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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of LOCAL 1145, AFSCME, AFL-CIO CITY OF WHITEWATER EMPLOYEES To Initiate Mediation-Arbitration Between Said Petitioner and CITY OF WHITEWATER	Case XVII No. 27259 MED/ARB-979 Decision No. 18467-A

APPEARANCES:

Richard W. Ableson, Business Representative, on behalf of the Union

Quinn Smet, City Manager, on behalf of the City

On March 16, 1981 the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to Section 111.70(4)(cm)6.b. of the Municipal Employment Relations Act in the matter of a dispute existing between City of Whitewater, hereafter the City, and Local 1145, AFSCME, AFL-CIO, hereafter the Union. Pursuant to statutory responsibilities, the undersigned conducted a public hearing and mediation proceedings between the City and the Union on May 4, 1981. Said mediation effort failed to result in voluntary resolution of the dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on June 12, 1981 for final and binding determination. Post hearing exhibits and briefs were filed by both parties by July 23, 1981. Based upon a review of the evidence and arguments and utilizing the criteria set forth in Section 111.70(4)(cm), Wis. Stats., the undersigned renders the following award.

The issues in dispute include the following: wages, duration of the agreement, longevity pay, sick leave accumulation, and miscellaneous benefits.

The parties also disagree on what constitutes comparable communities in this proceeding. Since this latter issue has a significant impact on the substantive issues in dispute, it will be discussed first.

The undersigned will thereafter discuss the individual issues in dispute, and then, the relative merit of the total final offers of both parties.

COMPARABLES

City Position

The best comparables to the City are Watertown, Beaver Dam, Waupun, Oconomowoc, Fort Atkinson, Burlington and Hartford. All are within the same geographical area, they all have populations between 7,000 and 18,000, and none are part of the greater metropolitan Milwaukee area.

Furthermore it must be noted that the population and tax base figures are distorted for the City because of the presence of the University in the City. University dormitory housing added 4,307 residents to the 1980 City population. These students make no contribution to the real property tax base.

Union Position

The City can fairly be compared with: Racine County, Waukesha County, and Washington County; Brookfield, Menomonee, New Berlin, Muskego, Germantown, and Pewaukee.

Discussion

Since there are a sufficient number of cities of the same general size and in the same geographical area as Whitewater, the undersigned will utilize as comparables those cities within a 60-mile radius of Whitewater with populations between 5,500 and 21,500, excluding those which are a part of the Milwaukee metropolitan area and which are subject to an established pattern of benefits which are in some respects unique to that metropolitan area. The use of the above comparables is further limited in some instances by the fact that data pertaining to 1981 collective bargaining agreements is not available, in which cases certain comparable communities could not be utilized for purposes of comparison. Because the number of geographically proximate cities of comparable size were sufficient for comparison purposes, data with respect to county employees in the area has not been utilized.

WAGES AND DURATION OF AGREEMENT

Issue:

The Union proposes a two-year agreement; retaining the COLA provision contained in the current collective bargaining agreement, and increasing the wage rate by 14¢ on 1/1/81 and 15¢ on 1/1/82.

The City proposes a one-year agreement; deleting the COLA provision contained in the current agreement, rolling in $2.30 accumulated COLA into the base rates, and adding 54¢/hour to the base rates across the board effective 1/1/81.

Position of the Parties:

City Position

The City does not argue that it cannot meet the financial burden of either proposal. Instead, it argues that the COLA clause severely hampers budgetary considerations for any upcoming year because of its unpredictability.

The City furthermore has a limited ability to transfer funds from one account to the other within the budget, particularly after commitments are made. If the City overestimates the amount for COLA, there would be money tied up in that account and not available for other City activities. If on the other hand the City underestimates the COLA amount, it is faced with the choice of transferring money from other areas of the City budget or borrowing to meet operating expenses.

Thus, a budget cannot be adopted that fairly projects City activities and expenditures for the ensuing year.

The COLA provision serves to further aggravate an already high comparative position of the employees covered by said provision. This is especially evident when they are compared to employees in cities that do not have COLA provisions in their contracts.

