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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
CITY OF MILWAUKEE)
)
And)
)
TECHNICIANS, ENGINEERS &)
ARCHITECTS OF MILWAUKEE)
(TEAM))
_____)

CASE NO. CCII 24840
MED/ARB 463
Decision No. 17152-A

Impartial Mediator/Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, Wisconsin 53185

Hearing Held

October 31, 1979
November 2, 1979
City Hall
Milwaukee, Wisconsin

Appearances

For the Employer

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For the Union

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Milwaukee and the Technicians, Engineers and Architects of Milwaukee (TEAM).

The prior labor agreement between the parties was effective for the two year period ending December 31, 1978. After independent negotiations between the parties had failed to result in agreement, the matter was unsuccessfully mediated by a member of the staff of the Wisconsin Employment Relations Commission on January 2 and March 15, 1979, and the parties submitted their respective final offers.

On June 14, 1979, the Employer filed a petition with the Commission alleging that an impasse existed within the meaning of the Wisconsin Statutes, and requesting mediation-arbitration pursuant to the provisions of Section 111.70(4)(cm) 6 of the Municipal Employment Relations Act; on July 25, 1979, the Commission issued the appropriate Findings of Fact, Conclusions of Law, Certification of Results of Investigation and an Order Requiring Mediation-Arbitration of the matter. On August 9, 1979, the Commission issued an order appointing the undersigned to act as mediator-arbitrator in the dispute.

A preliminary meeting took place between representatives of the parties and the Mediator-Arbitrator on September 17, 1979, after which formal mediation took place on October 10, 1979. Pursuant to the provisions of the Wisconsin Statutes, the Mediator-Arbitrator determined that a reasonable period of mediation had taken place and that it was appropriate to proceed to final and binding arbitration of the matter; a written notification of these determinations was served on each of the parties on October 10, 1979, and a copy of the document was mailed to the Commission.

The interest arbitration hearing took place on October 31, 1979 and November 2, 1979, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions, and both parties reserved the right to submit post-hearing briefs. Following the receipt of the transcript of the mediation-arbitration proceedings, the Employer and the Union submitted post-hearing briefs which were simultaneously distributed to the parties by the Arbitrator on April 3, 1980. The Union submitted a reply brief dated May 1, 1980, after the receipt of which the Arbitrator closed the hearing on May 5, 1980.

THE FINAL OFFERS OF THE PARTIES

The parties were in agreement that the new agreement would be effective January 1, 1979 through December 31, 1980; the final offers of each of the parties on the various impasse items are described below.

- (1) The Union proposed general wage increases of 7% effective January 1, 1979 and January 1, 1980; it also proposed that present multiple step pay ranges 620 through 630 be modified by the elimination of the bottom increment and the addition of an increment at the top effective January 1, 1979 and January 1, 1980.

The City proposed general wage increases of 6.6% effective January 1, 1979, and an additional 6.4% effective January 1, 1980; it proposed no changes in the structure of the pay ranges.

- (2) The Union proposed that employees serving as members of the TEAM bargaining committee be paid their normal base rate plus reasonable travel time for all hours spent in contract negotiations carried out during their regular working day; it also urged that, to the extent possible, negotiations should be carried out during non-working hours, and that such negotiations not be unnecessarily protracted.

The City Proposed no change in the prior policy which provides for the payment of up to a maximum total allowance of seventeen hours per year for time spent in negotiations.

- (3) The Union proposed the following reclassifications, reallocations or reslots:
- (a) That the two employees presently classified and paid within the Plan Examiner II classification, be reclassified and upgraded into either the Civil Engineer III Classification or into an appropriate Architect Classification;
 - (b) That movement into certain merit ranges in the salary structure be open to bargaining-unit employees on the basis of years of experience as an alternative to college credit; that three years of credit be sufficient for movement from one merit range into another; to also allow those employees attaining a P.E., an R.L.S. or a D.E. license from the State of Wisconsin to qualify for movement into the merit ranges.

The City offered no reclassifications, and proposed that that the implementation of wage changes within the merit steps be in accordance with the procedures stated in the parties' 1969-1970 agreement.

THE STATUTES

The merits of the dispute are governed by the provisions of the Wisconsin Statutes, which in Section 111.70(4)(cm) 7 direct the Mediator-Arbitrator to 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees 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 employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, and 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."

Two other sections of the Wisconsin Statutes were introduced into consideration by the parties.

- (1) Section 63.23 is entitled Classification of Offices, and provides in pertinent part as follows:

"(1) The city service commission shall classify all offices and positions in the city service excepting those subject to the exemptions of s. 63.27, according to the duties and responsibilities of each position. Classification shall be so arranged that all positions which in the judgment of the commission are substantially the same with respect to authority, responsibility and character of work are included in the same class. From time to time the commission may reclassify positions upon a proper showing that the position belongs to a different class."

