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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the
Mediation/Arbitration Between

DANE COUNTY PROFESSIONAL SOCIAL WORKERS LOCAL 2634, AFSCME, AFL-CIO

and

DANE COUNTY (DEPARTMENT OF SOCIAL SERVICES)

Case LXXIV
No. 26119 Med/Arb-701
Decision No. 17884-A

APPEARANCES:

Mulcahy & Wherry, S.C., Attorneys at Law, by John T. Coughlin, appearing on behalf of Dane County and its Department of Social Services.

Walter J. Klopp, District Representative, Wisconsin Council of County and Municipal Employees, appearing on behalf of the Dane County Professional Social Workers Local 2634, AFSCME, AFL-CIO.

ARBITRATION HEARING BACKGROUND:

On July 2, 1980, the undersigned was notified by the Wisconsin Employment Relations Commission of appointment as mediator/arbitrator, pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act in the matter of impasse between the Dane County Social Workers Local 2634, hereinafter referred to as the Union, and the Dane County Department of Social Services, referred to herein as the Employer. Pursuant to the statutory requirements, mediation proceedings were conducted between the parties on August 6, 1980. Mediation failed to resolve the impasse and an arbitration hearing was held on the same day. At that time, the parties were given full opportunity to present relevant evidence and make oral argument. The proceedings were transcribed and post hearing briefs and reply briefs were filed with and exchanged through the mediator/arbitrator.

THE ISSUE:

The sole issue remaining at impasse between the parties is relative to seniority. The final offers of the parties is as follows:

Employer's Offer:

Keep present contract language as follows at page 11:

Article 7.04 (b)(3)

1. Examination with a maximum point total possible of 100 points.
2. Applicants who are in this bargaining unit as of the effective date of this Agreement shall receive one-half (½) point for each year or major fraction thereof of their current continuous employment with Dane County. Applicants who came into this bargaining unit after the effective date of this Agreement shall receive one-half (½) point for each year or major fraction thereof

of their current continuous employment in this bargaining unit.

Union's Offer:

Amend Article VII - Filling Positions, Seniority and Lay-Offs. Section 7.04 (b)(3) as follows:

3. When open recruitment is used:

   a. Examination with a maximum point total possible of 50 points;
   b. Bargaining Unit applicants receive one point added to their examination score for each year or major fraction therof up to a maximum of ten and thereafter, one-half (½) point shall be added for each year or major fraction thereof of their current continuous employment in this bargaining unit.

STATUTORY CRITERIA:

Since no voluntary impasse procedure was agreed to between the parties regarding the above impasse, the undersigned, under the Municipal Employment Relations Act, is required to choose the entire final offer of one of the parties on all unresolved issues:

Section 111.70(4)(cm)7 requires the mediator/arbitrator to consider the following criteria in the decision process:

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 employemnt 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 comparable communities.

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

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

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

H. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

THE POSITION OF THE EMPLOYER:

The Employer contends that only five of the eight criteria required for consideration under 111.70(4)(cm)7 apply in the instant situation: A, B, C, D, and H. Accordingly, then, it argues relevant to these criteria.

The first argument advanced by the Employer is that the Union has not established a need for the language change they are seeking. Therefore, the status quo should be maintained. In support of its position, the Employer states that the Union can show no abuse in the current manner in which employees are promoted since 89 percent of the positions filled since January, 1976 have been filled with employees who have been with the department. Additionally, the Employer indicates that it has liberalized the promotional requirements which makes advancement more available to its employees. Thus, since there has been no demonstration by the Union that the employees have been harmed by the current practice of filling the positions, and since the Employer follows a promotional practice that is administered in a fair and reasonable manner, there is no need for an arbitration award granting such language.

The second argument the Employer presents is that the promotional procedure is applied by the department in a fair and uniform manner. Citing that the Employer applies a promotional standard which uses only objective criteria and that, further, the parties have stipulated to a procedure to be used in oral examinations which ensures objectivity in conducting the exam, the Employer argues that its system encourages professionalism and maintains high morale among the employees.