The COLA provision gives the DPW unit employees an unfair advantage over other City employees. It must be dropped in order to create a more equitable situation vis a vis other City employees.

Because the City has offered to roll in $2.30 of accumulated COLA into the base rate, additional benefits will also be gained by the effected employees. By adding this money to the base rate, it will be applied to overtime, sick leave, longevity, vacations and all other benefits that are based on the employees' base wage rate.

The City also intends to maintain the employees' comparative position in relation to the cost of living and other area cities by proposing an approximate 10% increase over the 1980 wage rates.

It is not the City's intention to take away from the employees their present position in relation to other cities and the cost of living. Rather, the City wishes to return to the bargaining table yearly to deal with these increases.

The COLA clause which provides for automatic salary increases without regard for the City's ability to pay ought to be eliminated. Accordingly the City has proposed that a one-year agreement be adopted, and that the COLA clause be deleted from the agreement.

Lastly, the City notes that only two other potential comparable cities pay COLA to their DPW workers.

In response to one of the Union's arguments, while it is true that employees opt to take compensatory time off in place of overtime pay, the City does not save money through this option. The use of substantial amounts of comp time defers hundreds of hours of public service projects to some future date when labor and material costs will inevitably be higher.

Furthermore, compensatory time is more of a benefit to the employees because under the current agreement the employee receives COLA money on compensatory time, and not on overtime.

Union Position

The City is not in a position where it is unable to meet the financial obligations of either offer. To the contrary, the City has a relatively low tax burden and can quite handily meet the costs of the Union's final offer, as well as the City's final offer which is higher in totalcosts and roll ups in 1981.

The City further has never argued an inability to pay at the bargaining table.

The Union's final offer, with its lower costs, actually meets the public's needs better than the City's final offer. The Union's final offer also increases costs more gradually than the City's offer since it is based upon the gradual rise in the C.P.I. The COLA clause negotiated by the parties accounts for this gradual rise with a January adjustment and a July adjustment in each calendar year.

The COLA adjustment in the contract does no more than provide a "catch-up" in inflation. Since the adjustment lags six (6) months, the employee's purchasing power erodes for a full six (6) months before the adjustment is made.

Under the prior labor agreements back to 1974 the wage rate received by employees has been divided into two (2) parts. The base wage rate and the amount generated as the cost of living allowance.

The base rate is the only amount used in the computation of such significant fringe benefits as overtime and longevity pay. The effect of this basis of computation is to decrease the total compensation of employees by virtue of not including the COLA in these computations.

COLA is paid only on the standard work week of forty (40) hours or 2080 hours per year. The impact of this is that most employees exercise their option to take compensatory time off rather than overtime in cash. Therefore, the City saves money by not incurring the same overtime costs as they normally would if COLA were part of the overtime computation.

The parties originally placed the cost of living allowance provision in their contract in 1974. The provision has remained in all successor agreements to date. In each round of negotiations, the City has attempted, unsuccessfully, to remove the cost of living allowance provision from the contract.

The Arbitrator should not remove from the agreement a provision that the parties freely negotiated long before Mediation/Arbitration became law.

Arbitrators have generally agreed that to give up an item of both monetary and philosophical significance such as a COLA provision, the Union should be entitled to a significant increase in compensation for a period of years. In the instant dispute, no such "buy out" is being offered. Rather, the City offers a slightly increased monetary

settlement for one year.

Longevity is the only significant benefit where the City offer substantially exceeds the Union offer.

The majority of comparable cities have granted wage increases of 10% or more. The City's employees therefore can reasonably expect to receive an increase of 10% plus, even in the absence of the Union giving up a substantial benefit already in their possession. The City's offer of 10.4% is therefore no more than what the Union would have received anyway, and the "buy out" is therfore zero.

The COLA provision is of great worth to the bargaining unit employees.

The City is not providing any kind of compensation for the Union's loss of the COLA provision.