- (2) Section 65.02 is entitled Definitions, and provides in pertinent part as follows:

"(9) Uniform Compensation Schedule.
The compensation schedule shall provide for and establish uniform rates of pay for offices and positions in the city service to be in effect for the ensuing fiscal year."

THE POSITION OF THE EMPLOYER

In support of its contention that its final offer was the more appropriate of the two before the Impartial Arbitrator, the City presented the following principal arguments:

- (1) It submitted that the requested reclassification and upgrade of the Plan Examiner II classification would be inappropriate for the following basic reasons:
- (a) That the requested change would be contrary to the provisions of Section 63.23 of the Wisconsin Statutes, which charges the City Service Commission with the responsibility of classifying positions and determining appropriately and uniformly, the compensation for positions of like value;
 - (b) That the demand would also contravene the provisions of Section 65.02(9) of the Statutes, which provides for uniform compensation schedules;
 - (c) It would place the employees at the same level as Civil Engineers III and Architects III, despite the lack of a professional degree or an equivalent level of expertise;
 - (d) That such a move would inappropriately disturb the historic relationship between the involved jobs.
- (2) That the request for payment for all hours utilized in the negotiations process by bargaining unit members of the negotiating committee is inappropriate, as each of the parties should bear the major and primary responsibility for conducting its own labor relations; that the current 17 hours of city paid time has been negotiated, bears a reasonable relationship to the size of the bargaining unit, and that no need has been shown for modifying the present practice

- (3) That the City's offer of a 6.6% increase in the first year and a 6.4% increase the second year is the more appropriate of the two proposals for the following basic reasons:
 - (a) It is simple, clear-cut, and has been the pattern in settlements reached with other Unions representing City employees; thus the comparability criterion favors the Employer's offer as far as internal comparisons are concerned;
 - (b) That the appropriateness of the City's wage offer is also indicated by external comparisons with other surveyed jurisdictions;
 - (c) That the low rate of turnover in the bargaining-unit supports the inference that salaries have been very fair in the past, and that the Employer has been able to hire replacements at the bottom of the 1978 ranges;
 - (d) That past movement in the Consumer Price Index has not accurately reflected the impact of inflation upon members of the bargaining unit; that bargaining unit employees have kept pace with inflation, when measured against a personal consumption expenditure deflator, which is a more accurate description of cost of living changes;
 - (e) That when the appropriate number of pay grades and the language of the job descriptions are considered, bargaining unit jobs are competitive with the pay rates shown in the BLS Municipal Compensation Survey;
 - (f) That the City's offer is consistent with appropriate Federal Guidelines, which the City is committed to follow.
- (4) That the Association's request for experience being substituted for college credit for merit range purposes, would be unsound, for the following major reasons:
 - (a) That such a change would amount to the unwise adoption and introduction of longevity steps;
 - (b) That it would reduce the incentive of employees to avail themselves of available educational opportunities;
 - (c) That the merit step changes would result in inappropriate inconsistencies with employees in other bargaining-units, and would distort normal relationships.
- (5) That in looking to the overall level of benefits, the City's employees currently enjoy superior pension benefits, average vacation benefits, average sick leave provisions, average holiday provisions, superior life insurance benefits, and a very good basic health care plan.

THE POSITION OF THE UNION

The Union submitted both general and specific arguments in support of its position with respect to the various impasse items. In general, it submitted that the appropriateness of its final offer was primarily supported by the statutory criteria of consumer prices/cost of living, comparisons, and changes in the cost of living during the pendency of the arbitration proceedings.

- (1) In connection with the payment for negotiations time issue, it presented the following basic contentions:
 - (a) That the old seventeen hours per year pay provision is unfair in light of the fact that it puts severe and unreasonable economic pressure on the TEAM negotiators, encourages stalling by the City, and is inconsistent with the situation whereby City negotiators are fully paid for all time spent in negotiations;
 - (b) That Sections 111.01, 111.04 and 111.06(1)(d) of the Wisconsin Statutes mandate bargaining, and that this bargaining should not be inhibited by financial strictures applying only to one side of the bargaining table;
 - (c) That the unfairness of the City's position is particularly apparent in situations involving small unions, which cannot afford a staff of negotiators;
 - (d) That the threat of cutting-off pay, raises a conflict of interest between the Union's negotiators and the members of the bargaining unit;
 - (e) That the comparison criterion favors the Union here, in that Milwaukee County has already eliminated a similar limitation;
 - (f) That the Employer has not enforced the limitation in the past, at least until the current case went to the mediation-arbitration step.

