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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of GENERAL DRIVERS, DAIRY EMPLOYEES & HELPERS LOCAL NO. 579 To Initiate Mediation-Arbitration Between Said Petitioner and GREEN COUNTY (DEPARTMENT OF SOCIAL SERVICES)	Case LIX No. 29190 MED/ARB-1532 Decision No. 19662-A

Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S. C., Attorneys at Law, by Timothy G. Costello, appearing on behalf of the Union.

Melli, Shiels, Walker & Pease, S. C., Attorneys at Law, by Jack D. Walker, appearing on behalf of Employer.

ARBITRATION AWARD:

On July 8, 1982, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between General Drivers, Dairy Employees & Helpers Local No. 579, referred to herein as the Union, and Green County (Department of Social Services), referred to herein as the Employer. Pursuant to the statutory responsibilities the undersigned conducted mediation proceedings between the Union and the Employer on August 31, 1982, however, said mediation failed to resolve the matters in dispute between the parties. At the conclusion of mediation proceedings, the Employer and the Union waived the statutory provisions of 111.70 (4)(cm) 6.c. which require the Mediator-Arbitrator to provide written notice of intent to arbitrate and to establish a time frame within which either party may withdraw its final offer.

Arbitration proceedings were conducted on September 14, 1982, at Monroe, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were transcribed, and briefs were filed in the matter, which were exchanged by the undersigned on November 2, 1982. Thereafter, motion to reopen hearing was filed by counsel for the Union on November 4, 1982, for the purpose of submitting additional evidence into the record with respect to the amount of wage increase granted to Unified Service employees effective January 1, 1983. On November 8, 1982, counsel for the Employer responded to Union motion, requesting leave to submit into evidence the percentage wage increases granted to Unified Service employees effective January 1, 1982, if the Union was permitted to enter into evidence the increase granted for 1983. Counsel for Employer further specifically objected to any actual reopening of hearing for other purposes. On November 10, 1982, the undersigned initiated telephone conference call between counsel for Union and counsel for Employer to discuss Union's motion of November 4 and Employer's response of November 8, 1982, and by agreement of counsel Green County Board of Supervisors' resolution 10-2-82 and the contents of counsel for Employer's letter of November 8, 1982, were admitted into the record of these proceedings post hearing. On November 10, 1982, the undersigned confirmed the foregoing arrangements and advised counsel that the hearing and record was then closed, after both counsel had declined an opportunity to submit further argument with respect to the newly admitted evidence.

THE ISSUES:

The issues joined by the final offers of the parties are as follows:

1. DURATION OF CONTRACT

The Union proposes a three year Contract commencing January 1, 1982 and expiring December 30, 1984.

Employer proposes a two year Contract commencing January 1, 1982 and expiring December 31, 1983.

2. SICK LEAVE

The Union proposes increasing the accumulation of sick leave from 72 to 90 days, and further proposes that one-half of the accumulated sick leave be paid out upon employee's termination.

The Employer proposes that the terms of the predecessor Collective Bargaining Agreement at Article XV relating to sick leave remain unchanged. Said terms provide that sick leave is capped at an accumulation of 72 days and that 50% of the employee's accumulated sick leave at the time of the employee's termination due to normal retirement, death or permanent disability, will be paid to the employee or his/her heirs.

3. WAGES

The Union proposes to bring the wages of the bargaining unit employees into parity with selected, non-union employees of the County's Human Services Department who have comparable job skills and responsibilities. The Union wage offer results in no raise for one employee and a maximum raise of $2.12 per hour for another employee in the first year of the Agreement. The average percentage increase for the first year of the Union proposal is 27.16%. The Union proposes an 8% across-the-board increase in the second and third years of the Contract.

The Employer offer for the first year of the Agreement proposes selected increases for each individual in the bargaining unit ranging from no increase in the first year for one employee and a maximum raise of $1.26 per hour for another employee for the first year of the Agreement. The average percentage increase to the employees in the unit is 8.83%. Employer further proposes that the minimum starting wage as set forth in Article XXXV, Section 1 of the Contract be increased by 6.46% and that the "1982 rate" be increased by 2.7% in the first year of the Agreement. For the second year of the Agreement the Employer proposes that all present unit employees and any employee hired in 1982 upon completion of their probationary period shall receive a 37¢ per hour increase in 1983. The 37¢ per hour increase for 1983 calculates to an average percentage increase of 7% for each unit member.[1]

4. Employer proposes to modify Article XXXVII by adding the following language: "Nothing in this section or this Agreement prohibits the Employer from implementing its proposals or parts thereof if such implementation is otherwise lawful."

Union proposes that the language of the predecessor Agreement found at Article XXXVII remain unchanged.

1/ The percentage increases set forth in this paragraph are excerpted from the Union brief. Employer calculates in his brief that the Union first year proposal represents a 24% increase and that the Employer first year proposal represents an 8% increase.

