the fact that the City has presented no evidence to support its proposed change.

DISCUSSION AND CONCLUSIONS:

In this dispute, the City seeks a change in the status quo with respect to language contained in Article XXIV of the parties collective bargaining agreement by proposing to eliminate three provisions in this article. The three provisions that it proposes to eliminate relate to the length of time the City may keep written reprimands and/or memos of reprimands for all disciplinary actions in an employee's personnel file and establish that the parties intend that any document so removed shall not be used in any future disciplinary against the employee. In order to prevail, as most Wisconsin interest arbitrators have concluded, the City must show that the language creates a significant and unanticipated problem; that its proposed elimination of the language will solve the problem, and that it has proposed an appropriate *quid pro quo*.[1]

In this dispute, the City has failed to meet any of the above-identified prerequisites. Instead, it has solely argued that since this bargaining unit has benefits similar to or better than employees in its other bargaining units and since its wage and benefit increases are comparable to the wage and benefit increases of the employees in these other bargaining units, it should not have language in its contract that grants it a benefit the other employees with the City do not have. While this argument could be persuasive if the Union were just now proposing this language, it is not not persuasive since the language existed in the previous collective bargaining agreement and was granted by the City in the give and take of earlier negotiations.

There is also no reason to grant the City's proposal based upon a comparison of internal and external comparables and upon a review of the overall compensation package. While the City argues that similar language and/or protection does not exist in the other collective bargaining agreements of the other bargaining units, it is noted that each of those units falls within the category of units whose disciplinary actions are governed by State statute. Consequently, any provisions negotiated into those contracts must conform with the limitations set forth by the statutes. Further, there is nothing in the external comparables which indicates the existing language is out of line with

[1] See *Unified Community Services of Grant and Iowa Counties*, Dec. No. 3 30621-A (Petrie 4/3/04), *City of Monona*, Dec. No. 30991-A (Kossoff 12/16/04), *Adams County*, Dec. No. 25479-A (Reynolds 11/22/88), *Wisconsin Indianhead technical College*, Dec. No. 29510-A (Malamud 2/03/00).

the types of language negotiated by other employees performing similar work in similar communities.[2]

There is also nothing in the review of the total compensaton package which indicates this Union has benefited to any greated extent than have other employees within the City. While the City has stated its proposal should be awarded given its economic limitations, it claimed no inability to pay and it showed no economic contraints which be imposed by retaining the existing language. Without such a showing these factors carry no weight in determining the reasonableness of the City's proposal.

AWARD

Having considered the statutory criteria set forth in Wis. Stats. 111.70(4) (cm) (7) and, particularly, that cited by the parties; having considered the arguments and evidence advanced by both parties, and having reached the above findings, it is determined that the final offer of the Union, together with the stipulations of the parties and those terms of the predecessor collective bargaining agreement which remained unchanged thoughout the course of bargaining shall be incorporated into the 2006-07 collective bargaining agreement.

Dated December 16, 2006 at La Crosse, Wisconsin.

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Sharon K. Imes, Arbitrator

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[2] Similar language exists in the collective bargaining agreements of similar employees performing similar work in the cities of Baraboo and Menomonie and all of the cities agreements contain a just cause standard which subjects retention of and reliance upon such documents in future disciplinary actions to the judgment of grievance arbitrators.