STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of GENERAL TEAMSTERS UNION, LOCAL 662 To Initiate Mediation-Arbitration Between Said Petitioner and CITY OF HUDSON (DEPARTMENT OF PUBLIC WORKS)	Case X No. 27244 Med/Arb-974 Decision No. 18526-A

Appearances:

Mr. Raymond J. Weber, Consultant, St. Paul Employers' Association appearing on behalf of the City of Hudson.

Mr. Merle Baker, Business Agent, General Teamsters Union, Local 662 appearing on behalf of the employees of the Department of Public Works, City of Hudson.

Arbitration Award:

On April 2, 1981, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator pursuant to 111.70 (4)(cm)6b of the Municipal Employment Relations Act, in the matter of a dispute existing between the General Teamsters Union, Local 662, referred to hereafter as the Union, and the City of Hudson (Department of Public Works), hereafter referred to as the Employer. Pursuant to the statutory responsibilities the undersigned conducted a mediation meeting between the Union and the Employer on May 19, 1981. The mediation effort proved unsuccessful and due notice was given to the parties of their rights to withdraw their final offers under 111.70 (4)(cm)6c. Neither party chose to withdraw its final offer and an arbitration hearing was then held on May 20, 1981. The parties were both present at the hearing and given full opportunity to present oral and written evidence and to make relevant argument. No transcript of the proceedings was made and the parties jointly agreed not to file post-hearing briefs.

The Issues:

The contract under which the instant case arose expired on December 31, 1980. Pursuant to the negotiation of a new contract the parties exchanged initial proposals on October 2, 1980 and met jointly thereafter four times. On December 28, 1980 a petition to initiate Mediation-Arbitration was filed by the Union with the Wisconsin Employment Relations Commission. The final offers of the parties were certified by the WERC on March 18, 1981 pursuant to Section 111.70 (4)(cm)6 and these remained unchanged through the arbitration hearing as set forth below:

Union Final Offer:

1. Retroactive to January 1, 1981 $1.25 per hour increase in all Steps and Classifications

2. One (1) year contract to terminate December 31, 1981.

Employer Final Offer:

1. Two year contract, effective January 1, 1981.

2. Wages: 9.5% added to each classification effective January 1, 1981. Also added an additional 10 cents per hour to waste treatment plant chief operator and waste treatment operator classifications effective January 1, 1981.

Also add 9% to all classifications effective January 1, 1982, plus an additional 10 cents per hour added to the waste treatment plant chief operator and waste treatment operator classifications. Effective January 1, 1982.

3. Article XIV, Paragraph 2 (Overtime Pay) will provide that classifications of waste treatment plant chief operator and waste treatment operator may be scheduled on Saturday and Sunday on a rotating basis at the regular straight time rate of pay, but shall be paid 1-1/2 times the regular rate of pay for all hours worked on their designated days off.

   Delete Article XI, Section 3 from the Contract when the above is implemented and add 20 cents per hour to the classifications of waste treatment plant chief operator and waste treatment operator classification.

Discussion:

The discussion set forth below will evaluate each of the final offers of the parties to the instant dispute, taking into consideration as appropriate the statutory criteria found at 111.70 (4)(cm)7 Wis Stat. The undersigned will concern himself primarily with the criteria to which the parties directed their evidence and argument. Both parties rested their cases primarily on the comparables criterion, 111.70 (4)(cm)7d, while the Union also raised as a defense of its position, cost of living statutory criterion "e". In addition, the Employer made reference to the need for weekend operation of a new waste water treatment facility not yet in operation at the time of the arbitration hearing.

The Salary Issue

In its demand that all steps and classifications be increased by $1.25, retroactive to January 1, 1981, the Union is basically asking for a year to year increase of 16.0 percent. The rationale for its salary demand is several. In the first place it argues that under the previous contract, in force from January 1, 1979 to December 31, 1980, bargaining unit employees received salary increased of 10 percent and 7 percent in 1979 and 1980 respectively. Using as a cost-of-living benchmark, the All Items Consumer Price Index for Urban and Clerical Workers (CPI-W) for the Minneapolis-St. Paul SMSA CPI changes amounted to 12.2 percent in 1979 and 11.0 percent in 1980. The Union contends that as a consequence of such CPI increases the Employer's salary levels have fallen considerably behind the cost of living for the two years the last contract was in force.