- (2) That TEAM'S requests, totalling 11.00% each year are reasonable and justified for the following primary reasons:
 - (a) That the cost of living has moved from 170.5 in November of 1976 to 232.5 in November, 1979, an increase of 36%; that the index increased to 240.8 in the next two months;
 - (b) That the two wage increases since January 1977 (ie 3.65% in 1977 and 3.85% in 1978), have resulted in members of the bargaining unit losing significant ground to inflation; that to keep pace, an increase of 24.13% would be required for 1979, and an even higher increase required for 1980;
 - (c) That the recent disparity between increases in the cost of living and wages, is so great as to far outweigh any margin of error attributable to imperfections in the C.P.I. data;
 - (d) That the comparison criterion favors the position of the Union, particularly with respect to the historic relationship between the Management groups in the Engineering Department and bargaining unit positions;
 - (e) That even the requested 11% per year in total pay increases would leave members of the bargaining unit at below the levels reported in BLS studies and below the levels recommended by the National Society of Professional Engineers;

- (f) That the Union's final offer is compatible with recent increases granted for comparable jobs in Milwaukee County;
 - (g) That the offer is compatible with the 10% per year award to the Milwaukee Police, which was rendered on October 3, 1979; that acceleration in the cost of living since that time justified an 11% per year figure as requested by the Union;
 - (h) That the Union's request for 11% increases is modest, necessary, and more than justified by today's economy
- (3) That the movement of the two current Plan Examiners II from pay range 623 to pay range 628 is justified for the following reasons:
- (a) That the work of the Plan Examiners entails review and approval of plans and designs prepared by engineers and architects, and that there is no valid basis for refusing to consolidate the classifications for payroll purposes with either the Civil Engineers or the Architects;
 - (b) That the WERC determined in January, 1970, that the PE II classification was a professional engineering position;
 - (c) That despite the fact that the Employer has been guilty of underfilling the job, the senior PE II has two engineering degrees.
- (4) That both state licensure and years of experience should qualify employees for the merit increments in pay ranges 620 and 623 for the following reasons:
- (a) Personnel hired before 1970 are already eligible by years of service or by having a specified number of college credits, while those hired after 1970 are only eligible if they have 120 credits, the equivalent of a bachelor's degree;
 - (b) Those who are licensed by the State of Wisconsin as Registered Land Surveyors (RLS), as Professional Engineers (PE) and/or as Design Engineers (DE) have substantial experience and have passed a state administered examination; since they are thereafter assigned to perform the same work as graduate engineers in specific fields, they should not be denied entry into the M steps;
 - (c) That graduates and non-graduates are presently receiving comparable pay with Technicians IV, V and VI at substantially the same rates as CE I, CE II and CE III, and that the top five increments in ET IV are identical with the CE I pay range;
 - (d) That perhaps the best indication of the inequity is the fact that ET IVs who are in the M steps of pay range 620 won't take the ET V examination because they couldn't qualify for the M steps in the higher range; if promoted, they would get less money for greater responsibilities.

FINDINGS AND CONCLUSIONS

Despite the fact that the Impartial Arbitrator is faced with the necessity of selecting one of the final offers of the parties in its entirety, for the sake of clarity, each of the impasse items will be separately discussed, prior to reaching a decision and rendering an award in this matter. These findings and conclusions will be organized along the following lines:

- (1) The general wage increase and the pay structure adjustment impasses;
- (2) The payment for bargaining time impasse;
- (3) The impasse relative to the reclassification and upgrading of the Plan Examiner II classification;
- (4) The impasse in connection with eligibility for entry into the merit ranges;
- (5) The various general arguments advanced by the parties.

The General Wage Increase and Structural Adjustment Impasses

The items of major impact and major importance to the parties in this arbitration proceeding are clearly the size of the general wage increase and whether or not to grant the structural adjustments requested by the Union. The major statutory criteria emphasized by the parties in connection with these impasse items were the cost of living criterion by the Union and the comparison criterion by the City.

The Union placed primary reliance in support of its demand for an approximate 11% per year increase in compensation, upon the significant recent increases in cost of living. Basically, the Union referenced and relied upon changes in the BLS Consumer Price Index for Urban Wage Earners and Clerical Workers for the City of Milwaukee. It emphasized changes in the index which had occurred since November 1976, which was the last time that the parties went to the bargaining table. The figures cited by the Union utilized a 1967 base period, and consisted primarily of the following:

November 1976 = 170.5;
November 1977 = 181.6 (+6.5%);
November 1978 = 200.7 (+10.5%);
November 1979 = 232.5 (+15.8%);
January 1980 = 240.8 (+3.57%).

The last figures shown above were actually published after the hearing in this matter, but were submitted by the Union in reliance upon the permissive language of Section 111.70, which directs arbitrators to consider changes in the criteria which occur during the pendency of the arbitration proceedings.

