STATE OF WISCONSIN

ARBITRATION AWARD

In the Matter of the Stipulation to Initiate Mediation-Arbitration between CITY OF BELOIT and LOCAL 2537, WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO	Case XXXIX No. 22474 MED/ARB-10 Decision No. 16085-A

Appearances:

Mr. Daniel T. Kelley, City Attorney, and Mr. L. C. Tyler, Jr., Personnel Director, appearing on behalf of the City of Beloit.

Mr. Darold O. Lowe, District Representative, Wisconsin Council of County and Municipal Employees, appearing on behalf of Local 2537.

ARBITRATION AWARD:

On February 14, 1978, the undersigned was appointed Mediator-Arbitrator, pursuant to Section 111.70 (4)(cm) 6. b. of the Municipal Employment Relations Act, in the matter of a dispute existing between the City of Beloit, referred to herein as the Employer, and Local 2537, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, referred to herein as the Union. Pursuant to the statutory responsibilities the undersigned conducted a mediation meeting between the Employer and the Union on March 20, 1978, and during the course of the mediation the undersigned proposed a recommended settlement to the Union and to the Employer to dispose of the matter in dispute. On March 23, 1978, the Employer advised that the recommendation for settlement was unacceptable to the City Council of the Employer, and that they wished to proceed to arbitration in the matter. On March 29, 1978, the Union advised their acceptance of the recommended settlement. Also, on March 29, 1978, the undersigned provided written notice to the parties that pursuant to Wisconsin Statutes 111.70 (4)(cm) 6. c. the parties had until April 2, 1978, to advise the opposing party, the Mediator-Arbitrator, and the Wisconsin Employment Relations Commission, that they desired to withdraw their final offer. Neither party withdrew their final offer, and pursuant to notice that the arbitration phase of the proceedings were to commence, hearing was conducted on April 6, 1978, at Beloit, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence, and to make relevant argument. No transcript of the proceedings of April 6, 1978 was made; however, the proceedings were tape recorded. Arrangements were made at hearing for filing briefs and reply briefs. Briefs were timely received from both parties postmarked April 21, 1978. Arrangements for reply briefs were made, which were due April 28, 1978; however, no reply briefs were timely filed by either party.

THE ISSUES:

There are two issues at impasse between the parties. The final positions of the parties are set forth below with respect to said issues:

EMPLOYER FINAL OFFER:

The final offer of the City of Beloit is for an overall wage increase of 6%, and with a total increase for wages, insurance, holidays and roll-ups of 9.34%.

UNION FINAL OFFER:

1. Add to Article VII: Employees will receive five (5) weeks vacation each calendar year in which they complete twenty-three (23) years of continuous service.

2. Wages will be increased by 6.5% or 32¢ per hour, whichever is greater.

DISCUSSION:

STATUTORY CRITERIA

The criteria to be applied by the Arbitrator is found at Wisconsin Statutes 111.70 (4)(cm) 7 as follows:

7. "Factors considered." In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

e. The average consumer prices for goods and services, commonly known as the cost-of-living.

f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h. 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.

Evidence adduced at hearing and argument submitted by the parties were all directed to criteria 7 d. and 7 e. Additionally, the City specifically stipulated at hearing that it was not raising an issue with respect to criteria found at 7 c., the financial ability of the unit of government to meet the costs of any proposed settlement. Since the parties have focused on the statutory criteria found at 7 d. and 7 e. the undersigned will consider these criteria in arriving at his decision.

At hearing the parties were unable to agree as to what constituted comparable communities for comparative purposes. The Union submitted evidence which included comparisons among the following Wisconsin cities: LaCrosse, Fond du Lac, Oshkosh, Eau Claire, Sheboygan, Beloit, Wauwatosa, Janesville, Waukesha and Brookfield. The Employer took exception to the inclusion of Wauwatosa, Waukesha and Brookfield in the list of comparable communities, but stipulated that Oshkosh, Janesville, Sheboygan, LaCrosse, Eau Claire, Fond du Lac and Beloit were comparable. The Employer based his objection to the inclusion of Wauwatosa, Waukesha and Brookfield on the fact that they are in the metropolitan area of the City of Milwaukee and, therefore, distinguishable from other small and medium size cities throughout the State of Wisconsin. The undersigned agrees with the Employer that it would be improper to consider Wauwatosa, Waukesha and Brookfield in the list of comparable communities because they are part of the metropolitan area of Milwaukee. It

follows, then, that in considering the comparability of the offers at issue here, the undersigned will not make comparisons with the aforementioned cities of Wauwatosa, Waukesha and Brookfield.