The language of the predecessor Agreement at Article XXXVII, which would be modified by the Employer's proposal reads: "In the event such notice is served the parties shall operate temporarily under the terms and provisions of this contract until a new contract is entered into, at which time, the new contract shall be retroactive as of the date of termination of this Agreement."

The foregoing represents the entirety of the disputed provisions of the final offers of the parties. The Employer, in its final offer, has proposed two other modifications to which the Union now stipulates. The stipulated modifications to the predecessor Agreement are:

1. Article VII Item (4) add: ", or clients". (TR. page 39)
2. Change the introductory paragraph of Article XXIV to read:

The level of benefits in effect as of April 1, 1982 for the health and welfare program shall remain substantially the same for the life of this Agreement, beginning April 1, 1982. The County may select another carrier, providing the benefit levels remain substantially the same. The level of benefits includes employer payment of the first $200.00 of coinsurance.

The County agrees to pay for 90% of the cost of health insurance premium for full-time employees for each family unit of coverage and full cost of health insurance premium for each single unit of coverage. The employees consent to the County deducting any amounts due from his/her payroll check prior to the first of each month when the premium shall be due.

Health and welfare coverage and payments for the period January 1, 1982 through March 31, 1982 shall be as it actually occurred.

Newly hired employees hired after March 1, 1979, shall receive health insurance coverage from the first of the month following thirty days of employment. (TR. page 40)

DISCUSSION:

The Statute directs that the Mediator-Arbitrator, in considering which party's final offer should be adopted, should give weight to the factors found at 111.70 (4)(cm) 7, a through h. The undersigned, in evaluating the parties' offers will, therefore, consider the offers in light of the aforementioned statutory criteria.

WAGE ISSUE

The Employer argues that the equity of his offer lies in the comparison to the percentage wage increase offered to this unit compared to the wage increases agreed to between the Green County Pleasant View collective bargaining unit and Green County. The Pleasant View unit is represented by the AFSCME Union, and they settled at an 8% increase for 1982 and an 8% increase for 1983. The Employer argues that the average increase in this unit in excess of 8% for the first year and 7% in the second year squares favorably with those settlements. Employer further argues that in comparing settlements with comparable counties in the surrounding area, his 8% and 7% offer here compares favorably to the settlement in Dane County of 8% and 7.5% for clericals and 6.5% and 7.5% for social workers; with Iowa County clerical settlement of 10.75% for two years, 1982 and 1983, and 5.65% in 1982 and 1983 for social services; with Rock County social services of 7.25%; and with Richland County where the settlement established a 7% lift with a 5% cost for the bulk of the social services unit. The undersigned agrees that the 8% and 7% offer here for two years by the Employer compares favorably with percentage settlements in other units, both internal to the County and to settlements of social worker departments in the surrounding counties. Thus, when considering solely patterns of settlement, the Employer offer is clearly preferred over the Union offer, which counsel for Union in his brief calculates to be 27.16% increase for the first year and 8% for each year thereafter.

The Union final offer in this matter with respect to wages is based entirely on the proposition that the employees represented in this unit are entitled to parity for performing the same or similar work as the wages paid to non-represented employees of this same Employer employed within the County Unified Services. When the predecessor labor agreement was negotiated between this Employer and this Union, the Department of Social Services represented by the Union here was a separate and distinct department from the County Unified Services Department, whose employees were unorganized. During the term of the predecessor Collective Bargaining Agreement the Department of Social Services and the Department of Unified Services were merged into one department entitled Department of Human Services, under the direction of one administrator, Russ Willett.

The County Board of the Employer, by its resolution 9-3-80, authorized the Personnel and Labor Relations Committee to enter into a contract with the State of Wisconsin, Department of Administration, Community Management Services, to provide a job classification/compensation study with Green County non-bargaining unit employees. Thereafter, by resolution of the County Board of the Employer, resolution 7-3-81, the Board implemented the job classification/compensation study for its non-unit bargaining employees, which included the non-represented employees in the newly merged Department of Human Services. The foregoing implementation resulted in establishing salary grades and compensation rates for all non-represented employees in Human Services. No job classification/compensation studies were performed for the bargaining unit employees in the represented unit of Human Services, and their rates of pay under the Employer offer here would be based upon the historic bargaining relationship between the Union and the Employer rather than any consideration of equities of pay between represented and non-represented employees in the Department of Human Services. The Union grounds its case on parity for the same or similar jobs being performed, irrespective of whether they are represented employees in Social Services or non-represented employees in Unified Services. The Union argument is persuasive, particularly, when considering the testimony at hearing of Ralph Hantke, Supervisor of County Merit Unit of State Department of Health and Social Services. Hantke testifies that he participated in similar mergers of Unified Services and Social Services into Human Services Departments in Jefferson and Portage counties, wherein the aforementioned counties established single classification and compensation plans for the entire department and classified the employees based on their job content, paying the same wages for the same or similar services performed in both Unified Services and Welfare Departments. (TR. pages 12-26) Therefore, based on Hantke's testimony, and the equities of parity considerations, and providing that the Union evidence in this record establishes the parities of these specific jobs under consideration, the Union's argument for parity is persuasive.