In looking to the recent CPI statistics referenced above, the Union submitted the persuasive argument that its wage increase demands were actually far less than would be reasonably required to keep pace with the rising rate of inflation. It cited the overall increase of approximately 41% in the short time period shown above.

In support of its argument that the members of the bargaining unit had reasonably kept pace with actual increase in living costs, the City submitted the argument that the CPI was not an accurate measurement of increases in cost of living. It presented extensive

testimony and evidence from Professor Maurice Weinrobe, whose qualifications as an economist and as an academician were a matter of stipulation by the parties. Dr. Weinrobe testified in favor of the generally accepted proposition that the CPI somewhat overstates the actual rate of increase in cost of living to the consumer, due to the fact that it does not measure changes in the expenditure patterns of consumers: 1./

"...it is not a cost of living index but rather that it is a market basket of goods and services being followed over time and that it is reasonable to expect that people will change their expenditure patterns over time and, therefore, it will not accurately measure their cost of living as it were."

The City submitted that a more accurate measurement of how bargaining unit employees have fared relative to inflation is offered by the use of the Personal Consumption Expenditure Deflator (PCE). Dr. Weinrobe testified to his conclusion that members of the bargaining unit had, over a period of several years, reasonably kept pace with movement in the PCE.

The Union's position relative to Dr. Weinrobe's testimony and evidence was the argument that the recent disparity between wage increases, and increases in the cost of living were so great as to outweigh any imperfections in the reporting of CPI information by the BLS.

In looking to the positions of the parties, it is quite apparent to the Arbitrator that the cost of living criterion strongly favors the position of the Union in this dispute. The importance of cost of living changes as a factor in wage and salary determination, will vary with the rate of changes in consumer prices; during periods of price stability, the factor is not of significant importance, while during periods of price volatility, the factor assumes critical importance. The evidence presented at the hearing supports the conclusion that we are in a period of rapidly rising prices and, accordingly, cost of living considerations are a major factor in substantially all contemporary labor negotiations and interest arbitrations.

While the Arbitrator agrees with the generally accepted proposition that the CPI is imperfect in several respects, and does actually overstate increases in cost of living, he must observe that it, rather than alternative indexes, is almost universally used for labor management relations purposes; in the words of one prominent author in the field: 2./

"Changes in the cost of living are measured by pricing a constant 'market basket' of goods and services at regular time intervals and by converting these prices into index numbers for aggregates (food, apparel, rent, etc.) as well as for all items combined. This statistical operation has been practiced for many years. Several agencies in the United States perform this function....If the disputes that reach arbitration are representative of bargaining generally, the BLS Consumers' Price Index for all practical purposes has crowded the others out of wage determination."

Despite the fact that the above referenced source is more than two decades old, nothing in the experience or research of this Arbitrator would tend to detract from the Author's conclusions. When the legislature drafted the various arbitral criteria specified in Section 111.70, it is reasonable to assume that they intended the parties to use the criteria normally applied in the settlement of labor management disputes generally.

Apart from the above, the evidence offered by the Employer was not persuasive with respect to the desirability of using the Consumer Price Deflator for Personal Consumption figures. The testimony of Dr. Weinrobe was equivocal with respect to the advisability of the use of the PCE for collective bargaining purposes: 3./

"Q Is the PCE, in your experience, used by any major industry in the determination of increases or decreases in wages to be paid pursuant to cost of living escalator clauses?

A As far as I know, there are none. I am afraid that there may be an attempt to introduce it into some contract and I would be utterly opposed to that."

Despite the statutory requirement that changes in the various criteria during the pendency of the arbitration proceedings be considered, the testimony of the witness also disregarded any consideration of the recent and current rate of inflation: 4./

"Q So that you're not in a position to tell us today... how this Union's compensation would stand relative to inflation for 1979 and 1980 as compared with the way it related to inflation in these past years?

A ...I'm not prepared to say anything about - - I guess we could chat about it, but I don't have anything in the way of expertise to offer on that subject."

It should also be noted that the evidence and the analysis of Dr. Weinrobe related to a period of time that included substantial data from prior to the parties' last contract negotiations that resulted in the 1977-1978 agreement. As referenced in the Union's post hearing brief, the normal base period used by arbitrators in applying cost of living consideration, is the effective date of the last collective agreement; this practice is described in the following extract from Bernstein: 5./

"...Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule: the base for computing cost of living adjustment shall be the effective date of the last contract (that is, the expiration date of the second last agreement).⁸ The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go behind such a date,' a transit board has noted, 'would of necessity require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded between.'⁹ This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost of living in their negotiations. Where the legislative history demonstrates that this issue was considered, the holding become so much the stronger."

