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In the Matter of Arbitration :
Between : WISCONSIN EMPLOYMENT
AWARDS AND CONDITIONS COMMISSION
BROWN COUNTY : BROWN COUNTY (LIBRARY)
Case LXXXV No. 26096
and : MED/ARB-692
Decision No. 17852-A
LOCAL 1901 C., BROWN COUNTY :
PARAPROFESSIONAL LIBRARY EMPLOYEES :
UNION, AFSCME, AFL-CIO :

I. HEARING. A hearing on the above entitled matter was held on August 19, 1980, at the Brown County Library, 515 Pine Street, Green Bay, Wisconsin, beginning at 11 a.m.

II. APPEARANCES.

KENNETH J. BUKOWSKI, Corporation Counsel,
appeared for the County

JAMES W. MILLER, Representative, Bay District, Wisconsin
Council of County and Municipal Employees, AFSCME, AFL-CIO,
appeared for the Union.

III. NATURE OF THE PROCEEDINGS. This is a matter of mediation-arbitration under Section 111.70 (4) cm 6 of the Municipal Employment Relations Act. The Wisconsin Employment Relations Commission issued an order requiring mediation-arbitration between the parties on June 3, 1980, and the parties having selected Frank P. Zeidler, Milwaukee, Wisconsin, as mediator-arbitrator, the Commission appointed him to be arbitrator effective June 16, 1980. Mediation was attempted on August 19, 1980, and after a reasonable period of mediation, the mediator-arbitrator found that the parties remained at an impasse, and the parties were then notified that a hearing in final and binding final offer arbitration would be held on the same day. The arbitration proceeded as stated above.

All other matters for a one year contract are settled between the parties.

IV. FINAL OFFERS.

A. FINAL OFFER OF THE UNION.

All regular part-time employees hired after the date of the arbitrator's award shall have their insurance payments paid on a pro-rated basis. Regular part-time employees hired prior to the date of the arbitrator's award shall continue to enjoy the same payment benefits as those offered to regular full-time employees.

B. FINAL OFFER OF THE LIBRARY.

Regular part-time employees shall be eligible for said County payment on a pro-rated basis for the following benefits:

Hospital & Surgical Insurance

Life Insurance

Dental Insurance.

V. FACTORS CONSIDERED:

Arbitrators are to consider the following factors in making an award under Section 111.70 (4) cm 6 of the statutes:

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 contained in 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.

VI. BACKGROUND. Local 1901 C. Brown County represents the paraprofessional employees of the Brown County Library. There are about 55 employees in the Union. About 13 of the employees are part-time employees working twenty or more hours of work a week, and 10 would be affected by the resolution of the issue. This is a first contract between the parties. There was a previous contract between Brown County and the Brown County Library Association which represented all the non-professional employees, permanently employed or employed at least 20 hours a week.

As can be noted, the parties are in agreement that hires shall be granted the insurances on a pro-rated basis, but not those who were already on staff. Such employees have been receiving full benefits for about five to seven years.

VII. THE ISSUE ON INSURANCE BENEFITS.

A. The Union Position. The Union submitted an exhibit (Union Exhibit 1) which was the 1980 agreement between Brown County and Brown County Employees Union Local 1901, AFSCME, AFL-CIO, Mental Health Center for 1980. Under Article 20, Insurance, regular part-time employees hired before January 1, 1972, who work an average of 20 hours per week, are eligible for full payment in hospital and surgical insurance, but were eligible for life insurance and dental insurance on a pro-rata basis.

Union Exhibit 2 was the agreement between Brown County and the Brown County Professional Library Employees Union, Local 1901 B, AFSCME, AFL-CIO. Under this contract all current employees hired prior to January 1, 1978, shall be entitled to a vacation. However, under Article XX, INSURANCE, hospital and surgical insurance, life insurance and dental insurance are available on a pro-rata basis to regular part-time employees.

