

EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Petition of :
 :
Local 366 Affiliated with Milwaukee District :
Council 48, AFSCME, AFL-CIO :
 :
To Initiate Arbitration Between Said Petitioner and: :
 :
Milwaukee Metropolitan Sewerage District : Case 338
 : No. 69991
 : INT/ARB-11580

Appearances: Sweet and Associates, LLC by Mr. Mark A. Sweet, for the Union
Mr. William Halsey, Attorney, for the Employer _____

By its Order of September 2, 2010 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator “to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act,” to resolve the impasse between the above-captioned parties “...by selecting either the total final offer of the [Union] or the total final offer of the [District].

A hearing was held at Milwaukee, Wisconsin on December 14, 2010. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. Both parties submitted briefs and the District submitted a reply brief. The record was completed on February 24, 2011 with notification by the Union that it would not submit a reply brief.

In December, 2006 the Union filed a unit clarification petition with the Wisconsin Employment Relations Commission. Subsequently, the parties reached a stipulation whereby nine classifications were accreted to the bargaining unit. The parties then entered into negotiations in an attempt to agree upon the terms and conditions which would apply to the incumbents of those positions. They reached agreement with respect to some, but not all, of them. They reached agreement on the wage schedule which will apply to new hires in two of the classifications [Real Estate Coordinator; Sales and Marketing Representative], but they are at impasse over the wage rates which will apply to the incumbents in those classifications. With respect to the third classification [Technical Services Coordinator], they are at impasse over the wage schedule which will apply to new hires, and they are at impasse over the wage rate which will apply to the incumbent in that position.

The Union then petitioned for interest arbitration. The parties’ final offers are as follows:

Wages of Incumbents

(A) Technical Services Coordinator

The incumbent's salary is \$ 55,436.26 which would fall between steps 5 and 6 of the Union's proposed schedule, and would be higher than step 6 of the District's proposed schedule.

The Union proposes to keep the incumbent at her current pay for one year, from 3/1/10 -3/1/11 "and then move to the top step (Step 6) of the Union's wage schedule for this classification on March 1, 2011." By keeping her at her current pay level, the Union argues, this protects the status quo "as it relates to the wages of employees newly accreted into the bargaining unit."

The District has used a job evaluation system for non-represented and management employees for several years. It argues that if this unit clarification proceeding and subsequent accretions to the bargaining unit had not occurred, it would have applied the results of this system to the Technical Services Coordinator. It argues that if the Union's final offer is selected, "the salary of the Technical Services Coordinator will be approximately 7.5% above the salary maximum supported by the job evaluation system. That disparity will in all likelihood continue to grow through the course of negotiations. The District has proposed allowing this employee to remain at \$ 55,436.26 until the proposed new hire maximum of \$ 52,734 exceeds \$ 55,436.26 through negotiations." This, the District argues, "is a far more reasonable approach than the Union's proposal which would permanently allow the salary for this position to exceed the results of the job evaluation system." The District argues that "the mere fact that it was determined that those positions were eligible for inclusion in the Union should not negate the action to bring those salaries in line with other District salaries, as well as other public and private employees performing comparable duties."

The Union argues that during their negotiations the District did not provide its job evaluation system either to the Union or to the affected employees, and the first time the Union saw it was at the interest arbitration hearing. It argues further that even if the job evaluation is considered, it "... does not provide a compelling need, or even an explanation for why the District's wage freezes must be applied to the newly accreted employees."

It is the arbitrator's view that unless the District can show compelling reasons to red circle the incumbent's pay rate, the incumbent should simply be placed into the negotiated wage scale and then benefit thereafter from whatever is negotiated by the Union. Until the accretion to the bargaining unit occurred, the District unilaterally determined the incumbent's compensation, since she was a non-represented employee. Presumably, she was being paid at what the District viewed as an appropriate rate. The record demonstrates that the District has implemented its job evaluation system in the past for its non-represented and management employees. Prior to the accretion of the incumbent's position to the unit, the District had not seen fit to freeze her wages, even though the District indicates now that it would have done so had not the bargaining unit accretion occurred.

The District put into evidence the description of the job evaluation system on which it relies. The arbitrator does not view that evidence as sufficient or persuasive, particularly because the District did not freeze the incumbents' wages, as it now argues should be the case, when it had the chance to do so. Moreover, what the District put into evidence was the document which describes the job evaluation system, and the evaluator's conclusion about how the position should be placed in relation to other positions. The District did not document the basis on which the evaluator reached the conclusion about where the incumbent's wage should be placed, either in relationship to other bargaining unit employees or in relationship to employees doing similar work in other jurisdictions.

In the arbitrator's opinion, the addition of the incumbent's position to the bargaining unit is not in and of itself a reason to freeze her wages, and there has been no persuasive reason given for doing so. If in fact there is justification for freezing her wages, this is something which can be addressed by the parties in the next round of negotiations.