The Employer further objected to the wage information submitted by the Union, because there was no testimony that the wage data submitted were for the same duties and same services as those performed by the employees involved in the instant dispute. The undersigned rejects the Employer argument in this regard. While no job descriptions were entered into evidence which would show the specific duties contained in the classifications of employees of the Employer and those of the classifications submitted in evidence by the Union, the undersigned is persuaded that the job titles of Clerk/Typist I, Library Assistant I, Clerk/Typist II, Account Clerk, Engineering Aide II, and Building Inspector are sufficiently descriptive so as to establish the comparability of the positions based on the job title. The Titles themselves are common and the duties ascribed to the titles are not subject to sufficient variance so as to create doubt in the mind of the undersigned that the duties are not comparable as contemplated in the statute. The undersigned, therefore, accepts the evidence submitted by the Union with respect to comparable positions.

Having established the criteria which will be given consideration in this decision, the undersigned will proceed to review each of the items in dispute separately.

VACATIONS:

The Union has proposed in its final offer that a fifth week of vacation be granted to employees in the year they complete their 23rd year of continuous service. The Employer has made no offer for a fifth week of vacation. The Union bases its position on vacation on evidence which shows that employees in the cities of Oshkosh, LaCrosse, Eau Claire, received twenty-five days vacation after twenty years, and employees of the City of Janesville receive five weeks of vacation after twenty-two years. The Union further points to the Department of Public Works of the City of Beloit, which provides a fifth week of vacation in the twenty-third year.

The Employer points to the evidence which shows that employees involved in the instant dispute receive two, three and four weeks of vacation at earlier dates than the employees of the communities which show a fifth week of vacation as submitted by the Union. The undersigned agrees with the Employer that the evidence clearly shows that the first four weeks of vacation earned by the employees involved in this matter are paid earlier than the first four weeks of vacation of employees in comparable cities and of employees in the Department of Public Works for the City of Beloit. Since the parties have elected to bargain a preferred status for vacation purposes to the instant employees when compared with the Department of Public Works in the City of Beloit and the employees of other comparable municipalities, the undersigned concludes that the Employer's offer on vacations is the more reasonable.

WAGES:

The Employer has offered a 6% increase, while the Union has offered a 6 1/2% increase, with a minimum guarantee of 32¢ per hour, if the 6 1/2% does not generate 32¢. The undersigned will first consider the respective percentage increase proposed by the parties without regard to the floor of 32¢ per hour, which the Union proposes.

The undersigned has considered the cost of living criteria, both for the present year, as well as the accumulated data since 1967 which the parties put in evidence. It is clear to the undersigned from the evidence that the offer of neither party is out of touch with the realities of cost of living. Consequently, the cost of living criteria in the statute is not determinative of which offer is to be preferred. The evidence shows, however, that the Public Works employees in the employ of the City of Beloit have received a 6.5% increase pursuant to their Agreement effective January 1, 1978. The evidence also shows that fire fighters in the employ of the City of Beloit, pursuant to their Collective Bargaining Agreement, received a 6.6% increase effective January 1, 1978. Based on the foregoing evidence, which shows other negotiated agreements provide a 6.5% and 6.6% increase to employees of the City, the undersigned can only conclude that the 6.5% increase contained in the last offer of the Union is the more reasonable.

Having concluded that the 6.5% increase proposed by the Union is the more reasonable it remains to be decided whether the guaranteed increase of 32¢ per hour to those employees for whom 6.5% would not provide 32¢ per hour should be adopted. The undersigned notes, and is mindful, that the difference between the wage offer of the Employer and the wage offer of the Union (without roll-ups) is 2.42%. .5% is attributable to the difference in the percentage increase proposed by the parties, and 1.92% is generated as a result of the proposal of the 32¢ floor on the part of the Union. The evidence further shows that the dollar difference between the positions of the parties (excluding roll-up) totals $21,624.00 Of this amount $4,465.25 is attributable to the difference between 6 and 6 1/2%, and the balance of $17,158.75 is attributable to the 32¢ floor proposed by the Union. While the floor proposed by the Union provides for the lion's share of the differences between the parties from a cost point of view; and while the significant cost spread attributable to the floor is sizeable; the undersigned will not reject the Union's proposal solely because of its cost impact. The Union's proposal of the 32¢ floor is made to bring lower paid employees into line for comparable work performed for comparable employers. If the evidence supports the Union contention that the additional adjustment is merited, the undersigned will adopt the Union position. A scrutiny of the comparables is essential to determine the dispute. The undersigned will consider in the comparison only those positions with a maximum rate of $5.00 per hour or less in this comparison, because it is at the level less than $5.00 at which the floor of 32¢ per hour has any effect. The table set forth below reflects the comparison of the Union proposal and the Employer proposal compared to comparable employers for comparable positions.