Noting that there are times when there is a need to recruit individuals from outside the department when the need for expertise, experience or exposure to new techniques exists, the Employer posits that the public's interest is better served through the County's open recruitment procedure. Additionally, the Employer argues that the Union's proposal would result in automatic progression of even the minimally qualified. This automatic progression, the Employer contends, would result in less qualified candidates and a reduction in employee motivation to upgrade their skills.

The Employer further declares that its lawful authority necessitates rejection of the Union's proposal since the proposal would seriously inhibit the department from attaining State and Federal affirmative action goals. Arguing that promtional positions are as important in minority placement as is initial hire, the Employer avers that the Union's proposal would assure a "super seniority" allowing only current employees to be considered for vacancies.

Finally, asserting that comparisons is the least important criteria to be considered, the Employer presents a list of counties to which it compares its current promotional procedures. The counties selected by the Employer are selected on the basis of either geographic proximity or similar population of clientele and size of department. The Employer also argues that the additional counties selected by the Union should be disregarded since they neither meet the criteria of geographic proximity or similar size and population. The Employer states that comparisons of county departments and other social service departments show that no two promotional procedures are alike. Citing those systems exempted from the Merit system which make them particular-

ly similar to Dane County, the Employer argues that the promotional procedures of those counties allows for greater subjectivity in determining promotional qualifications than Dane County does and that, further, none of those counties affords promotion on a straight seniority basis. When the counties with Merit Systems are compared with Dane County, the Employer contends that it is still apparent that no county awards promotions strictly on a seniority basis.

In conclusion, the Employer argues that if comparisons are to be made between bargaining units in Dane County, as the Union suggests, it must be recognized that there are seven collective bargaining units in the County and only one is similar to the Social Services unit in that it maintains the same type of professionalism and requires the same types of responsibilities, skills, and abilities. This unit, the Attorneys' unit, is the one that should then be compared. To attempt to compare the Social Services unit with other units is to compare dissimilar community of interest, non-professional employees with professional employees, dissimilar promotional opportunities and distinct and different bargaining histories, all of which makes these units unacceptable comparisons.

THE POSITION OF THE UNION:

The Union contends that it is seeking to obtain the same consideration for the Social Service employees as is granted to other AFSCME employees in the employ of Dane County. In support of its position, the Union argues that only three of the statutory criteria of 111.70(4)(cm)7 are pertinent: A, D, and H.

The Union contends that the real issue in this dispute is that of comparability. If comparisons are important criteria, the Union argues that comparisons with Dane County employees and with other counties in Wisconsin will show that the Union's proposal is not an unreasonable proposal.

In comparing the Social Service employees with AFSCME Local 65 (Highway, Exposition Center and Airport employees) and the Joint Council (Locals 705 and 720 which include the Institutions and Courthouse employees), the Union contends that the three contracts all contain similar language construction, similar employer and employee rights, similar fringe benefits and similar job security and other considerations of employment. It is only where these contracts deal with promotions that a dissimilarity between the social workers' contract and the other two contracts occurs. Thus, the Union argues, the Employer has the right and the duty to afford the social workers' bargaining unit the same consideration it has given its other employees.

Additionally, the Union contends that a review of other Wisconsin counties shows that their social service bargaining unit contracts all exceed the Union's proposal for promotional purposes. This substantiates why the Union's proposal should be accepted.

The Union's second argument is that the Employer's affirmative action argument is spurious. The Union contends that the Employer has complete control of hiring at the entry level and that if disparity exists it is because the Employer has failed to hire minorities at this level. If the Employer wishes to comply with affirmative action goals, the Union contends it may do so at the entry level and those minorities which are then hired will only benefit by the promotional proposal of the Union.

Further, the Union states that the Employer has failed to show that the percentage of minorities hired in this department is any different from the overall percentage of qualified minorities available for hire.

