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ARBITRATION DECISION

JUN 9 1980

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Mediation-
Arbitration Dispute Between

THE CITY OF APPLETON and

APPLETON CITY EMPLOYEES' UNION
(WASTE WATER DIVISION), LOCAL 73,
AFSCME, AFL-CIO

Case CXXIV
No. 25674
MED/ARB - 605
Decision No. 17618-A

Gordon Haferbecker
Mediator-Arbitrator
June 7, 1980

APPEARANCES:

For the City of Appleton: David F. Bill, Director of Personnel, City of Appleton

For the Union: LeNore J. Hamrick, Business Representative, Local 73, AFSCME, AFL-CIO

BACKGROUND

This is a mediation/arbitration dispute under Section 111.70(4)(cm) of the Wisconsin Statutes. The parties are the City of Appleton (Employer) and Appleton City Employees' Union (Waste Water Division), Local 73, AFSCME, AFL-CIO (Union). Local 73 is the exclusive bargaining representative for all City of Appleton Waste Water Treatment Plant employees excluding craft, confidential, supervisory, and professional employees.

Negotiations for a 1980 collective bargaining agreement commenced on December 4, 1979, with the exchange of initial proposals. Following three additional bargaining sessions, an impasse was declared by the parties.

On February 12, 1980, Amedeo Greco, a staff member from the Wisconsin Employment Relations Commission was unsuccessful in mediation efforts to achieve a voluntary settlement between the parties. Mr. Greco accepted a stipulation of the agreed upon items and final offers from the parties. A deadlock in the negotiations was certified by the Commission on February 27, 1980.

Gordon Haferbecker was selected as Mediator-Arbitrator from a list provided by the WERC. The Commission appointed him as Mediator-Arbitrator on March 13, 1980.

Mediation-arbitration proceedings were conducted by Mr. Haferbecker on April 23, 1980. Mediation failed to produce a settlement and the parties agreed to proceed directly to hearing. Mr. David F. Bill, Personnel Director for the City of Appleton, gave testimony and presented evidence for the Employer. LeNore J. Hamrick, Business Representative, presented evidence and testified on behalf of the Union. The Employer entered twenty-nine exhibits and the Union presented fifty-five exhibits.

At the hearing the parties reserved the right to make corrections and/or objections to the exhibits by May 2, 1980. The Employer submitted corrected copies of its exhibits numbered 16 through 27 and corrections to Union exhibits numbered 16 through 27. The Employer also submitted corrections to Union exhibits numbered 19 through 21 which the Union accepted except for two objections to the Employer's choice of comparables.

The parties agreed to submit written briefs to the Arbitrator postmarked no later than May 21, 1980. The briefs were received by the Arbitrator on May 22, 1980.

ISSUES

Two issues are involved in the final offers: wages and dental insurance.

The Union proposed a wage increase of 40¢ per hour effective 1/1/80 and an additional 20¢ per hour effective 7/1/80. The Union proposed an increase of up to \$20 per month toward single or family premiums for dental insurance (\$2.20 per month increase on single premiums and \$13.72 per month increase on family premiums).

The Employer proposed a wage increase of 52¢ per hour effective 1/1/80 and no change in the present dental insurance contribution of up to \$6.28 per month toward single or family premiums.

Union Exhibit 11 states the stipulations that were agreed upon by the parties prior to the final offer. The most significant of these was a provision for wage adjustments for the Liquid operators of 5¢ per hour on 1/1/80 and 4¢ per hour on 7/1/80.

The Union estimated the cost difference between the Employer and Union proposals at \$950 (actual) to \$1,003.72 (maximum) (Union Exhibit #20). The Employer, in its May 1, 1980 comment on the exhibits, estimated the total cost at \$1,364.72. The Union accepted this correction.

The parties organized their Briefs around the statutory standards for mediation-arbitration cases. The Arbitrator will use this approach in his analysis.

I. The lawful authority of the municipal employer.

The parties were in agreement that this was not an issue in this case.

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

Employer Position: The Employer does not plead inability to pay but does point out that the proposal might impact the financial ability to pay in the future. It is not in the interests of the public to have a Union obtain through arbitration what no other employees of the City of Appleton have obtained through voluntary settlements. The Union is asking for a "split" increase even though there are no inequities to correct and for increased employer contributions to dental insurance in addition to a wage package that is larger than any other City of Appleton 1980 settlement.