There was a previous agreement between Brown County and the Brown County Library Association, which represented all non-professional employees of Brown County working at least 20 hours a week on a permanent basis. In this contract, the Employer agreed to pay one hundred per cent of the single employee's rate for hospital, surgical and dental insurance programs that were in effect. Each employee could get insurances for family coverage by paying \$3.80 per month for hospital and surgical coverage and \$1.00 per month for dental insurance. The Employer agreed to provide \$10,000 of life insurance and \$10,000 accidental death or dismemberment coverage for employees working 37-1/2 hours per week, and for employees working more than 20 hours but less than 37-1/2 hours, the Employer agreed to provide \$5,000 in life insurance and \$5,000 in accidental death or dismemberment coverage.

Ten employees involved have been receiving full coverage since January 1, 1980, the effective date of the contract. The Union says that they would have to pay back about 30 cents per hour for each hour of work or \$48 a month, or at the time of the hearing a total of \$590.

The Union said that when it made the agreement with the Employer it agreed to red-circle some employees who did not receive increments, but it did not agree to reduce employees' benefits. The County, according to the Union, is inconsistent in attempting to reduce benefits, and the other contracts recognize the principle of grandfathering certain benefits.

The Union notes that the benefit that ten of the part-time employees are receiving existed for about five to seven years, and the employees are continuing to receive the benefit at this time. They should continue to receive the benefit until they leave, when the liability of the Employer will decrease. No one is hurt in the process, and eventually all part-time employees will be pro-rated.

The Union notes that the ability to pay was not raised, and the money is in the General Fund. All employees were under paid including full-time employees, but management did not ask the full-time employees to pay for their adjustment by any deductions. The Employer cannot show that any Brown County employees were ever asked to give up an already existing benefit while changes were being made, and it cites its exhibits as evidence. The present continuing of benefit levels from the past is a fair action.

The Union notes that there was a grievance before an arbitrator concerning the professional library union involving the same issue. The arbitrator advised the parties that the Employer would lose if an award were to be issued. The arbitrator, however, agreed not to issue his award until the Personnel Director and the Corporation Counsel went to explain the matter to the Brown County personnel committee.

The Employer is now asking the arbitrator in this matter to treat the non-professional employees differently.

The Union contends that the Employer is trying to get by arbitration what it could not get in bargaining.

B. The Employer's Position. The Employer provided a series of exhibits in support of its position. Employer Exhibit 4 was Article XX of 1979 Library Professional Contract showing that regular part-time employees received hospital and surgical insurance, and life and dental insurance on a pro-rata basis.

Employer Exhibit 6 was an exhibit in which the Employer listed ten persons who were part-time and eligible for benefits. The Employer, basing its calculations on the proposed new rates as of 10/1/80, calculated an annual dollar increase and then subtracted the insurance payment to arrive at a percentage increase for individual employees. These increases varied according to the classification, percentage of full-time worked, and type of insurance taken. The percentage increases shown on Employer Exhibit 6 ranged from 6.7% to 24.3%.

The method of calculation by which these figures were arrived at were shown in work sheets which were County Exhibit 10 a-e.

Employer Exhibit 7 was an exhibit asserting that there was an average added value per hour of insurance benefits for part-time employees over full-time employees thus:

TABLE I

AVERAGE ADDED VALUE PER HOUR OF INSURANCE
BENEFITS OVER FULL-TIME EMPLOYEES

<u>Classification</u>	<u>Full-Time</u>	<u>Part-Time</u>	<u>% Inc.</u>
Typist I/Library Assistant I	\$4.70	\$5.02	6.8
Library Assistant II	5.30	5.60	5.0
Maintenance Worker II	4.96	5.02	1.2

Employer Exhibit 8 compared two different matters. One was the impact of the wage settlement for four groups of employees under different agreements. The other matter was a comparison of the total unit settlement. The following tables show this information:

TABLE II

IMPACT OF WAGE SETTLEMENTS FOR 1980 FOR
TYPIST I/LIBRARIAN I IN FOUR BROWN COUNTY UNITS

<u>Unit</u>	<u>1979 Top Rate</u>	<u>1980 Rates</u>	<u>Impact</u>
Courthouse Complex*	\$4.41	\$4.81 (1-1-80) 4.92 (9-1-80)	.51
Mental Health Center**	4.38	4.85 (1-1-80)	.47
Social Services Para Professional*	4.23	4.53 (1-1-80) 4.66 (6-15-80)	.43
Library Para Professional	3.90	4.25 (1-1-80) 4.70 (10-1-80)	.80

* Pro-rated benefits for part-time employees.