The COLA was never looked upon by the Union as a short-term money maker. Rather, the history of the COLA provision has been lower monies during the year in which the COLA was being recomputed in return for long-term protection against inflation.

Regardless of what cities are deemed to be comparable, the Union's final offer better compares to other municipalities than the City's inasmuch as it is lower both in absolute dollars and total roll up.

In terms of comparability of the City's wages to those paid in comparable communities, the COLA provision has caused no distortion. Concededly the employees' wages are high, but historically, they have always been high.

Lastly the City has not persuasively demonstrated that its budgeting and bookkeeping procedures are made more difficult because of the COLA provision in the parties' contract. The City's arguments, unsupported by evidence, are not sufficient to prove this point.

Discussion

The dispute over wages and the duration of the agreement is the critical issue in the instant proceeding. However, unlike most disputes over wages, it involves not so much the question "how much?", but instead, the question "by what means shall wages be determined?", i.e., solely by the collective bargaining process, or instead, by a combination of collective bargaining and reference to the Consumer Price Index (CPI).

The City has raised essentially two issues in support of its contention that the COLA provision in its current agreement be deleted.

First, it has argued that the unpredictability of the CPI has made the budgeting process difficult. In spite of the fact that the logic of the City's arguments in this regard is persuasive, in a proceeding such as this, where the City is attempting to eliminate a benefit contained in the parties' current collective bargaining agreement which was voluntarily agreed upon, the City has the burden of proving that the COLA clause in the parties' current agreement has in fact caused it to have sufficiently serious budgeting problems to warrant the clause's deletion. This the City has failed to do. There is no evidence in the record indicating that the City has not been able to accurately predict the impact of the COLA clause and to accordingly allocate its resources in a relatively informed and accurate manner. Mere speculation and argument that such problems might exist is not sufficient.

Secondly, the City argues that the COLA clause has resulted in a situation where DPW wages are out of line with the wages of similar DPW employees in comparable communities and with the wages of other City employees. The City has failed to demonstrate with competent evidence how the COLA clause has misaligned DPW wages when compared to other City employee wages and accordingly, no comparisons can be made by the undersigned in that regard. The undersigned has however been able to analyze the wages paid representative DPW employees with those paid similar employees in comparable communities in order to try to assess the merits of the City's arguments in this regard. The following charts reflect the available data which was utilized in making the aforementioned analysis.

Mechanic

	1980 Hourly Rate		1981 Hourly Rate	% Increase
West Bend	$7.00		$7.63	9
Watertown	6.70		7.37	10
Beaver Dam	6.30		6.87	9
Oconomowoc	7.72		8.49	10
Ft. Atkinson	6.66		7.34	10.2
Delavan	5.87		6.87	17
Jefferson	7.02		7.80	11.1
Lake Geneva	6.93		7.35	6
Average	6.78		7.47	10.3
Whitewater (including COLA)	8.04	City	8.85	10.1
		Union	8.45-8.75	5-8.8
Rank	1/9	City	1/9	
		Union	2/9-1/9	
+/-Average	+1.26	City	+1.38	
		Union	+ .98 - +1.28	

Laborer

	1980 Hourly Rate		1981 Hourly Rate	% Increase
West Bend	$7.00		$7.63	9
Watertown	6.20		6.82	10
Beaver Dam	5.85		6.38	9.1
Oconomowoc	7.21		7.93	10
Ft. Atkinson	5.82		6.43	10.5
Hartford	6.90		7.40	7.2
Delavan	5.87		6.45	9.9
Jefferson	6.86		7.48	9
Lake Geneva	6.10		6.48	9.5
Average	6.42		7.00	9.4
Whitewater (including COLA)	7.54	City	8.35	10.7
		Union	7.95-8.25	5.4-9.4
Rank	1/10	City	1/10	
		Union	1/10-1/10	
+/-Average	+1.12	City	+1.35	
		Union	+1.05 - +1.25	