An award to the Union could encourage increased use of arbitration by this and other units, leading to increased city costs if the Union prevails or to deteriorating morale if they do not.

Union Position: The Union notes that the Employer has not argued inability to pay and points out the small cost differences in the proposals.

The Union states that Local 73's arbitration a year ago did not result in any adverse impact on collective bargaining for the City since all other bargaining units achieved voluntary settlements for 1980. There is no reason to believe there would be a change in another year.

Even though the percentage settlement requested by Local 73 is higher than other City of Appleton settlements, the cents-per-hour total increase is well within what other City of Appleton employees received. These were: Police 65.4¢, Fire 67.8¢, Craft Employees 73.8¢, Professional Employees 68.4¢. The Employer's offer of 53.3¢ (53.6¢ year end) is twelve cents below what other City employees received and the Union offer of 55¢ (66.8¢ year end) is still below what other City employees received and even the year-end impact fails to match other settlements except police.

Split increases were granted to waste water employees in Oshkosh.

Arbitrator's Comments. The Arbitrator agrees with the Employer that the potential impact of his decision on the Employer's collective bargaining relationships with other union units needs to be taken into account.

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

Employer Position: The Employer agrees that neither the Union nor the Employer proposal would make up for the loss of purchasing power that almost everyone has experienced recently. The Employer in its Exhibit #29 shows that these employees have not lost ground when 1967 is used as the base period. Other bargaining units in the City also considered cost-of-living and arrived at voluntary settlements which were lower than this Union is asking for.

Union Position: The Union's exhibits 22 through 34 deal with the impact of cost-of-living increases since 1972. These exhibits show a loss of buying power since 1972 even if the Union's requested wage increase and dental insurance requests are included. The Union's maximum year-end gain of 10% is below the 1979 inflation rate of 1979 and the currently higher rate in 1980.

Arbitrator's Comments. As the parties agree, neither proposal will match the increase in cost-of-living. The Union position comes closer to doing this but other issues are probably more important in determining the outcome in this case.

IV. Wage comparisons - City of Appleton

Employer Position: Employer Exhibit #1 shows that the City's 1980 settlements (2nd year or 2-year agreements) averaged 7.3%. The settlements for 1980, settled at the end of 1979, were 8.5% for Police, 8.5% for Fire, 8.4% for Craft Employees, and 8.4% for Professional Employees (Employer Exhibit #2). The Employer's proposal for Local 73 would provide an increase of 8.3% (cost as a per cent of average rate). The Union proposal would be 8.6% on the same basis. It would, however, have an impact on the average rate of 10.4% (due to split increases and dental insurance). The highest impact of the other settlements would be only 8.5%.

City Exhibit #5 shows that about 15 members of this bargaining unit will receive scheduled step increases in their hourly rate during 1980. These costs were not included in the Employer's 8.3% proposed increase but they are more important to members of this unit than any of the City's other units that negotiated in 1979 for 1980. If they were considered, the City's offer would become higher than any other 1980 settlement.

The Employer notes that Appleton water plant operators receive higher pay than the Waste Water operators but notes that this is also true of comparisons between the Water Department and other units such as Public Works. The Water Commission is a separate and distinct employer from the City of Appleton and the Appleton City Council has no control over water department employee wages and benefits.

In City Exhibits #7, #8, and #9, the Employer shows that the wages and fringes paid Waste Water employees compared favorably in 1979 with those paid to other Department of Public Works employees and those of the Park Department and City Hall. All of the Waste Water employees, except Helper and Laboratory Technician, improve their relative position under the City's proposal for 1980 and those two retain their relative rank.

Of the 20 classifications in Exhibit #10, six of the top ten are in Waste Water. The Union's proposal would place six Waste Water classifications in the top eight, including the highest four. This could be an unjustified change in existing relationships.

Dental insurance is the only fringe benefit at issue here. City Exhibit #14 shows that 251 City of Appleton employees have fully paid dental insurance. Of these 89 received dental as a trade-off for longevity. With the exception of the Teamster units which received dental as part of their 1972 settlement and the Waste Water unit, no employees who have dental insurance coverage also have longevity. The City does not object to dental coverage in general. It does object to the Union attempting to gain through arbitration something that no other City unit has obtained through voluntary negotiations--namely insurance improvements in addition to a wage package that meets the pattern of other settlements within the City rather than as a part of such a package.