(B) Real Estate Coordinator and (C) Sales & Marketing Representative

The District would red circle the rate of the incumbents until the newly negotiated wage schedule catches up to their rate. The Union would grandfather them, and thus keep them at their present rate subject then to the negotiated wage increases in the future.

In negotiations the Union agreed to the District's need to have a lower wage schedule for new hires into these positions. The parties did not agree about how the incumbents' wages relate to those schedules. The District argues that by agreeing to those schedules the Union agreed to the reasonableness of the District's job evaluation system in determining how new employees should be paid. Even if that is the case, the arbitrator does not assume that the Union also agreed to the fairness and reasonableness of applying the job evaluation results to the incumbents.

The arbitrator's analysis of these positions is the same as discussed above for the incumbent in the Technical Services Coordinator position. The District has not

demonstrated a compelling reason to red circle the incumbents' pay rates, and thus they should simply be placed into the negotiated wage scale. Until the accretion to the bargaining unit occurred, the District unilaterally determined their compensation, since they were non-represented employees. Presumably, they were being paid at what the District viewed as an appropriate rate. Prior to the accretion of the incumbents position to the unit, the District had not seen fit to freeze their wages, even though the District indicates now that it would have done so had not the bargaining unit accretion occurred.

In conclusion, with respect to the matter of pay to the three incumbents whose wage placement is in dispute, the arbitrator favors the Union's final offer. He is not persuaded that the District has demonstrated why the incumbents should not be allowed to maintain their current salaries and then be subject to the parties' subsequent bargaining regarding their future placement on the schedule. The District did not freeze their salaries when it could have done so. Moreover, the District has not demonstrated persuasively that comparisons with other District employees show the necessity of such a measure, nor has it presented data to show that the incumbents' wages are out of line with wages of employees doing similar work in other jurisdictions.

Technical Services Coordinator Wage Schedule

There remains the issue of which wage schedule should be put into place for new hires in the Technical Services Coordinator position. At the first step the Union's final offer is some \$ 8,000 higher than the District's final offer. The offers differ at each of the next five steps and at the highest step, step 6, the Union's final offer exceeds the District's final offer by about \$ 4,000.

The Union proposes the same schedule which the parties have agreed will be in place for the Real Estate Coordinator and the Sales & Marketing Representative. However, the Union did not present evidence which would demonstrate what it is about the Technical Services Coordinator position which warrants the same pay as is given to these other positions. The Union argues further that its final offer with respect to the two Coordinator positions [Technical Services Coordinator and Real Estate Coordinator] is similar to the pay received by the District's other Coordinator positions.

The District argues that the wage schedule should not be set simply based on the title given to the job. It notes that there are significant differences with respect to the requirements to hold the positions, and that the Technical Services Coordinator requires only a high school degree while the Facilities Information Coordinator requires a bachelors degree, and the Real Estate Coordinator and Project Coordinator require job related associate degrees. It argues further that the Laboratory Services Coordinator position has the pay that it does, even though requiring only a high school degree,

because the supervisor of the individual in that position succeeded in getting that position upgraded without following Human Resources policies and procedures.

The District argues also, as mentioned above, that by agreeing to the District's proposed wage schedule for the Real Estate Coordinator and the Sales and Marketing Representative, the Union has demonstrated the reasonableness of the job evaluation study on which those wage schedules were based, and that therefore the wage schedule resulting from the job evaluation system for the Technical Services Coordinator should also be viewed as reasonable. The arbitrator is not persuaded by the argument that the Union views the job evaluation system as reasonable as it applies to the wage schedule for Technical Services Coordinator. The fact that the Union agreed to the wage schedule for two of the disputed positions does not compel a conclusion that the Union should also find the third (and much lower) wage schedule to be appropriate. The District did not demonstrate why the Technical Services Coordinator wage schedule should be set as shown in its final offer, except to cite the result of the job evaluation study. Since the Union did not have access to the job evaluation study or its results during negotiations, the Union should not now be viewed as having accepted the reasonableness of its conclusions.

The arbitrator does not find either party's arguments supporting its final offer to be particularly persuasive. The District has not demonstrated why the lower wage schedule is more appropriate, except to say that it was the result of the job evaluation study. Even if the arbitrator were to agree with the District's arguments, the District has not demonstrated why its proposed wage schedule is more appropriate, except for the obvious fact that it is less expensive than what the Union proposes. By the same token, the Union has not demonstrated why its more expensive proposed wage schedule is more appropriate, except to the extent that the data show that whether viewed at the first step or at the top step, the Union's proposed wage schedule for the Technical Services Coordinator is much closer to the schedules for the five other Coordinator positions than is the District's proposed wage schedule.

The parties submitted the wage schedules for the other classifications in the bargaining unit, but neither party analyzed those data in arguing in favor of its own final offer. The arbitrator has looked at the data, and has concluded that they do not clearly support one party's final offer more than the other and particularly since he has no basis in the record for determining how, in terms of job content, the Technical Services Coordinator's wage schedule should be viewed in relation to the other classifications .