In response to the Employer's arguments, the Union contends the following:

1. The Employer's position relative to liberalizing the promotional procedures is no different than the requirements of the State Merit System,

2. The Employer's position relative to the stipulation entered into by the parties regarding objectivity of oral exams still does not give the Union "control on the contents of those examinations or the slant they can take," and

3. It is not in the public interest to make the department a training ground which it becomes unless seniority is given to inspire confidence in the employees.

Finally, the Union argues that its offer will not upset the practice the County itself has established. The Union notes the Employer concedes that 89 percent of the dpeartment's available positions were filled through promotional procedures and, the Union continues, the Employer has not shown that the change proposed would be harmful. Additionally, the Union contends that since seniority is a strong influence in private employment and since it exists in the AFSCME bargaining units of Dane County, and since it exists in some form in other counties in the State, the Union's offer should be accepted.

DISCUSSION:

In the previous contract, an agreement existed between the parties wherein a promotional system existed that allowed the Employer to fill positions (including promotions) from the bargaining unit Civil Service employees who had completed their probationary period; from all Dane County Civil Service employees who had completed their probationary period or from all eligibile applicants including those from the bargaining unit or in Dane County's hire. If any of those applicants met the minimum qualifications, they were admitted to an examination. One of those who received the top three composite scores (derived by examination points of 100; seniority points of one-half (½) point per year or major fraction thereof from the date of their current continuous employment in the bargaining unit and from veteran's points as provided by law) would be hired or promoted by the department. In the final offers before the undersigned, the Employer proposes continuing this arrangement while the Union would change the process when open recruitment is used. The Union's proposal would change the examination point system to a maximum of 50 points and would weight the seniority consideration so that the employees of the bargaining unit would receive one (1) point a year or major fraction thereof up to a maximum of ten years and one-half (½) point for each year or major fraction thereof thereafter. The Union argues that its proposal should be accepted because the comparables, both within Dane County and within other social service bargaining units in the State support promotions on the basis of seniority. The Employer argues that since the Union has failed to prove a need for its proposed language, comparables should be the least considered criteria.

The parties relied upon different sets of comparables although both cited some of the same counties. The undersigned sees no need to define a set of comparables since a review of both sets reflects that the split is about even between counties who promote on the basis of seniority and counties who require that all skills, training and ability be equal before seniority prevails. Added to consideration regarding the comparables is the fact that many of the counties compared operate under the State's merit system wherein the State determines which applicants for promotion are qualified based upon an education, training and experience standard and an examination. Thus, the result is that even in those counties where seniority prevails, the true standard is "if all other qualifications are considered equal." Very few counties in either set rely upon a purely subjective standard for promotion.[1] If consideration is given to the argument advanced by the Employer, however, wherein it suggests that the true comparison exists when Dane County is compared with other counties who do not have a merit system, the comparables do tend to support the subjectivity of selecting individuals for promotional positions rather than applying seniority.

In analyzing the Employer's proposal and the Union's proposal, it appears that under either proposal some subjectivity would still be allowed in the selection process of the most qualified candidate although seniority is a factor in determining who is most qualified. The difference between the proposals exists in that under the Union's proposal, if skill, training and ability were equal and the examination scores were near equal, it would be much more likely that an individual who is an employee of the County would be considered as one of the top three rather than an individual outside the employ of the County. Thus, although seniority is a factor in either proposal, the proposals differ from the comparables in that seniority does not decide who is promoted once qualifications are determined. This conclusion, together with the fact that the merit system rule's impact must be considered in determining what weight seniority is given in each county, leads the undersigned to believe that comparisons with other counties doing similar work is not as strong a determining criteria as other statutory criteria are.