Union Position: The Union contends that other employee occupational groups within the City of Appleton are in or near leadership positions when their wages and benefits are compared with like employee groups in comparable cities (Union Brief, p. 8). As indicated earlier, the Union also notes that the hourly increases for other Appleton employees are greater than the Employer has proposed for this unit.

The Employer's offer would further increase the disparity between Appleton Waste Water employees and Water Department employees.

Arbitrator's Comments. I do not think the parties are in disagreement concerning the fact that the Union's offer on a percentage basis would exceed the impact of the other Appleton settlements. The Union feels that this is offset by other criteria that the Arbitrator must consider. The Employer feels that primary consideration must be given to the Appleton comparisons. The Arbitrator finds that the other City settlements are of major significance.

The Employer's Brief points out that the recent Appleton Water Department settlement for 1980 provided for an increase of 50¢ per hour effective January 1 and 5¢ per hour effective July 1, plus insurance improvements totalling \$18.14 per month effective July 1, 1980 (Employer Brief, p. 1). The Union had been asking for the same 60¢ per hour by July 1, 1980, at the Water Department that it requested here. The Appleton Water Commission had offered 57¢ per hour (Union Brief, p. 19).

V. Wage and fringe comparisons - other Waste Water Treatment Plants.

Employer Position: The exhibits of the parties agree with two exceptions, on the plants that should be used as comparables. Those exceptions are the Employer's use of Town of Menasha and Heart of the Valley. These two plants plus Appleton and Neenah/Menasha serve the majority of the 150,000 people in the Appleton contiguous metropolitan area.

The Employer's Exhibits 16 through 27 document comparisons with "other employees performing similar services. . . in public employment. . . in comparable communities." These are based on wages and fringe benefits but excluded fringe benefits which are uniform in all the communities (such as 100% Employer contributions to the Wisconsin Retirement Fund). The Employer uses a weighted average in making the comparisons. The Employer's proposal for 1980 retains Appleton's fourth place ranking but moves it to within 6.3¢ of the third place city. The Union's proposal would move Appleton from fourth to third, 9.9¢ ahead of the fourth place city.

Union Exhibit 55 supports the City's position. The "Average Hourly Earnings" show the Appleton-Oshkosh SMSA below Green Bay, Fond du Lac and Sheboygan and higher than Manitowoc. This is the same relationship that would exist in area Waste Water plants under the City's proposal. In addition, Appleton's average rate is higher than any other in its SMSA (Oshkosh, Neenah/Menasha, Town of Menasha, Heart of Valley (Employer Brief, pp. 6-7).

Union Exhibit #51 shows that there is no consistency between communities on the matter of the relationship between Waste Water and Water wage rates. Three pay Waste Water operators more than Water operators and three do the reverse, and one pays both the same.

Union Position: In comparing wages in waste water treatment plants in the area the Union used four bench mark positions: Maintenance Specialist II, Solids Operator, Helper, and Laboratory Technician. These were compared for 1978, 1979, and 1980. They include 15 of the 23 employees in Local 73. In comparing the seven cities (Green Bay, Manitowoc, Neenah/Menasha, Appleton, Sheboygan, Oshkosh, Fond du Lac), the rank of the Maintenance Specialist moves from fourth place in 1978 to fifth in 1980 under both the Union and Employer proposals in this case. The 1978-80 total wage increase under the Employer proposal ranks seventh and it ranks sixth under the Union proposal.

For the Solids Operator, Appleton's rank was fourth in 1978, tied for fourth in 1979, fifth under the Union proposal for 1980, and sixth under the Employer proposal. For the total 1978-80 increase, Appleton would be fifth under the Union proposal and last under the Employer proposal.

For the Helper, Appleton was fourth out of six in 1978, third in 1979, and fourth in 1980 under both Employer and Union proposals. For the total 1978-80 increase Appleton ranks fifth under the Union proposal and last or next to the last under the Employer proposal (Manitowoc is not yet settled and Union and Employer proposals are shown separately).

For the Laboratory Technician, Appleton ranked second out of four in 1978, third in 1979, and third in 1980, under both Union and Employer proposals. The 1978-80 increase shows Appleton at second under the Union proposal and fourth under the Employer proposal.

Union Table 5, Union Brief, p. 16, shows the cents-per-hour increases for 1980 in the seven community waste water treatment plants. Many provided for split increases such as the Union is proposing here. Generally, the increases for the four job classifications were above the 52¢ offered by the Employer in Appleton.