Equipment Operator

	1980 Hourly Rate		1981 Hourly Rate	% Increase
West Bend	$7.00		$7.63	9
Watertown	6.70		7.21	7.6
Beaver Dam	6.30		6.87	9
Oconomowoc	7.38		8.12	10
Ft. Atkinson	6.33		6.99	10.4
Hartford	7.09		7.59	7
Delavan	5.87		6.45	7
Jefferson	6.43		7.38	14.8
Lake Geneva	6.10		6.48	6.2
Average	6.58		7.19	9.3
Whitewater (including COLA)	7.67	City	8.48	10.6
		Union	8.08-8.38	5.3-9.3
Rank	1/10	City	1/10	
		Union	2/10-1/10	
+/-Average	+1.09	City	+1.29	
		Union	+ .89 - +1.19	

Working Foreman

	1980 Hourly Rate		1981 Hourly Rate	% Increase
West Bend	$7.10		$7.73	8.9
Beaver Dam	6.54		7.13	9
Ft. Atkinson	6.91		7.64	10.6
Delavan	6.43		7.07	10
Jefferson	6.54		7.26	11
Lake Geneva	6.35		6.74	6.1
Average	6.65		7.26	9.3
Whitewater (including COLA)	7.79	City	8.60	10.4
		Union	8.20-8.50	5.3-9.1
Rank	1/7	City	1/7	
		Union	1/7-1/7	
+/-Average	+1.14	City	+1.34	
		Union	+ .94 - +1.24	

The above data clearly indicates that DPW employees have been and will remain wage leaders in 1981 under either party's final offer. In fact, in 1981, the gap between their wages and the wages of similar employees in comparable communities would increase under the City's offer.

Although one cannot attribute the relative status of the City's DPW wages to the COLA clause based upon the evidence submitted in this record, it is fair to conclude that the City's DPW wages are substantially superior to those of similar employees in comparable communities.

It is also fair to conclude that the City's wage offer slightly exceeds the size of the wage increases granted in comparable communities. In this regard, although the pattern of comparisons is not uniform, it would appear that in most instances the City's wage offer exceeds the average increase by about 1%.

This latter fact goes to the issue raised by the Union as to whether the City is paying a fair price in attempting to buy out of the COLA clause in the parties' current agreement, assuming arguendo that there are legitimate grounds supporting the City's desire to accomplish same.

In the same regard, under the City's offer two employees would receive improved longevity benefits in excess of $300, six employees would receive improved longevity benefits in excess of $200, and four employees would receive improved longevity benefits of approximately $100 or more. Thus, of the 17 employees in the unit, 12 would receive a substantial additional economic benefit under the City's offer resulting from the folding of the current COLA into the base rate for purposes of determining longevity as well as other fringe benefits.

Although it is not clear or certain how the total economic package proposed by the City compares with the economic value of agreements reached in comparable communities, it probably would not be unfair to conclude that it exceeds by perhaps 1 or 2% the total value of the economic

persuasively demonstrate that the COLA clause has caused it significant budgeting difficulties. It has however demonstrated that its DPW wages are significantly above the wages paid similar employees in comparable communities, even though it has not been able to attribute this fact to the COLA clause. The undersigned accepts however the validity of the premise that the COLA clause has been at least partially responsible for the superior position of the City with respect to DPW wages, even if said fact has not been proven. In all instances, both in 1980 and under both final offers in 1981 said wages are more than $1.00 over the average wage for identical positions in comparable communities, and perhaps more importantly, among the positions examined in 1980, the City's DPW wages exceeded the next highest wage paid in a comparable community by, at the minimum, 29¢ per hour.

Thus, it would appear that there is some merit to the argument that automatic wage increases tied to the Consumer Price Index cannot fairly and reasonably be retained in light of the fact that the City already pays its DPW employees substantially more than comparable communities pay their DPW employees, and also in view of the fact that the vast majority of comparable communities do not automatically tie wage increases to the CPI. In fact, in that regard, only Lake Geneva employees are covered by a COLA provision in their agreement.