The Union attempts further to support its salary claims by drawing a comparison between the salaries paid to positions in the Employer's bargaining unit with counterpart positions in a set of six comparable cities: Maplewood, Stillwater, White Bear Lake, and Roseville (all of Minnesota); and New Richmond and River Falls (both of Wisconsin). The comparisons (Union Exhibit #5) purport to show that the Union's wage demand would leave its members with a salary level lower than nearly any of its comparison cities.

The City, on the other hand, challenges the Union's wage comparables and in their place offers its own set of comparisons. These were created by taking certain positions found in the Employer's bargaining unit (park maintenance workers, waste treatment operators, waste treatment plant chief operator, and city mechanic) and then systematically comparing the wage per hour paid for Wisconsin cities in the population range of Hudson, i.e. 2,500-10,000, for the year 1980. These comparisons would seem to show that for park maintenance workers only one of 22 cities in the survey exceeded Hudson; for waste treatment operator only 4 of 30 cities surveyed exceeded Hudson's rate; for waste treatment plant chief operator only 3 of 36 cities exceeded Hudson; for city mechanic only 4 of 45 cities exceeded Hudson; and for street maintenance workers the ratio was 1 of 32 cities was above Hudson's wage level for that position.

In terms of comparables the undersigned finds little guidance from the parties' respective arguments. The Union offers six cities to support its position, four of which are drawn from Minnesota. The Employer argues without refutation that such cities are not comparable since they are characterized by different tax structures, and state and local laws. Moreover, the Employer contends that there is no bargaining history to support the use of any of the cities in the Union's comparison set.

The Union for its part attempts to show that the City in fact has used these six cities in the past citing wage surveys made in the 1970's and used for unilateral wage adjustments. The Employer, however, counters that surveys were not used in

making the wage adjustments nor were the six cities the basis for the various collective negotiations which followed the organization of the Union in October 1976.

The wage comparisons offered by the city seem to show that its pay levels are well above the average for like cities in Wisconsin. However, here again as with the Union's comparison set, difficulties arise in using the Employer's comparables in an unequivocal manner. In the first place, there is no indication that beyond job titles, job duties are identical or reasonably so. Further, even were duties comparable other job conditions including fringe benefits might have to be considered in explaining the apparent higher wage levels for Hudson. Finally, without explanati from the Employer, the number of cities in the survey varies from 22 to 45. The Wisconsin Blue Book for 1979/80 indicates there are approximately 75 Wisconsin cities in the size grouping of 2,500-10,000 population. The undersigned is thus compelled to ask why were a large number of Wisconsin cities in the size grouping used for the wage survey omitted or excluded? And, what difference would it make to Hudson's wage ranking if the missing cities were included.

A more fruitful approach would seem to involve combining the Wisconsin cities in the Union's comparison set with those contained in the survey used by the Employer to obtain data on shift rotation and related employment practices in other Department of Public Works in Wisconsin (Employer Exhibits 4-11). We would now have a set covering the following Wisconsin cities: New Richmond, River Falls, Tomah, La Crosse Chippewa Falls, Menomonie, St. Croix, Baraboo, and Ashland.

Using what we will call the Arbitrator's set, we find that Hudson's DPW wage level for 1980-81 would rank second for the 10 cities behind only New Richmond. The Arbitrator's set also can be employed to compare wage level changes from 1980 to 1981 for DPW employees in the Hudson bargaining unit with those of the other cities in the set. The results of such a comparison are presented in the table below.

PERCENTAGE CHANGE IN AVERAGE HOURLY WAGES FOR ARBITRATOR'S SET OF WISCONSIN DEPARTMENTS OF PUBLIC WORKS

City		Average Percent Increase 1980-81
Ashland		10.4
Baraboo		9.92
Chippewa Falls		*
La Crosse		9.95
Menomonie		8.46
New Richmond[1/]		10.5
River Falls[1/]		7.70
St. Croix		*
Tomah		*
Hudson	(Employer Offer)	9.5
	(Union Offer)	16.16

*Not available

1/Calculated from Union's Exhibit #5. Other cities calculated from Employer Exhibits #4-11.