Concerning fringe benefits the Union noted that on vacations, sick leave, pension, health insurance, call time, holidays, and holiday premium, benefits are similar throughout Appleton and the six comparable communities. Shift differentials at Appleton are slightly better. Sunday premium pay for shift workers is superior at Appleton but this affects only four of the twenty-three employees. Dental insurance is provided in part or in total by three utilities, including Appleton.

The Union objects to the Employer's method of computing longevity benefits. The Employer used average length of service of Appleton employees in each classification but only four bargaining unit employees have ten or more years of service and only eight have five or more years of service. Thus, the Employer's approach places Appleton in a more favorable light than is actually the case (Union Brief, pp. 22-27).

Union Table 14, Union Brief, p. 31, compares the four bench mark positions in the seven communities in total compensations, including the various fringe benefits. Separate computations are made with and without longevity. Generally, when longevity is excluded from total compensation, Appleton employees maintain or lose rank under both parties' final offers. Generally, when maximum longevity is added to the total compensation, Appleton loses rank when compared to the other utilities under the Employer's final offer.

The Union objects to the Employer's approach in computing Appleton's relative standing against comparable utilities. The Employer's use of "weighted averages" seems to imply that although Fond du Lac employees received an 8% increase January 1, 1980 and will get an additional 1% July 1, they will receive only a 21.6¢ or 2.98% increase during 1980 in their total compensation (Union Brief, pp. 32-33 and Employer Exhibit #26).

The Union objects to the Employer's inclusion of the Heart of the Valley and the Town of Menasha as comparables. The parties have not used them in the past. Both plants are substantially smaller in terms of population served. Heart of the Valley is a new plant, still under construction, and employees there do not yet carry the same responsibilities as those required in established plants.

Arbitrator's Comments. The Arbitrator agrees with both parties that comparisons with area waste water treatment plants are a major factor to be considered in this case.

The parties do not agree as to what effect the Union and Employer offers in this case would have on the relative rank of the Appleton workers. Generally, the Union exhibits show Appleton losing in rank under the Employer's proposal. The Employer's exhibits generally show Appleton slightly improving its rank in the comparisons.

Why do the results differ? The Employer uses a different list of bench mark positions than the Union. The Employer uses a weighted average approach in some of its comparisons. In arriving at an average rate each position is weighted according to the number of positions in the unit. For example, there is only one Plant Electrician and that has a weight of one. There are seven utility workers and they have a weight of seven in computing the average. There are some problems with this approach. One is that it is not commonly used in wage comparisons and is not fully understood by both parties. Another is that the Employer is here assuming that the same weights should be applied to the positions in each of the other communities. Is it realistic to assume that each waste water treatment plant will have about the same relative proportion of solids operators, laboratory technicians and so forth? Might this assumption distort the results? The Employer apparently did not have figures on the number of each classification of workers in the other plants. How does the Employer explain the Union's objections to his approach as noted on page 33 of the Union Brief?

Concerning the Union's selection of bench mark positions, it does not include the position in Appleton that has the largest number of employees, Utility Worker. There are seven Utility Workers in the Appleton group.

The Employer objects to the Union's use of the maximum rate of pay for each position rather than the actual rates being paid in making calculations of average rates and percentage of increase. This approach inflates the average rate and deflates the percentage of increase (Employer Brief, p. 14). The Employer notes that in all of the City's 1980 settlements actual wage rates rather than the maximums were used. This Employer objection to the Union approach seems to have some validity.

It does seem to the Arbitrator, after reviewing both Union and Employer exhibits, that there would be some 1980 loss of the position of the Appleton workers under the Employer's proposal (see especially Union Table V, p. 16, Union Brief).

In addition to the above conclusion, however, the Arbitrator notes that there are also step increases for many of the Appleton employees and that the Union's request includes a substantial increase in dental insurance payments by the Employer.

The Arbitrator hopes that the parties in the future can develop an agreed method to be used in comparing Appleton with the other waste water treatment plants. Neither the Employer's nor the Union's approach seems to be fully satisfactory.

VI. General wage levels in the area.

Union Position: Exhibit #52 and #54 show that two major area industries, meat and paper, have state-wide average earnings of \$9.11 for meat products and \$7.50 for paper and allied products, compared to \$6.49 for Local 73 members in 1979. The \$7.08 average hourly rate within the SMSA would be nearly identical to the Union's wage proposal of \$7.09 at year end (Union Exhibit #55).