Having so concluded, the last question which must be answered is, in the undersigned's opinion, the most controversial and difficult to answer. Clearly, from the Union's and employees' perspective, since the benefit in question has been so important and advantageous, it is highly unlikely that any offering by the City would be deemed sufficient to be considered "fair". That belief is clearly understandable from the Union's perspective. However, in determining the "fairness" of the consideration offered by the City, the undersigned must balance the benefits afforded by the COLA provision in question to the employees with the problems said benefit has created for the City. Those problems are legitimate and serious in the undersigned's opinion in that DPW wages are not in the mainstream of those paid employees in identical positions in comparable communities, and continued application of the COLA clause is likely to aggravate this disparity.

In order to correct this problem, the City has offered a wage increase slightly larger than those which have been agreed upon in comparable communities, and a substantially improved longevity benefit, plus other less tangible improvements in economic fringe benefits. The City's offer will increase the gap between the City's DPW wages and those paid in comparable communities and will allow the City's DPW Department to remain the wage leader among comparable communites. Furthermore, the City's offer will afford the DPW employees a longevity benefit which substantially exceeds the maximum benefit available in any comparable community. Of the data that was made available to the undersigned, the following comparables are relevant in this latter regard:

Longevity Maximums

Watertown	$526.50 after 16 years
Beaver Dam	4%/hour after 20 years (approximately $582 for an employee earning $7.00/hour and working 2080 hours per year)
Oconomowoc	$20/month after 20 years or $240/year
Ft. Atkinson	$500/year after 25 years
Lake Geneva	20¢/hour after 20 years or $416/year
Burlington	$125/year after 15 years
Whitewater	City - 8% after 12 years to maximum of $1,000. Union - 8% after 12 years to maximum of $1,100.

In the undersigned's opinion, the City's wage offer must be deemed the more reasonable of the two offers on this issue because it maintains the City's leadership position on wages, because it significantly

improves the longevity benefit so that it is far superior to such benefits in comparable communites, because it allows the Union to return to the bargaining table in one year to address economic issues related to inflation and the cost of living 1/, because the problems the City is trying to correct, namely, preserving the equity in salary relationships with comparable communities, are legitimate and serious, and because such cost of living provisions are extremely rare in collective bargaining agreements in comparable communites 2/.

Perhaps it should be noted that the facts present in the instant proceeding can be distinguished from those present in the 1977 Bellman arbitration award, for there the award relied at least in part on the fact that there was no evidence that the employees in question were comparatively highly paid. Clearly, said fact has been proven herein.

LONGEVITY MAXIMUM

The Union wishes to raise the longevity cap from the current maximum of $1,000 to a new maximum of $1,100. The City opposes the change.

Position of the Parties:

City Position

The City opposes removing the $1,000 cap on longevity because its offer already provides for a benefit substantially more than the next highest comparable city.

Under the City's longevity offer only two people receive a slight or no increase because of the cap. The remaining employees receive increases from 31% to 99% with a total longevity increase cost to the City of 34% over 1980.

A cap that is raised every time an employee reaches the cap, is not a cap at all. The $1,000 cap that currently exists is fair and reasonable, and should remain in the agreement.

Union Position

The bargaining history supports periodic raises in the cap on longevity.

Discussion

As indicated above (See chart, p. 7) the City already has the most generous maximum longevity benefit among comparable communities. In fact, the current $1,000 maximum exceeds the maximums in all comparable communities by at least $400. Furthermore, under the City's final offer 10 out of the 17 employees in the bargaining unit would receive longevity benefits in excess of $690, which in and of itself is significantly greater than the maximum longevity benefit available in all other comparable communities. Based upon the foregoing, the City's final offer in this regard is deemed the more reasonable of the two.

SICK LEAVE ACCUMULATION CAP

The City proposes that sick leave accumulation be capped at 90 days, as opposed to the provision in the current agreement which has no cap. The Union objects to the 90-day cap.

1/ See Kenosha United School District No. 1, Kerkman, Dec. No. 16604, 1/79 wherein the arbitrator stated: "...because traditionally cost of living provisions are written into multiple year agreements where there are no wage reopeners in order to protect the employees covered by the agreement from a real wage erosion due to inflation; and because the protection against a wage erosion can be assured to the employees in the unit by reason of the wage reopener of the instant agreement; the undersigned concludes that the cost of living provision proposed by the Union is not necessary for the protection of its members, notwithstanding the fact...that predecessor agreements had a cost of living provision which became operative in the second year of two year agreements contained in them."