**Pro-rated benefits for part-time employees since January 1, 1972.

TABLE III

UNIT SETTLEMENTS FOR FOUR UNITS OF BROWN COUNTY
CONSIDERED COMPARABLE BY THE EMPLOYER

<u>Unit</u>	<u>Total Unit Settlement % Change</u>
Courthouse Complex	9.0
Mental Health Center	9.2
Social Services Para Professional	9.2
Library Para Professional (Brown County Library)	
Mgt's Offer	10.66
Union's Offer	11.35

Employer Exhibit 9 used Oshkosh Public Library rates for a comparison with Brown County Library rates. The following table is abstracted therefrom:

TABLE IV
COMPARISON OF SELECTED CLASSIFICATIONS, TOP RATE,
BROWN COUNTY LIBRARY AND OSHKOSH PUBLIC LIBRARY

<u>Classification</u>	<u>12/31/79</u>	<u>1/1/80</u>	<u>7/1/80</u>	<u>10/1/80</u>
Library Asst. I				
Brown Co.	3.90	4.25	-	4.70
Oshkosh	4.06	4.37	4.59	-
Library Asst. II				
Brown Co.	4.40	4.80	-	5.30
Oshkosh	4.77	5.08	5.30	-
Library Asst. III				
Brown Co.	4.91	5.42	-	5.85
Oshkosh	5.26	5.57	5.74	-

The Employer on the basis of its exhibits holds that the parties both established that part-time employees should not receive full-time benefits, especially in vacations, holiday pay, sick leave and insurance benefits, and in other bargaining units, it is agreed that part-time employees receive part-time benefits. Thus neither party introduced evidence to this effect. However Employer Exhibit 7 shows the added value that accrues to part-time employees who get full-time benefits, which amounts to 32¢ per hour for a Library Assistant I.

Concerning the increase in the cost of living, the Employer notes that its Exhibit 8 on the comparison of impacts and on unit settlements is favorable to the Employer in that its offer on a settlement for the para-professional unit is about 1-1/2% above what other units have received.

The Employer says that while it made no argument on ability to pay, yet it had only so many dollars provided for a settlement of the para-professional contract. The funds so provided were utilized to bring Brown County into a comparable position, particularly with Oshkosh. The funds are thus not available for paying added benefits, such as full-time benefits.

The Employer holds that if the Employer's position is upheld, no employee would have to pay back funds to the County. If the Employer's position is upheld, the amount of excess benefits in insurance that the employees received would be deducted from the back pay due the employees for the higher wage increases.

C. Discussion on the Insurance Issue. The essence of this interest dispute is the question of whether the Union offer should prevail of having part-time employees who had enjoyed full insurance benefits the same as full-time employees under a previous contract (but not the same union) continue to have the benefits under the new contract. In resolving the dispute the whole agreement must be considered in that the Employer pointed to the overall benefits in wages the employees were gaining.

The Employer indirectly raises the issue of the ability to pay by asserting that a certain fund of money was allocated for the settlement of this contract, and the money was allocated to increasing base salaries to catch-up especially with Oshkosh Library employees. Therefore the money is not available to meet the cost of the Union offer. Costs were not provided by either party, so that the arbitrator does not know how much more the Union offer would cost than the Employer's offer. Since the only difference between the offers is this issue of insurance benefits, it can be concluded from the Employer's Exhibit 9 that the cost of this item of the package would add 0.69% to the Employer's cost. Lacking any evidence of the Employer's budget, the arbitrator cannot reach a judgment that the Employer's implied lack of ability to pay is sustained.