Employer Position: As indicated earlier, the Employer pointed out that these Union Exhibits place Appleton Waste Water employees in the same relative relationship with Waste Water employees in other communities as Appleton manufacturing employees have with their counterparts in other communities.

Arbitrator's Comments. It is significant that there is a close relationship between private and public employee wages in the area as noted by the Employer.

ARBITRATOR'S ANALYSIS

This has been a difficult case for the Arbitrator. Both parties were well represented and each presented comprehensive briefs and exhibits. The parties through collective bargaining did narrow their differences to only two issues, wages and the Employer contribution to dental insurance. Neither of the final offers was clearly unreasonable.

The parties discussed in detail the various statutory standards to be considered by the Arbitrator. In this case, I think the parties would agree that the most significant are (1) the Employer's settlements with other bargaining units and (2) wage comparisons with other waste water treatment plants.

The impact of the Union's request on a percentage basis is over 10%, compared to around 8.5% for the other City bargaining units. The Arbitrator shares the Employer's concern about the potential effect on other collective bargaining units if the Union offer were chosen. While a 1969 arbitration decision favoring the Union did not seem to injure voluntary settlements of 1980 contracts, there is no assurance that this would be the case as 1981 contracts are considered.

The Employer also presented evidence referred to earlier (Employer Exhibit #10) that the Union proposal would dramatically change the wage relationship among the higher-paid city positions by placing six Waste Water classifications in the top eight city positions (Waste Water, Street, Parks, City Hall units).

While the Employer's offer to the Union represents an average cost of 8.3%, compared to 8.4% and 8.5% for the other bargaining units, the impact as a per cent of average rate is 8.4%, the same as Craft and Professional Employee settlements. The Union's request is 8.6% as a percentage of average rate and the impact as a percentage of average rate is 10.4% (Employer Exhibit #2). It is also significant that a majority of the Waste Water employees will receive a step increase in 1980 in addition to their cents-per-hour adjustment.

It appears that the final Appleton Water Department settlement reported earlier seems to be above what the Employer has offered in this case and below what the Union is asking here. I agree with the Employer that less weight can be given Water Department wages than other City units because the Water employees' wages and fringes are not under the control of the City Council.

On the second major issue, wages in waste water treatment plants in comparable cities, the parties are in disagreement as to the effect that their offers would have on the relative ranking of Appleton Waste Water employees. The Employer found that his offer maintained or slightly improved the ranking. The Union found that in most cases Appleton employees would lose rank.

As indicated earlier, the Arbitrator is not fully satisfied with either the Union or Employer approach in the comparison methods used by the parties. I hope that the parties can agree upon a reasonable approach in comparing cities for 1981 bargaining. I do not feel that the City wants the Appleton employees to lose rank in comparison to other waste water treatment plants. The Employer and the Union have agreed upon one 1980 wage inequity adjustment for an important position in the unit.

As indicated earlier, the Arbitrator does find the Union exhibits concerning Appleton's rank order more convincing than those of the Employer. A larger wage increase than the Employer is offering would seem justified in view of the Union exhibits.

Thus, on the two major issues, the Arbitrator feels the Employer has made the more convincing case in City of Appleton wage issues and the Union has made the more convincing case in its examination of comparable cities.

The Arbitrator would prefer a settlement somewhere between the final offers of the parties as being more reasonable than either final offer, but under the law in this case the Arbitrator must choose the final offer of the Employer or the Union.

While other Employer settlements should be given major consideration in a decision, comparisons with other cities and strong inequities can cause an Arbitrator to approve a settlement which exceeds the pattern established by the Employer with other bargaining units.

In this case, the Arbitrator finds the Employer's offer to be more reasonable overall taking into account the statutory standards and the evidence and arguments presented by the parties.

One of the important considerations in this case is that the Union is not only asking for a wage increase to maintain its rank with comparable cities but is also asking for a substantial increase in the Employer's contribution to the dental insurance plan. While the Arbitrator would have liked to see a somewhat larger wage increase than the Employer is offering, he is not willing to accept the Union proposal as more reasonable overall.

DECISION

The Arbitrator selects the Employer's final offer and directs that the wage increase of 52¢ per hour, effective 1/1/80, be incorporated in the 1980 contract between the parties.

Gordon Haferbecker
Gordon Haferbecker, Arbitrator