It can be seen that while the Employer's wage offer is generally in line with th comparison set for 1981 the Union's wage offer would increase wages on the average considerably more than the other cities the arbitrator has chosen. Even were one to include the four Minnesota cities of the Union comparison set the picture does not change appreciably. Thus, for example, the 1980-81 percentage change in wages for

Moreover, in a time in which budget cutting by national, state, and local governments has become widespread, without a stronger basis to justify a wage increase very significantly beyond the level settled for in comparable communities, the undersigned is hardpressed to accept the Union's position on its wage demand. This is particularly true in a situation in which the Union seeks in one year to make up what it lost in two years.

As a consequence of the foregoing the undersigned finds the Employer's final offer on wages to be more in line with the statute's comparables criterion and therefore is to be preferred.

The Duration of the Proposed Contract

The Employer in the instant case has offered a two year contract and the Union's response is one year. Given the uncertainty concerning future rates of inflation, tax collections, and revenues from other governmental levels there is much to be said for short-term collective agreements. The feeling that this conclusion is appropriate to the instant case is reinforced by the concomitant uncertainty in the parties' minds relative to the startup date for the city's new waste water treatment plant. A possible time frame for the startup apparently runs from September 1981 through February 1982.

The parties, however, have not urged their respective positions concerning the contract terms on the arbitrator; nor have they sought through the statutory criteria of 111.70 to provide evidence one way or the other. The question of one or two years is thus not determinative of the final outcome of the instant dispute. As such the undersigned therefore will forego any explicit statement of preference for contract duration beyond that indicated above and leave the question to be resolved as a by-product of the disposition of the other issues.

The Issue of Shift Rotation and Overtime Pay for Weekend Duty

The Employer's final offer in the instant case contains the demand that waste water treatment plant employees would be required on a rotating basis to work Saturdays and Sundays. Under the present contract clause, Article XI, Section 3, such workers are on call on weekends for which they are paid time and one-half their hourly rate for 4 hours each on Saturdays and Sundays. These employees are also paid $35 per month for operating dams under the same clause.

The Employer proposed to delete Article XI, Section 3 while at the same time add to Article XIV, Paragraph 2 a statement that weekend work, unless required on designated days off, would be paid at straight time rates of pay. The dam pay of $35 per month would be converted to 20 cents per hour and added to the base pay of waste water plant workers.

Under present practice waste water treatment employees generally work approximately 4 hours each on Saturdays and Sundays seventeen weekends per year. However, the Employer believes that the new waste water plant will require full 8 hour shifts on weekends and in addition will necessitate raising the number of employees from three to five. In support of its contention, the Employer cites the new plant's operating manual plus surveys of comparable communities operating such plants.

The Union counter argues that the manpower needs of the new plant are not clear and won't be until the plant is in operation. Also,disputed are the Employer's survey results on waste water treatment plant operating practices. In this regard, the Union seeks to show that the survey reveals no consistent practices on shift rotation and overtime payment for weekend work among the surveyed communities.

A major point raised by the Union is the economic loss which would be suffered by the waste treatment plant operators were the overtime payment dropped. At the present time such workers receive approximately $1,500 per year in mandatory overtime payments.

To offset the financial loss of the waste water plant operators the Employer has offered an additional 10 cents per hour beyond the basic increase in wages its package would provide in 1981 and 1982. It also challenges the Union's view on the overtime payment, arguing that efforts to continue the mandatory overtime is a departure from the original purpose of overtime as a penalty payment.

In general arbitrators are not favorably disposed toward the efforts of contending parties to remove existing language from the contract. This is especially so where the language was voluntarily negotiated and where no significant harm nor irreparable

damage could be shown by the continuance of the offending language. The burden thus is on the moving party to demonstrate that necessity more so than convenience motivates its efforts. In the instant case the Employer has sought to show that it needs Saturday and Sunday treated as regular work days such that the new waste water plant can be fully staffed on weekends. The institution of a shift rotation would cover the manpower needs. At the present time the Hudson Department of Public Works employs three men at the existing waste disposal facility. According to the testimony of Mr. Thomas O'Keefe, Director of the DPW five men will be required including a maintenance man for the lines and four men at the new plant. In this regard the Employer contends that whatever cost would be saved by the elimination of weekend overtime payments would then be expended on hiring additional employees.