As urged by the Union, the evidence at the hearing strongly supports the conclusion that the rate of increases in consumer prices as reflected in the BLS index was so large as to far outweigh any potential margin for error. As reflected in City Exhibit #23, for example, even when the various major contributing factors such as home purchases, home financing, taxes & insurance, fuels, gasoline and medical care were completely extracted from the CPI, the rate of inflation was still a significant figure; the exhibit shows a residual increase in consumer prices of 7.9% for the May 1978 to May 1979 time frame, even after the removal from the index of the above factors. When even this reduced figure for one year is compared to the last bargaining unit wage increases of 3.65% for 1977 and 3.85% for 1978, it is apparent to the Arbitrator that the employees have

not kept pace with inflation.

Also of significance in these proceedings from a cost of living criterion standpoint, is the fact that the employees in the bargaining unit have not received any wage increase at all, thus far, in 1979 or 1980. Even though the Employer has an offer on the table which guarantees minimum increases of 6.6% effective January 1, 1979, and an additional 6.4% on January 1, 1980, no implementation of these increases has been undertaken, despite requests by the Union. In a period of time marked by both high interest rates and a high rate of inflation, it must be recognized by the Arbitrator that the value of a 6.6% wage increase implemented in January 1979, would be considerably higher than the value of the same increase paid in mid-1980. If the money had been spent by an employee during the earlier time frame, it would have purchased more in the way of goods and services, and if the money had been saved, it could have drawn significant interest during the interim period.

For all the reasons outlined above, the Impartial Arbitrator has reached the preliminary conclusion that the final wage offer of the Union is strongly favored by consideration of the statutory cost of living criterion.

In connection with the comparison criterion, the City heavily relied upon internal comparisons within the City, citing a 1979-1980 pattern established in its bargaining with other unions representing other City employees; these settlements generally provided for either 6.6% or for 7% settlement the first year and for either 6.4% or for 7% settlements in the second year of the various two year agreements.

From an external comparison standpoint, the City offered survey data with respect to average percentage increases, average wages paid, and average dollar increases by various other governmental entities. (CX #35-#50) It additionally submitted data showing average salaries for various classifications, resulting from a National BLS Survey of Professional, Administrative, Technical and Clerical Classifications. (CX #71-#72)

In dealing with the comparison criterion, the Union submitted that the settlement with District Council #48 should not be a persuasive factor, due to the fact that there were practically no positions among the employees represented by District Council #48 which bear any significant relationship to the positions in the bargaining unit in this matter. On the other hand, the Union relied strongly upon a prior historic relationship between TEAM III positions and Management III level positions; it alleged that the relationship had been modified by the City as a result of the last settlement between the parties, and submitted that it should be restored by the selection of the Union's final offer. (UX #11) It additionally cited a similar erosion in the alleged historic relationship between TEAM IV positions and Management IV positions. (UX #12)

In moving to external comparisons, the Union submitted evidence tending to show that current TEAM wages were below those currently reported by the U.S. Department of Labor from the same BLS Survey of Professional, Administrative, Technical and Clerical Pay that was cited by the Employer. It also cited data from salary levels recommended by the National Society of Professional Engineers, which tended to show that its final offer was more appropriate than that of the City. (UX #7-#8, CX #72) Additional external comparisons were offered by the Union in connection with its reporting of wages paid by Milwaukee County for TEAM represented jobs alleged to be identical with those in the bargaining unit; these comparison data, submitted the Union, strongly support its final offer.

In applying the comparison criterion against the evidence and arguments advanced by the parties, the internal comparisons dealing with other settlements reached by the City in its negotiations with other Unions tends to strongly support the position of the City. There is no doubt that the final offer of the City is more compatible with its settlements reached within other bargaining units, than is the final offer of the Union. As was developed in the testimony at the hearing, however, certain reallocations and reclassifications agreed upon by the City in its negotiations with other Unions were not always highlighted in the evidence dealing with the cost of the settlement. (UX #21, pp 46-49)

The departure from the internal relationships that previously existed as between TEAM represented positions and Management III and Management IV positions in the City tends to support the position of the Union.

The external comparisons offered at the hearing, particularly those appearing in City Exhibit #72 do not definitively favor the position of either party due to the lack of satisfactory evidence in the record relative to the comparability of the jobs surveyed with those in the bargaining unit. The evidence with respect to Milwaukee County comparisons tends to support the position of the Union.