	Clerk/ Typist I	Library Asst. I	Clerk/ Typist II	Account Clerk	Engineer Aide II
Employer Offer	3.55	3.82	4.35	4.61	5.30
Union Offer	3.67	3.92	4.42	4.67	5.32
Oshkosh	3.66	N/A	4.00	4.19	6.04
Janesville	4.16	3.49	4.58	5.06	6.77
Sheboygan	3.89	4.16	4.35	5.21	6.73
LaCrosse		1978 data not furnished			
Eau Claire	3.64	3.60	4.22	5.25	5.71
Fond du Lac					
to 7/1/78	4.04	4.04	4.42	4.42	5.76
after 7/1/78	4.14	4.14	4.52	4.52	5.86

N/A - data not furnished

The foregoing table was constructed from evidence submitted by the Union in its Exhibit #12. The positions compared are occupied by 28 employees of the Employer out of 104 employees in the unit. (From Employer Exhibit #4) These 28 employees represent 26.9% of all employees in the unit, and represent 34.6% of the 81 employees whose rate currently if $5.00 per hour or less to whom the 32¢ per hour floor applies. This Arbitrator is satisfied that position comparisons which contain 34% of the employees in question is a valid basis on which to determine the preferred offer because the positions compared appear to fall within those positions that are common to the wage appendices of the labor agreements submitted into evidence; and, further constitute bench mark jobs of sufficient size as to make a valid comparison.

The table set forth above clearly shows that if the Employer position were adopted the Clerk/Typist I position would be 9¢ per hour lower than any of the comparable employers for this position. If the Union's offer were accepted the Clerk/Typist I rate would be 1¢ and 3¢ higher than Oshkosh and Eau Claire respectively, but would still be 49¢ per hour lower than Janesville, the closest comparable community to the Employer.

The Clerk/Typist II position shows the Employer offer to be superior to rates for two communities; the same as one community; and lower than two communities. The Union offer exceeds the rate for Clerk/Typist II in three communities, and is lower than two communities.

The Library Assistant I position shows the Employer offer to be higher than two communities and lower than two communities. The Union offer for this position has the same effect as the Employer's as far as ranking with the other communities is concerned.

The Account-Clerk position shows the Employer offer higher than rates in two communities, and lower than rates in three communities, as does the Union offer.

Lastly, the Engineering Aide II position shows both the Employer and Union offer placing this position well behind all the comparable communities listed.

Since the comparison shows that the Employer offer for those positions that would be affected by the 32¢ floor still leaves the Clerk/Typist I and Engineering Aide II positions significantly behind the comparable employers in rates of pay for these jobs; and since the Union offer for the positions of Library Assistant I, Clerk/Typist II, and Account Clerk would not significantly alter the comparative ranking that the Employer offer would establish; the undersigned views the Union offer to more nearly establish equity of pay for comparable positions when compared with comparable employers. It would follow, then, that the 6 1/2% offer with the 32¢ floor as proposed by the Union is the preferable wage offer.

The Employer has pointed to the size of the prior settlement with this Union in support of his position. The undersigned is cognizant that the prior settlement provided a significant wage increase to the employees represented by the Union in this matter. However, having found that the 32¢ floor is necessary to bring the lower paid employees into line with comparable employers for comparable work, the undersigned concludes that to deny the employees this increase would not be equitable.

The Employer has also argued that the size of the health insurance increase in prior years added significant cost to those settlements. The undersigned agrees that the health insurance increases have been costly to the Employer, however, it is noted that all other employees of the Employer participated in the same health insurance benefits and had received higher wage increases in some of the past years than the employees involved in the instant dispute. The undersigned, therefore, rejects the Employer argument with respect to the cost of health insurance.

CONCLUSIONS:

The undersigned has determined that the vacation proposal of the Employer is the more reasonable, and the wage offer of the Union is preferred. In considering the two items, the undersigned gives greater weight to the dispute over wages than to the dispute over vacation, and it would, therefore, follow that considering the total offers the final offer of the Union is preferred.

AWARD

Based upon the statutory criteria, the evidence submitted at hearing, the arguments of the parties, and for the reasons state in the discussion above, the Arbitrator determines that the final offer of the Union be incorporated into the Collective Bargaining Agreement for the year 1978.

Dated at Fond du Lac, Wisconsin, this 25th day of May, 1978.

Jos. B. Kerkman /s/
Jos. B. Kerkman,
Mediator/Arbitrator

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