In making his decision the arbitrator is required to give consideration to the statutory factors and to select one party's final offer in its entirety. In their presentations both parties have focused their arguments on just one of the factors: "other factors," described further below. The arbitrator does not disagree with their assessment that "other factors" is the statutory factor which is the most meaningful one in this proceeding. Conversely, neither party has demonstrated that the application of any of the other statutory factors provides a basis for supporting one final offer more than the other. These factors are: the greatest weight factor, which considers "any state law or directive lawfully issued by a state legislative or administrative officer, body or agency

which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer”; the greater weight factor which considers “economic conditions in the jurisdiction of the municipal employer”; the lawful authority of the municipal employer; stipulations of the parties; the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement; comparisons of wages, hour and conditions of employment with those of other employees performing similar services, and with other employees generally in public employment in the same community and in comparable communities, and with employees in private employment in the same community and in comparable communities; the cost of living; the overall compensation presently received by [these] municipal employees; and changes in any of the foregoing circumstances during the pendency of the arbitration.

As indicated above, the only statutory factor which the arbitrator as well as the parties view as having particular relevance to the present dispute is “such other factors...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining....arbitration or otherwise between the parties...”

Consideration of this factor leads the arbitrator to conclude that continuing the wages which the incumbents were receiving before their positions were accreted to the bargaining unit, and then having their wages determined by subsequent negotiations, is a fairer outcome than red circling their wages without a persuasive basis for doing so. It is also the arbitrator’s conclusion that the issue of the incumbents’ wages should be given greater weight in this proceeding than the issue of which wage schedule should be implemented for the Technical Services Coordinator where neither side has provided compelling nor persuasive evidence to support the implementation of its final offer over the other party’s final offer with respect to that issue.

It is the arbitrator’s decision that the Union’s final offer should be selected.

Dated this 4th day of March, 2011 at Madison, Wisconsin

Edward B. Krinsky
Arbitrator

July 7, 2010
 District Council 48, AFSCME, AFL-CIO and its affiliated Local 366
 Preliminary Final Offer
 to
 MMSD regarding accreted employees (March 1, 2010)

Position: Technical Services Coordinator
 Union's offer:

Annual	47634.00	49449.60	51265.20	53080.80	54896.40	56712.00
Bi-weekly	1832.08	1901.91	1971.74	2041.57	2111.40	2181.23

The current incumbent (Longrie) shall remain at her current rate of pay of \$55,436.26 until 3/1/11. At that time she shall move to the proposed 6th step.

Position: Real Estate Coordinator
 Union offer:

Annual	47634.00	49449.60	51265.20	53080.80	54896.40	56712.00
Bi-weekly	1832.08	1901.91	1971.74	2041.57	2111.40	2181.23

The Union agrees with MMSD's proposed wage schedule for new hires. However, the Union proposal is to "grandfather" the current incumbent. In other words - no red circle of the incumbent.

Position: Sales & Marketing Representative
 Union offer:

Annual	47634.00	49449.60	51265.20	53080.80	54896.40	56712.00
Bi-weekly	1832.08	1901.91	1971.74	2041.57	2111.40	2181.23

The Union agrees with MMSD's proposed wage schedule for new hires. However, the Union proposal is to "grandfather" the current incumbent. In other words - no red circle of the incumbent.

All executed tentative agreements (included) shall be incorporated into the Agreement.

All other terms and conditions of the MMSD/AFSCME, Local 366 5/1/09 - 4/30/12 contract shall apply.

Union offer
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July 29, 2010

Final Offer
of
Milwaukee Metropolitan Sewerage District
to
District Council 48, AFSCME, Local 366

Position: Technical Services Coordinator

MMSD's offer:

(new hires)

\$39,576.00	\$42,228.00	\$44,778.00	\$47,430.00	\$50,082.00	\$52,734.00
\$1,522.15	\$1,624.15	\$1,722.23	\$1,824.23	\$1,926.23	\$2,028.23
• Red circle current incumbent					

Position: Real Estate Coordinator

MMSD's offer:

(new hires)

\$47,634.00	\$49,449.60	\$51,265.20	\$53,080.80	\$54,896.40	\$56,712.00
\$1,832.08	\$1,901.91	\$1,971.74	\$2,041.57	\$2,111.40	\$2,181.23
• Red circle current incumbent					

Position: Sales & Marketing Representative

MMSD's offer:

(new hires)

\$47,634.00	\$49,449.60	\$51,265.20	\$53,080.80	\$54,896.40	\$56,712.00
\$1,832.08	\$1,901.91	\$1,971.74	\$2,041.57	\$2,111.40	\$2,181.23
• Red circle current incumbent					

All executed tentative agreements (Included) shall be incorporated into the Agreement.

All other terms and conditions of the MMSD/AFSCME, Local 366 May 1, 2009 – April 30, 2012 contract shall apply.