In further addressing the comparison criterion, the Union urged the Arbitrator to consider the recent decision in the City of Milwaukee Police arbitration, where the arbitrator selected the Union's final offer of 10% per year for a two year agreement; the City, on the other hand, urged the Arbitrator to follow the recent decisions of Arbitrators Rice and Kerkman, who selected the final offer of the City in interest disputes between the City and Local 494 of the IBEW and Local 61 of the Laborer's International Union. The decisions of these two distinguished arbitrators have been read with interest by the undersigned, who will preliminarily make the observation that the decisions of each arbitrator are limited to the evidence, the arguments and the final offers before him. There were, however, some significant distinctions between the two referenced cases, and the situation at hand:

- (1) Arbitrator Rice was dealing with a situation where other employees of the City were performing the same duties and using the same skills as others whose unions had already settled for the final offer of the Employer: 6./

".. Among the 2,840 employees represented by District Council 48 are a number of positions with the same duties and the same required skills as the employees involved in this proceeding.."

- (2) Arbitrator Kerkman was dealing with Union's demand for automatic cost of living escalation as the prime impasse item. In dicta relating to the 10% per year award in the Milwaukee Police Arbitration, the Arbitrator had the following observations: 7./

"Since the hearing in these matters were closed, and during the pendency of time in which the parties filed briefs, the police arbitration case came down with a 10% award on wages for police officers for both the first and second year of their agreement, and it could well be said that the police arbitration award had broken the pattern which was established through voluntary settlements, and the undersigned would be inclined to conclude so if the Union offer had approximated the percentage of increase awarded in the police arbitration. That, however, is not the

case here. The significant and principal difference is the cost of living provisions proposed by the Union in this matter. There is no cost of living provision awarded the police. If the Union offer here contained no cost of living provisions, and if the Union final offer had proposed a wage increase of 10% without cost of living, the Police award would be persuasive that a Union offer of 10% should be adopted. With the consistency of voluntary settlements at the 6.6% range without cost of living; and since the Police Award provides for no cost of living for that union the undersigned concludes that the wage offer of the Employer should be adopted.

SUMMARY AND CONCLUSIONS:

While a wage increase in excess of that offered by the Employer might well be justified in this dispute, in view of all of the evidence adduced at hearing, and particularly because of the inclusion of the cost of living proposed by the Union; and when considering the patterns of voluntary settlements, the undersigned concludes that the final offer of the Employer is to be adopted..."

Based upon the above discussion, the Impartial Arbitrator has reached the following preliminary conclusions with respect to the comparison criterion:

- (1) The internal comparisons as reflected in settlements reached in other bargaining units strongly favors the position of the City;
- (2) Internal comparisons dealing with the historic relationship between positions in the bargaining unit and certain other non-represented positions, tend to favor the position of the Union;
- (3) Recent arbitration awards are limited to the evidence, arguments and the final offers before the arbitrators, and do not definitively favor the position of either party;
- (4) The external comparisons, in general, lack the necessary definitive evidence of comparability, but those dealing with similar jobs in Milwaukee County tend to favor the position of the Union.

The Payment for Bargaining Time Impasse

This was not an impasse item upon which the parties spent a major amount of time in these proceedings, and the Impartial Arbitrator does not feel that the record strongly supports the position of either party.

As referenced in detail earlier, the Union cited the comparison criterion, referencing Milwaukee County practice in its TEAM contract, also referencing the past practice of the Employer, which would fall within the last, general criterion referenced in the Statute. It cited the arguments that good faith bargaining would be enhanced by payment for negotiations time by the Employer, that time spent in negotiations would be reduced, and/or that bargaining during non-work hours would be encouraged

The Employer presented the persuasive arguments that each party should be responsible for its own labor negotiations, also urging that seventeen hours was reasonable in light of the size of the bargaining-unit. It also urged that no persuasive evidence had been presented that would justify a change.

While the past practice of the Employer is persuasive evidence in support of the request for reducing the practice to writing, and would slightly favor the position of the Union, the Impartial Arbitrator is unable to ascribe critical importance to this item in the selection of the final offer of either of the parties.

The Impasse Relative to the Reclassification and Upgrading of the Plan Examiner II Position

In connection with this impasse item, the City objected to the Union's proposal on the basis of the provisions of Section 63.23 and Section 65.02 of the Wisconsin Statutes, which define the duties of the City Service Commission, and which describe a uniform compensation schedule. The City submitted that the City Service Commission had the statutory responsibility "...to classify the various positions under city service and to determine appropriately and uniformly the compensation for positions of like value.." 8./

The Union answered the above arguments in the following terms: 9./

"..it is not true that Chapter 63 of the statutes required that the City Service Commission determine 'uniform compensation'. The Commission does have the power to classify but we are not trying to get PE II's reclassified as architects or engineers, merely to place them in the same pay category because of their responsibilities and duties. If, indeed, the arbitrator is without jurisdiction to act, then this item is simply not properly before the arbitrator who could thus refrain from acting on it without requiring rejection of all other union proposals. In other words, if the matter is jurisdictional, it is severable."