It remains to be determined, however, whether the Union final offer here establishes the parity which they seek. In its final offer the Union proposes to bring all Social Service employees within the Human Services Department up to the salary schedule Green County implemented for non-union employees within Human Services Department as of January 1, 1982. The Union offer, however, is made more specific by an attachment to its offer which specifies the wage rates which would become effective January 1, 1982. The Union bases its case for the specifics of the wage rates in its final offer which they argue constitute parity, on the testimony of Mary Wilson, a Social Worker II in Social Services and Steward of the bargaining unit. Wilson testifies that she obtained the salary grades and salaries for all of the personnel in Unified Services from the County Clerk, and then graded the people in the bargaining unit based on the job descriptions of the merit system for each of the classifications and based on her knowledge of what the people did. She tried to arrive at what she felt was a comparable grade level for the kind of work they were doing. (TR. pages 28-31) Using the foregoing method, Wilson constructed what is in this record as Union Exhibit No. 9, which sets forth the grades and pay rates of unrepresented employees, compared to the grades and pay rates which the Union final offer advocates here. Thus, from Union Exhibit No. 9 it is clear that the Union advocates that employees Burkhard, Joranlien, Schwitz be classified in salary grade 8; that employee Zitzner be classified in salary grade 10; that employees Trumpy, Leutenegger, Marty, Hunt be classified in salary grade 11; that employee Hoover be classified in salary grade 13; and that employees Gonwa, Turner and Wilson be classified in salary grade 14. Union Exhibit No. 9, however, makes it clear that the comparisons with non-represented

employees were made with individuals based on the Union's assertion that the unrepresented employees are classified in certain salary grades. Union Exhibit No. 9 purports to show that employee Dusie is classified in salary grade 6; that employees Martin and Hoffman are classified in salary grade 8; that employee Grimm is classified in salary grade 9; and that employee Bandi is classified in salary grade 11. Thus, from her conclusions that equivalent work was being performed between the non-represented and represented employees, Wilson arrived at the grade proposals based on her slottings contained in Union Exhibit No. 9. If Wilson's conclusions and data are accurate, that the non-represented employees are properly slotted into the aforementioned salary grades, and that the represented employees are doing similar work; it would follow that the Union's offer should be adopted in this matter. The record establishes, however, from the testimony of Director Willett at pages 51 to 55 of the transcript that Wilson has erroneously classified certain of the non-represented employees. The unrefuted testimony of Willett establishes that unrepresented employee Dusie is classified in salary grade 5, not salary grade 6; that unrepresented employees Martin and Hoffman are classified in salary grade 7 and not in salary grade 8; that unrepresented employee Grimm is classified in salary grade 8 and not in salary grade 9; and that employee Bandi is classified in salary grade 10 and not in salary grade 11. Since Willett's testimony as to the proper slotting into salary grades of unrepresented employees is unrefuted in this record, the undersigned can only conclude that the Union comparisons would establish higher rates of pay for represented employees doing similar work rather than parity of pay for represented employees doing similar work. Wilson's testimony establishes that Union's claim for parity is based on the data contained in Union Exhibit No. 9. Specifically, Wilson slots Burkhard, Joranlien and Schwitz at salary grade 8, $5.10 per hour, based on her comparisons of other salary grade 8 unrepresented personnel. Therefore, the record establishes that the Union asserts that Burkhard, Joranlien and Schwitz should be paid at a salary grade comparable to unrepresented employees Martin and Hoffman who are also shown at salary grade 8 in Union Exhibit No. 9. Since the record testimony of Willett establishes that Martin and Hoffman are actually in salary grade 7, the Union proposal results in a pay rate and salary grade for represented employees one grade higher than unrepresented employees which the Union, by Wilson's testimony, considers equal or comparable. Thus, if the Union offer were accepted, employees, Burkhard, Joranlien and Schwitz would be paid 24¢ per hour more than unrepresented employees Martin and Hoffman, who the Union considers equal or comparable in terms of responsibilities for parity pay purposes. The same results would be achieved with respect to represented employees Trumpy, Leutenegger, and Marty who are slotted at salary grade 11, $5.90 per hour in the Union final offer. Union Exhibit No. 9 satisfies the undersigned that Union attempts to justify the salary grade 11, based on its data in Union Exhibit No. 9 that non-represented employee Bandi is slotted at salary grade 11. Willett's testimony, however, establishes that Bandi is slotted in salary grade 10. The Union offer, then, would establish a rate for these represented employees 28¢ per hour higher than Bandi's rate, the non-represented employee which Union Exhibit No. 9 would establish as comparable for pay purposes to Trumpy, Leutenegger and Marty. Consequently, the undersigned concludes that to find for the Union final offer on wages would establish an inequity between represented employees and non-represented employees to the benefit of represented employees. The undersigned further concludes that in view of the magnitude of the percentage increase sought by the Union here, which Union counsel calculates to be 27.16%, the Union's offer must be rejected for the foregoing reason.

