BEFORE THE ARBITRATOR

In the Matter of Interest Arbitration Between

ONEIDA COUNTY HIGHWAY EMPLOYEES
AFSCME LOCAL79 Case 181 No. 66768 INT/ARB 10904
Milo G. Flaten, Arbitrator
And Decision No. 32366-A

ONEIDA COUNTY, WISCONSIN

ARBITRATOR'S DECISION AND AWARD

Scope and Background

This arbitration arises over a dispute between the Oneida County Highway Employees led by their bargaining agent, AFSCME Local Number 79, (hereafter referred to as "the Union") and Oneida County, Wisconsin, their employer. (For purpose of brevity, Oneida County will be termed only as "the Employer" in the rest of this document.) The dispute involves an important benefit of their collective bargaining contract, that of the health insurance for retired employees. The benefit is important as the employment contract which binds both of these parties in their entire job relationship has some provisions which could go as far into the future as the year 2013.

For the record, the Union has proposed in its offer an increase in the contractual clothing/boot allowance. But this issue was not addressed at the arbitration hearing and exhibits and claims were not sworn to.

When the parties were unable to resolve their differences between themselves, the Union filed a petition for arbitration with the Wisconsin Employment Relations Commission as it is

authorized to do under the Wisconsin Municipal Employment Relations Act. The Commission then sent a member of its staff to conduct an investigation in the spring of 2007. The Commission investigator confirmed that the parties were indeed deadlocked in their negotiations. By this time it was the end of January, 2008 so the Commission ordered the parties to submit to it their respective final offers and sent them the names of a panel of arbitrators from which Milo G. Flaten of Madison, Wisconsin was selected to hear and decide the case.

After phoning and corresponding with the arbitrator, a hearing was held in Rhinelander, Wisconsin on June 9. 2008. Appearing for the Union was Dennis O'Brien, Staff Representative, and for the Employer, was Attorney John J. Prentice of Simandl and Murray, S. C., Waukesha, Wisconsin.

The Facts

The Employer is a municipal corporation, a governmental entity located in Rhinelander, Wisconsin. The Union represents the 28 employees employed in the Employer's Highway Department.

The instant subject concerns the continuation of the retiree health benefits paid by the Employer for employees who retire after 2008. Employees in the Employer's County are authorized to retire at age 55 and 92% of the Union members would qualify if they continue their employment to fulfill eligibility requirements. In order to earn Retiree Health Insurance, an employee currently must have worked 20 continuous years in addition to being at least 55 years of age.

With regard to highway workers' pay, the parties have agreed to a wage increase of 3% on the first of January, 2007 and to another 3% increase on the first of January, 2008.

The Final Offers

The final offer of the Employer would eliminate health care benefits to Union employees who have retired. It admits that the loss of this benefit would be painful. The Union's final offer opposes the change in the benefit, which has been a part of the contract for 10 years.

In order to soften the impact, the Employer in its final offer would continue to pay the benefit to current retirees and employees who retire this year (2008). After that, individuals who retire would be paid contributions in diminishing amounts to a personnel entity called a Health Reimbursement Account. The first contribution would be $5,000 for workers who retire in the year 2009. These payments would diminish by $1,000 each year until 2013 when the payments would end.

Both sides state in their final offers that it "reserves the right to add to, modify or delete these proposals".

In a later final offer, the Employer "sweetens the pot" and similarly offers contributions to an employee's health reimbursement account in diminishing amounts just like before. But in the amended final offer, the payments would start at $10,000 for employees who retire in the year 2009 instead of $5,000. The amendment would have diminishing contributions of $2,000 per year (instead of $1,000 per year) until 2013.

While the Union correctly objects that such an alteration in a final offer is impermissible, it does not state the reason for its objection other than to declare that the document "should be given no consideration".

In this regard, "final offer" arbitration procedure forces the parties on each side to analyze their positions in order to adopt a more reasonable stance before the arbitrator. By its

objection the Union apparently feels the Employer's improved final offer is a sort-of linchpin to the latter's case. Its objection to even including it for consideration causes the Union to state that it is "disturbing" and "very troubling".

While it does not state the grounds for its objection, the Union apparently feels the Employer's revised offer might be decided to be reasonable by an outside observer. The Union cites three Wisconsin cases as bases for its objection but doesn't explicitly explain its reasons other than to declare emphatically that amending a certified final offer is impermissible. On the other hand, the Employer feels that because it has increased its offer to other county employees who are represented by the same person, the amended final offer should also apply to the highway workers local.

As stated above, the law does not permit changes in a final offer once it is certified. The arbitrator has no jurisdiction, and therefore no authority to permit the Employer to amend its final offer, which has been previously submitted to the WERC.

Statutory Criteria

Since Under Wisconsin law arbitrators are directed to follow and consider certain criteria or factors in making any decision, this observer should give an accounting of his consideration of this factor or factors. The law orders an arbitrator to give "greatest weight" in his or her decision to "any state law or directive which places limitations on expenditures" by a municipal employer.

The statutory criteria also orders an arbitrator to give significant weight to other listed criteria. This observer, as directed, has considered and applied "given weight" to all of those statutory criteria.

Discussion

It is noted that no other Union working for the Employer has agreed to accept the discontinuation of its health insurance benefits for retirees. Furthermore, a comparison with the other counties which the parties have agreed are similar to the instant county employer, shows none of them has contracted to a benefit reduction such as that sought by the Employer.

An inspection of this observer's decisions over the year will reveal a reluctance to break a pattern of settlements with other work forces employed by the same employer. Close association with fellow employees, friends, and even neighbors could involve more intimate discussions of comparisons of benefits between local Unions. A marked deviation of benefits between work forces of municipal employees often leads to bitterness and unhealthy attitudes. In this case, this observer has that same reluctance to break a settlement pattern. The Employer wants the Highway Department employees to lead all the workers in the Employer's county in abandoning a benefit that has been in place for 10 years.

It should be noted that the retiree health insurance benefit of the contract is not simply bestowed on an employee upon retirement. There are several conditions, which must be met before eligibility is gained. Namely, an employee must have worked for a minimum of 20 continuous years and be eligible for a Wisconsin Retirement System pension in addition to attaining the age of 55 years.

With regard to the proposed Health Reimbursement Account (HRA), the record shows that this proposal has been made and rejected at bargaining conferences previously held by the parties. A litigant in a labor dispute should not be awarded something through arbitration which that litigant was unable to achieve through bargaining. "It is generally well settled that changes

are best made at the bargaining table than through interest arbitration" (Oconto County Highway, Dec. No. 29084 supported by Oconto County Courthouse, Dec. No 29085).

Decision

Since the record shows there is no other union of the Employer's County which has accepted or agreed to the significant change contained in the Employer's final offer and similarly, neither have the counties used by the parties as external comparables, this observer can see no reason for making the Union be a pioneer to accept the benefit reduction contained in the Employer's final offer.

Award

That the final offer of Oneida County Highway AFSCME Local 79 is selected and its terms shall be included in the upcoming contract.

Dated October 21, 2008

Milo G. Flaten, Arbitrator