The Employer in the same argument of lack of ability to pay, argues in essence that it is not in the interests of the public to have to pay this amount, because it is generally accepted, even by the Union, that part-time employees should receive part-time benefits. The arbitrator accepts the validity of the contention that generally part-time employees should receive a pro-rata share of benefits; but the conclusion that therefore the continuing part-time employees who had received such a benefit in the past, should not now receive it during the life of the new contract, must rest on the other factors to be considered.

The matter of comparability is one of the factors to be considered. The evidence of comparable current practice submitted by the Union was limited to three contracts, and that submitted by the Employer to two contracts. The net effect of these exhibits is to lead this arbitrator to the conclusion that the general practice is to give part-time employees pro-rata benefits, yet in the past where part-time employees had received such benefits, they were grandfathered into a continuance of these benefits under new contracts.

The Employer provided some exhibits that were related to the value of the increased benefits. The arbitrator does not believe that Exhibit 6 is valid to show the value of added benefits or of the percent increase in salary plus the added value of insurance benefits paid at the full-time rate for part-time employees. The problem in the exhibit is that the 10/1/80 step is used as the basis for calculation. This rate does not represent the rate for the year. The actual prospective pay of an employee for 1980 is a compound of part-time work for nine months at a lower rate, and three months at the higher rate. The arbitrator, not being familiar with the individual condition of each specific employee as to amount of time worked, classification, appropriate salary step, and type of insurance taken, will not venture to make the calculations for any individual employee listed.

The same problem exists in Exhibit 7 where only the 10/1/80 rate is used. However this exhibit is useful in that the arbitrator can accept the conclusion that the value of insurance given on the full-time rate for a part-time employee would add about 32¢ per hour on the average for Library Assistants I and 30¢ per hour for Library Assistants II.

With a Library Assistant I earning \$4.25 per hour for nine months and \$4.70 an hour for three months, this comes to an average of \$4.36 per hour over the year. \$4.36 per hour represents an 11.8% average increase in wages. Top wage of \$4.70 represents an increase of 80¢ or a percentage increase of 20.5% for top wage. On this score the wage offer of the Employer represents a substantial effort for this group. The level being attained by the Brown County Library represents a level comparable to the Oshkosh Public Library schedule for similar classifications. Thus on the matter of base wages, and thus as to comparability, this weight falls to the Employer.

As to the matter of overall compensation, this factor was not dealt with, but accepting the calculations of the Employer that the average added hourly cost of full-time benefits for part-time Library Assistants I is 32¢, this would constitute a 6.8% raise above the \$4.70 rate and a 28.7% increase above the previous rate for this classification.

Also looking at the settlement rate overall for the unit as compared to the settlement for other units in the County as shown in Table II, the County's overall effort in total compensation is a factor in its favor.

No exhibits have been shown as to the rise in the Consumer Price Index, but arbitral notice can be taken of the increases, and it can be said that while the County offer for the classifications here involved exceeds the rise in other units, yet the Association offer more nearly approaches the 1979 CPI rise. The CPI continues to rise.

The matter of "Other Factors" cited in the statutes needs to be considered here. There are three matters which are traditionally taken into consideration in arbitral decisions. They are comparisons with closely related units, past practice, and a custom in arbitration not to remove existing contract conditions without a compelling reason to do so. In this case, it appears likely that the grandfathering of part-time professional librarians will obtain for them full insurance benefits. The evidence also is that the part-time non-professional employees had enjoyed full-time benefits in the past half decade at least.

This brings the matter to the situation of considering whether the Employer has produced a compelling reason for changing the conditions. The arbitrator believes that it is in the interest of the public not to change the benefits in view of the fact that the principle of grandfathering exists in some benefits elsewhere, and that more particularly professional librarians in the same agency will be enjoying such benefits. Changing a benefit enjoyed by other comparable employees leads to a condition of discrimination.

For this reason which the arbitrator considers the prevailing factor among those cited for and against each offer, the following award is made:

AWARD. The 1980 agreement between Brown County and the Brown County Para-Professional Library Employees Union, Local 1901 C, AFSCME, AFL-CIO should include the final offer of the Union.



FRANK P. ZEIDLER
Arbitrator

September 18, 1980