2/ City of Milwaukee, Kerkman, Dec. No. 19915-A, 1/80.

Position of the Parties:

City Position

The City is merely trying to bring DPW employees into line with the vast majority of municipalities that have caps placed on sick leave accumulation. The City's present long-term disability insurance provision, sick leave termination payout, and retirement benefits keep the employees in a favorable position on this issue.

Union Position

The City has not justified their proposal relative to sick leave in any way. They have not demonstrated any abuse. Nor have they offset the modification in sick leave with any like monetary compensation to employees.

Out of 28 communities which the City argues are comparable, only eight (8) provide a sick leave cap as low as 90 days.

Furthermore, the City has provided no incentive to the Union relative to this significant diminishment of benefits.

Discussion

Reference to the pattern of benefits which are provided in comparable communities with respect to this issue indicates the following:

		Sick Leave Cap	Payout on Termination
Burlington		120 days	$10/day on death or retirement
West Bend		120	50% up to 35 days on retirement, 75% on death
Watertown		106	none
Lake Geneva		100	none
Beaver Dam		92	none
Oconomowoc		90	none
Jefferson		90	none
Hartford		90	none
Delavan		36	25% on retirement
Whitewater	City	90	50% up to 90 days on retirement
	Union	none*	

*Current policy

It would appear from the above that the City's sick leave accumulation and payout benefits are substantially superior to those provided in comparable communities. However, it would also appear that the City is attempting to move from perhaps one of the most generous sick leave accumulation policies to one of the least generous without offering the effected employees any significant consideration for the loss of said benefit, and at the same time the City is seeking to remove the extremely advantageous (from the employees' perspective) COLA provision from the parties' collective bargaining agreement. In view of the above, although a cap on sick leave accumulation may be justified, the terms proposed by the City are unreasonable under the circumstances present herein, particularly where it has not been demonstrated that any major problems have resulted from the current accumulation provision. Accordingly, the Union's final offer is deemed the more reasonable of the two in this regard.

MISCELLANEOUS FRINGE BENEFITS

The City offers to pay the certification fee charged by the DNR for water and sewer plant operators as part of its training and development program.

The City also offers to provide a uniform allowance to be paid to each employee upon completion of the employee's probationary period.

Discussion

Although the Union has not incorporated proposals in its final offer

regarding the certification fee and uniform allowance benefits offered by the City, no arguments or evidence have been submitted regarding their reasonableness, though the Union did indicate at the hearing that their economic impact was negligible. One problem the undersigned wishes to note with respect to these proposals is the uncertainty in the uniform allowance provision as to the amount employees shall receive for same. Similarly, how does said provision relate to the current Article XVIII, Section 3? These issues, if they have not been resolved in the private negotiations between the parties, may need further attention.

TOTAL FINAL OFFER

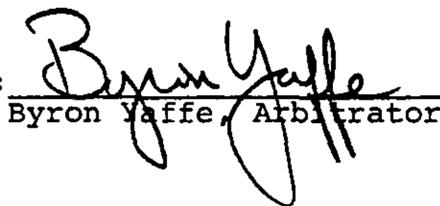
For the reasons set forth above, the undersigned has concluded that the City's positions on wages, duration, and longevity are more reasonable than the Union's, and that the Union's position of sick leave accumulation is more reasonable than the City's. Accordingly, the City's total final offer is deemed the more reasonable of the two, and it is therefore concluded that said final offer should be incorporated into the parties' collective bargaining agreement.

Based upon all of the foregoing, the undersigned renders the following

AWARD

The City's final offer which has been submitted herein shall be incorporated into the parties' collective bargaining agreement.

Dated this 23rd day of September, 1981 at Madison, Wisconsin.

BY: 
Byron Yaffe, Arbitrator