In considering the positions of the parties with respect to this matter, it seems clear to the Impartial Arbitrator that the provisions of Section 63.23 do reserve to the Commission the responsibility to determine the classification of employees; the legislature has clearly provided that the groupings of job duties into classifications shall be based upon the judgment of the Commission as to similarity of authority, responsibility and character of work. The Impartial Arbitrator finds nothing in the provisions of Section 111.70 which contravenes the provisions of Section 63.23 and, accordingly, I find that I have no statutory authority to reclassify employees currently holding the Plan Examiner II classification into either the Civil Engineer III classification or into an equivalent Architect classification.

While the Union argued that the major thrust of its request is not to have the Plan Examiners reclassified, but rather to place them into a higher pay category, this purpose is not reflected in its final offer which provides in pertinent part as follows:

"..Plan Examiner II classification to be placed in C.E. III or Architects titles and pay ranges as requires;"

The provisions of Section 111.70 clearly provide that neither party can revise its final offer without the consent of the other party, and nothing in the Statute would suggest to the Arbitrator that he has unilateral authority to modify the final offer of either party to conform with its alleged intent. Since the request for reclassification of those holding the Plan Examiner II classification is inconsistent with the provisions of Section 63.23, the Arbitrator lacks authority to grant the request. Accordingly, the Impartial Arbitrator will disregard from further consideration the Union's reclassification request; it will not be weighed by the Arbitrator against the various remaining statutory criteria, and it will not contribute to the basis for the selection of the final offer of either party in this proceeding.

There is nothing in the definition contained in Section 65.02(9) of the Statutes, which would indicate that the determination of appropriate compensation for the various appropriately constituted classifications would lie outside the scope of the impasse items subject to the application of Section 111.70.

The Impasse in Connection with Eligibility for Entry
Into the Merit Ranges

In reviewing the arguments advanced by the two parties with respect to this impasse item, the Impartial Arbitrator finds that the Employer has supported its position on very persuasive theoretical grounds, while the Union has cited persuasive practical grounds in support of its final offer.

The Employer suggested that the substitution of experience or licensing, for college credit in merit range progression, would be unsound, citing the lack of logic in a longevity approach to wage progression. In addition, it suggested that a negative incentive to pursue education in subjects beyond the scope of the immediate job would result, thereby lowering skills and knowledge available for various future professional applications. The testimony of Mr. Logan on behalf of the City was persuasive in the above respects.

The Union, on the other hand, had various persuasive and practical points to offer in support of its request for a change in policy. One rather frequent criterion applied by negotiators of labor contracts is the concept of equal pay for equal work and this concept has particular application to this impasse item for the following reasons:

- (1) There is an inconsistency between current practice as between those hired before 1970 and those hired after this date; the latter can qualify only through college credit, while the former can do so through experience or college credit;
- (2) The evidence at the hearing supporting the finding that an employee licensed by the State of Wisconsin as either an RLS, a PE or a DE must meet significant requirements and, thereafter, must perform the same work to which graduate engineers are assigned, but is still denied progression within the M ranges.

The concept of equal pay for equal work has gained a wide following in the negotiation of collective agreements in the United States, and falls well within the general provisions of Section 111.70(4)(cm) 7; the Impartial Arbitrator has determined that this concept favors the position of the Union in this respect, despite the theoretical objections of the Employer.

The Various Remaining General Arguments Advanced by the Parties

The Employer introduced testimony and exhibits tending to show that it had provided its employees over a period of time with a relatively high overall level of wages and benefits, which is one of the statutory criterion referenced in Section 111.70. No challenge was offered to the data as offered by the Employer, and the Arbitrator has reached the preliminary conclusion that the application of this criterion tends to favor the position of the Employer in these proceedings.

The City also introduced uncontested evidence of a relatively low rate of turnover among employees in the bargaining unit; it submitted that such a record is inconsistent with any major shortcomings with respect to wages and benefits. These data were not contested by the Union, and the Arbitrator would agree that it should be given some consideration in these proceedings.

Also falling under the last, general statutory criterion referenced in Section 111.70 (4) (cm) 7, is the subject of Presidential wage-price guidelines. The Employer argued that it had committed itself to comply with the 7% per year maximum in wage and benefit increases, as provided for in the wage-price standards advanced by President Carter on October 24, 1978, and introduced into the record as City Exhibit #89.

In the above respect, the Arbitrator will merely mention that the wage-price guidelines have not been a major consideration in these proceedings, for the following basic reasons:

- (1) The standards have been modified substantially by the Council on Wage and Price Stability during these arbitration proceedings, with a substantial increase in the second year standards;
- (2) There are some provisions for catch-up for workers not enjoying the protection of automatic cost-of-living escalation;
- (3) There are exclusions for certain types of merit, qualification and length of service increases.