The undersigned has further considered the actual comparisons of actual wages paid by this Employer to comparable positions as compared to wages paid for similar positions among other comparables. Those comparisons establish that when comparing the wage offers of the parties here with wages being paid for similar positions in the counties of Iowa, Sauk, Columbia, the Employer offer results in wages below the wages being paid for the same positions in the foregoing counties. Thus, a case for catch-up for the employees in this unit is supported. However, in view of the fatal error made in attempting to establish parity between represented and non-represented employees, which would result in higher pay to represented employees by reason of the misclassification of unrepresented employees described in the preceding paragraph, the undersigned concludes that the Union offer should not be adopted with respect to wages for that reason.

DURATION OF CONTRACT

The parties dispute the length of the term of the Contract in arbitration here. Union proposes a three year Contract, whereas Employer proposes a two year Contract. The history of bargaining establishes that the Employer and the Union have never entered into three year agreements previously. Thus, historically the parties have entered into two year agreements and, therefore, a two year Contract term is preferred based on that norm.

Furthermore, the Union proposes in the third year of the Contract for the year 1984 an 8% general increase at a time when there are no comparables available to establish what percentage increase is being negotiated for that term. Particularly in view of the uncertain economic times which presently exist, the undersigned concludes that a two year Contract is preferred.

SICK LEAVE

The Union proposes an increase in accumulation of sick leave days from 72 to 90, and a pay out upon termination of one-half of accumulated sick leave, irrespective of the reason for which the termination occurs. The undersigned looks primarily to the internal comparisons for guidance as to whether the Union proposal should be adopted. The record is clear that no other bargaining unit bargaining with this same Employer has the type of sick leave provision proposed by the Union here. Consequently, the undersigned concludes that the sick leave provisions of the Collective Bargaining Agreement should remain unchanged, particularly since the proposed changes with respect to accumulation of sick leave would have no impact on unit employees at the present time.

IMPLEMENTATION LANGUAGE

The Employer proposes the addition of language at Article XXXVII to read: "nothing in this section or this Agreement prohibits the Employer from implementing its proposal or parts thereof if such implementation is otherwise lawful." The record establishes that the foregoing proposed language was voluntarily agreed to in negotiations between this same Employer and the AFSCME Union in the Pleasant View unit. The record further establishes that the Employer objective was achieved when in negotiations between this Employer and its Deputy Sheriff's Association the parties agreed to remove the language which reads: "In the event such notice is served, the parties shall operate temporarily under the terms and provisions of this contract until a new contract is entered into." Based on the foregoing evidence, which establishes that other units have voluntarily entered into provisions in their collective bargaining agreement which would substantially achieve the same purpose as the Employer language proposed here; the undersigned concludes that the proposed language of the Employer here is not of such significant weight so as to preclude the adoption of the Employer final offer.

CONCLUSIONS:

Both parties to the dispute have placed primary emphasis on the wage issue. The Mediator-Arbitrator does so also. In the wage section of this Award, supra, the undersigned has concluded that the Employer's final offer on wages is preferred. Consequently, the undersigned now concludes that in view of the statutory criteria the final offer of the Employer in its entirety should be adopted. By way of commentary, however, the Mediator-Arbitrator in this matter is forced to select a final offer from two final offers which contain serious defects. Therefore, the undersigned has been placed in the position of choosing what he considers to be the lesser of the two evils. The undersigned would hope that the defects in the wage structure contained in this Collective Bargaining Agreement will be remedied in the next round of bargaining, and that the Employer will look to establishing true parity between represented and non-represented employees performing the same or similar duties. The Mediator-Arbitrator must necessarily leave this problem to the next round of bargaining by reason of the statutory provisions which preclude him from modifying either the final offer of the Employer or the Union.

Therefore, based on the record in its entirety and the discussion set forth above, after considering the arguments of counsel and the statutory criteria, the Mediator-Arbitrator makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties, and those provisions of the predecessor Collective Bargaining Agreement which have remained unchanged through the course of bargaining, are to be included in the written Collective Bargaining Agreement of the parties.

Dated at Fond du Lac, Wisconsin, this 3rd day of March, 1983.

Jos. B. Kerkman,
Mediator-Arbitrator

JBK:rr