The Employer argues that the controlling factor in determining which final offer shall be selected must lie in the Union showing a demonstrated need for the language change proposed. In support of its argument, the Employer cited the Village of West Milwaukee, (Krinsky, Dec. 12444, 6/74); the City of Greenfield Police Department, (Stern, Dec. 15033-B, 3/77); the School District

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[1] In the Employer's set of comparables, six counties used a standard of "if all other qualifications are considered equal, seniority prevails"; three counties used a standard of "if the employee is qualified, seniority prevails"; three counties used a subjective form of determining qualifications and one county relied upon the merit system test score as the determinative factor. The Union's set of comparables showed that six counties used the standard of "if all qualifications are considered equal, seniority prevails"; nine counties used a standard of "if the employee is qualified, seniority prevails"; one county used a subjective form of determining qualifications and one county relied upon the merit system test score as the determinative factor.

of Greendale, (Kerkman, Voluntary Impasse Procedures, 9/78) and others. This principle enunciated by the Employer does prevail among arbitral decisions, including previous decisions rendered by this arbitrator, provided that there is a failure to show that the present language is unworkable or inequitable, or that no quid pro quo existed or that there was no compelling need for the change. The Employer contends that the Union's case is insufficient in this area. It is essential, therefore, to determine whether the Union has sustained its burden for the proposed change.

The Union's primary argument in support of the need for change lies in its belief that the Employer has the right and duty to treat all of its employees in a similar manner. To demonstrate that all employees are not treated alike, the Union cites its AFSCME contracts with Local 65, covering highway, Exposition Center and airport employees, and with Locals 705 and 720 known as the Joint Council of Unions, covering institution and courthouse employees. The Union contends that because seniority in promotion is weighted even more in these contracts, it is only equitable that its proposal be implemented in the instant situation. While it is meritorious to seek equal consideration for all members of AFSCME who are in bargaining units in Dane County, the fact remains that these units are only two of six other units and are different in nature from the social workers unit. In addition to a different community of interest, substantial differences exist between the units in the amount of education and training needed for the differing position; the degree of professionalism represented by each unit; the differing criteria established to advance in each unit, and the number of positions available for advancement. The undersigned finds merit in the Employer's argument that if comparisons of bargaining units within the County are to be made, the units which represent non-professional workers are not as similar as the unit which represents professional workers (the attorney's unit) and, thus, will disregard the Union's argument relative to comparisons with AFSCME Locals 65, 705 and 720.

The deciding factor in selecting a final offer, then, lies in whether the Union has shown a compelling need for change in the language. The undersigned is satisfied that no such need was shown. Further, the undersigned is persuaded that the Employer has applied its language in a fair and consistent manner. Primary to this conclusion is the fact that the Employer has filled 89% of its promotional positions with employees from within the department since 1976; has liberalized the standards required to make individuals qualified for the positions and has stipulated to an agreement with the Union wherein objectivity would be maintained if an oral examination were to be administered.

The Union does not dispute the fact that 89% of the positions filled through promotion have been filled with employees from within the department, but suggests that this is another reason why the language should be implemented. On the contrary, it demonstrates that the Employer does give weight to the ability, training, and experience of its employees. Further, there is no showing that the Employer has substantially deviated from its policy on promotion since the initial implementation of a contract between the social workers and the County, thus, showing no need for a change in the existing language.

The Union suggests that the liberalization of the standards required for qualification reflects nothing different than the same qualifications required by the State merit system and therefore should not be weighed as a reason why a language change

should not occur. The fact remains t t the County does not participate in the State merit system and thus could establish any qualifications it desired. Its efforts to conform with the merit system demonstrates its concern for making its qualifications similar to what is required of other individuals doing like work.

Finally, the Employer's willingness to stipulate to an agreement wherein efforts are made to assure that oral examinations, when administered, are as objective as possible, indicates that again there is no demonstration that the Employer is attempting to treat its employees in any way other than in a fair and equitable manner. Thus, it cannot be said that the relationship between the County and its employees has been altered to the disadvantage of the employees or that it will be altered should the Employer's proposal be continued.

Based on these conclusions, the record in its entirety, the argument of counsel, the discussion set forth above, and after applying the statutory criteria, the undersigned makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties which reflect prior agreements in bargaining, are to be incorporated into the collective bargaining agreement of the parties.

Dated at La Crosse, Wisconsin, this 5th day of November, 1980.

Sharon K. Imes

Sharon K. Imes
Mediator/Arbitrator

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