The Arbitrator has sifted the evidence and testimony in the instant case carefully for signs that the Employer's decision to operate the new waste water treatment plant on a seven day basis is merely an act of capriciousness, arbitrary and unreasonable These signs are not visible to the undersigned and, to the contrary, the evidence suggests that the Employer believes that it will be acting in a manner consistent with the most efficient use of the new technology. The Director of Public Works has testified to the new plant's requirements and the Arbitrator, in the absence of sound basis for doing so, is not prepared to substitute his judgment concerning those needs for that of the Director of the Department. Thus, there is no question in the Arbitrator's mind that, under the circumstances, the Employer is justified in scheduling the operations of the new plant in a manner most productive for the investment the City has made.

However, less clearcut is the Employer's justification to schedule its work in avoidance of the premium it has contractually agreed to and customarily paid for weekend duty. In this regard several points appear pertinent. First, what began as a requirement for Disposal Plant employees to be "On-Call" for four hours each on certain weekends (Article XI, Section Three) has apparently evolved into a four hour work assignment on Saturdays and Sundays of 17 weekends per year. In essence, the Disposal Plant employees are now working overtime these 17 weekends for a total of 136 hours beyond their normal 2080. The Employer's shift rotation demand would eliminate those overtime hours but also the Saturday and Sunday premium pay.

A second point is that the Employer in its offer proposed to convert the Dam pay of $35 per month to a flat additional hourly rate of 20 cents plus to add 10 cents per hour to the base rate for the Disposal Plant workers. The additional 10 cents per hour could be considered, on the one hand, as a premium for the inconvenience and disruption of shift rotation and weekend work. Or, on the other, as a "buy-out" of the previous contractual restriction on scheduling weekend work at straight time hourly rates. In either case 10 cents per hour seems inadequate. In the past the Employer apparently agreed that loss of weekends was worth 150 percent of hourly base rate but now argues it should be devalued to approximately 1.2 percent.

In terms of the "buy-out" the exchange would be twofold: $208 per year premium (10¢ x 2080 hours) payments; and 17 days less work per year (i.e. the overtime now no longer required). The loss to the affected employees would be approximately $1,300 per year ($1,500 - $208). It does not strike the Arbitrator that these are the terms of a fair and equitable exchange.

The undersigned however, must weigh the equity of the exchange for the employees against the needs of the City for a technologically efficient and cost minimizing operation of the new facility. Under such circumstances, the Arbitrator must give preference to the Employer's position. This conclusion however is not reached without some misgiving for reasons which will be considered below.

Summary

The instant case illustrates the potential shortcomings of the final offer by package system which, under so-called S.B. 15, the Legislature of the State of Wisconsin adopted in 1978. Contrary to the premise of "either-or" interest arbitration the parties to the instant case did not negotiate to the point of reasonable final offers. In the Arbitrator's opinion neither offer was acceptable and the undersigned was therefore confronted with the dilemma of choosing the least worse offer. Thus, the Union's wage demands were not defensible by the standards set out in 111.70 Wis. Stats and, in certain respects the Employer's offer was no better. While it offered a reasonable wage increase, the Employer also provided little in the way of an equitable quid-pro-quo for major changes in work schedule and premium payments. The Employer has basically used the Arbitrator to impose a condition of employment which rightfully should have been mutually resolved at the bargaining table.

On balance, the Arbitrator concludes that he can not in good conscience require the Employer to pay an average 16 percent wage increase with the added roll-up costs overtime payments would entail and, in addition, preclude said Employer from instituting those changes in its new plant operations which would insure the benefits of advanced waste water treatment technology to the community it is intended to serve.

Having considered all of the issues in light of the evidence presented, the arguments, and the statutory criteria, the undersigned renders the following:

AWARD

The final offer of the Employer together with the prior stipulations of the parties is to be incorporated into the Collective Bargaining Agreement for the period beginning January 1, 1981 through December 31, 1982.

Dated at Madison, Wisconsin this 6th day of July 1981.

Richard U. Miller, Arbitrator