While the wage price guidelines have not been a major consideration in the selection of the final offer of either the City or the Union, the Arbitrator will also observe that they are not a factor that could necessitate the rejection of the final offer of either party.

Summary of Preliminary Conclusions

As outlined above, the Impartial Arbitrator has reached the preliminary conclusions summarized below:

- (1) The application of normal cost of living considerations strongly favors the final offer of the Union in these proceedings;
- (2) In considering the various comparison criteria, the internal comparisons with other bargaining units strongly favor the position of the City; certain internal historical comparisons favor the position of the Union; recent arbitration awards do not definitively support the position of either party; and external comparisons generally lack sufficient foundation to definitively favor the position of either party;
- (3) The position of the Union with respect to payment for bargaining time is slightly favored, primarily due to the past practice of the parties;
- (4) The Arbitrator, pursuant to Section 63.23 of the Wisconsin Statutes, lacks authority to reclassify the Plan Examiner II into either the Civil Engineer III or into an equivalent Architect classification;
- (5) The position of the Union with respect to progression into the M ranges is favored due primarily to the concept of equal pay for equal work;

- (6) The overall level of wages and benefits currently received by members of the bargaining unit favors the final offer of the Employer;
- (7) The low rate of turnover in the bargaining unit would tend to support the position of the Employer;
- (8) Federal Wage-Price guidelines cannot be assigned major consideration by the Arbitrator in the selection of the final offer of either party.

Selection of Final Offer

During the course of the proceedings, the Impartial Arbitrator has considered the various statutory criteria of Section 111.70(4)(cm)7, as discussed above. In light of the fact that neither party presented evidence of major arguments relating to the stipulations of the parties, the interests and welfare of the public and/or the ability to pay criteria, these factors were considered by the Arbitrator, but could not impact significantly upon the selection of the final offer of either party.

The Mediator-Arbitrator is frankly convinced that the final offer of the Union may be slightly too high, exceeding even the 10% per year awarded in the referenced Milwaukee Police Arbitration; the Arbitrator is also convinced, however, that the final offer of the City is significantly below what is justified by the application of the statutory criteria, particularly the cost of living considerations.

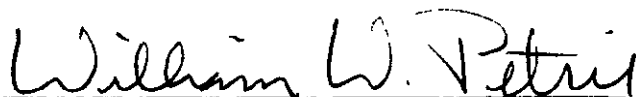
In consideration of the entire record before me, including the preliminary conclusions summarized above, it is apparent to the Impartial Arbitrator that the final offer of the Union is more appropriate. While certain of the statutory criteria favored the final offer of the Employer, the preponderance of major considerations favored the final offer of the Union, with the exception of the requested reclassification of the Plans Examiner II Classification, which was dismissed from further consideration as explained above.

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- 1./ Transcript II, page 12.
 - 2./ The Arbitration of Wages, Irving Bernstein, University of California Press, 1954, page 73.
 - 3./ Transcript II, Page 60.
 - 4./ Transcript II, Page 62.
 - 5./ Ibid, page 75. (Footnote 8 refers to San Diego Electric Railway, 11LA 458; Los Angeles Transit Lines, 11 LA 118; Bay Cities Transit, 11 LA 747; Public Service Coordinated Transport, 11 LA 1037; San Diego Gas and Electric, 12 LA 245. Footnote 9 refers to Public Service Coordinated Transport, 11 LA 1050.)
 - 6./ City of Milwaukee and IBEW Local 494, February 27, 1980, page 5.
 - 7./ City of Milwaukee and Laborers Local 61, January 31, 1980, pages 8-9.
 - 8./ City Brief, page 8.
 - 9./ Union Reply Brief, page 2.

AWARD

Based upon a careful consideration of all the evidence and argument, and pursuant to the various arbitral criteria provided in Section 111.70(4)(cm) 7 of the Wisconsin Statutes, it is the decision of the Impartial Mediator-Arbitrator that:

- (1) That portion of the Union's final offer requesting reclassification of the Plans Examiner II Classification into either the Civil Engineer III Classification or into an equivalent Architect Classification, is beyond the statutory authority of the Mediator-Arbitrator, and must be dismissed from further final offer consideration;
- (2) The remaining portion of the final offer of the Union is the more appropriate of the two final offers before the Mediator-Arbitrator;
- (3) Accordingly, the Union's final offer, herein incorporated by reference into this award, is ordered implemented by the parties.



WILLIAM W. PETRIE
Impartial Mediator-Arbitrator

June 8, 1980
Waterford, Wisconsin