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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

* * * * *
In the Matter of the Petition of
SHEBOYGAN COUNTY COURTHOUSE
EMPLOYEES, LOCAL 1749-C, WCCME,
AFSCME, AFL-CIO
To Initiate Mediation-Arbitration
Between Said Petitioner and
SHEBOYGAN COUNTY (COURTHOUSE)
* * * * *

Case LI
No. 29498
MED/ARB-1603
Decision No. 19799-A

Appearances: Helen Isferding, District Representative, for
the Union

Peter J. Witt, Personnel Director, for the
County.

On September 21, 1982, the Wisconsin Employment Relations Commission appointed the undersigned to be mediator-arbitrator of a dispute involving the above-captioned parties pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. A mediation meeting was held at Sheboygan, Wisconsin on December 15, 1982 which failed to resolve the outstanding issues. By agreement of the parties, an arbitration hearing was held on the same date. The record was completed with an exchange by the arbitrator of the parties' post-hearing briefs on January 20, 1983.

The parties' certified final offers, which were not modified subsequently by the parties, are as follows:

Union Final Offer on Disputed Items

Effective January 1, 1982 - December 31, 1982

1. All items tenetively (sic) agreed upon be incorporated into the contract.
2. Reclassify the "site manager" from grade 8 to grade 10
3. Increase all classifications 47¢ across the board

SHEBOYGAN COUNTY PERSONNEL COMMITTEE
1982 CONTRACT
FINAL OFFER
to
LOCAL 1749-C - COURT HOUSE EMPLOYEES
JULY 13, 1982

1. T/A County to assist in correct Union/Employee Information records
2. T/A Mileage item in contract increased to 21¢ per mile.
3. T/A Time limits on grievance procedures
4. County to provide new unit job description by December 31, 1982. (Side Letter)
5. Revised sick leave program:
 1. Employees Who Earn Sick Leave: All permanent employees shall earn sick leave. Sick Leave shall have no monetary value.
 2. Accrual of Sick Leave: Sick leave shall accrue at the rate of one day of sick leave for each calendar month of service.
 - (a) Sick leave allowance shall be accumulated in the employee's sick leave account to an unlimited number of days.
 - (b) Sick leave credits in any given year shall not be earned for any period of absence without pay or time otherwise not worked or paid for, except that for administrative purposes any approved absence or absences totalling thirty (30) days or less in a calendar year may be disregarded.
 - (c) Sick leave shall not be used until it has been accrued.
 - (d) Part-time employees shall accrue sick leave pro-rated on the basis of time worked.
 - (e) For new or returning employees, one (1) day of sick leave shall be added if the employment commences before the 16th day

of the month, but if the employee commences work on the 16th. day or thereafter, no sick leave shall be added for that period.

3. Eligibility for Sick Leave: Each permanent employee who has earned sick leave credits shall be eligible for sick leave for any period of absence from employment which is due to his illness, bodily injury, exposure to contagious disease, attendance upon members of his immediate family (defined as wife, husband and children) where employee's presence is required or death in the immediate family (defined as husband, wife, children, parents, brothers and sisters of the employee or his spouse, daughter-in-law and son-in-law).

(a) The department head has the duty to require that the employee make other arrangements within a reasonable time, for the attendance upon children or other persons in his care.

4. Sick Leave on Holidays or Days of Work Suspension: In the event that a holiday falls on a regular workday within the week or weeks taken as sick leave, such holiday shall not be charged as sick leave. For any day on which work is suspended, such suspension shall not be construed to extend any sick leave to an employee in such status at the time.

5. Effect of Termination of Employment: Upon termination of their employment all employees shall forfeit all sick leave that has accumulated. (Sick leave has no monetary value).

6. Seniority - Article XXVI

Replace Item "C" with the following language:

- C. Whenever any approved vacancy exists for positions within the bargaining unit, notice of said vacancies shall be posted for the information of all employees for five (5) work days prior to public posting on bulletin boards in buildings where members of the bargaining unit work. The vacant position shall be given to the most senior qualified applicant in a department where the position exists, then offered to the most senior

qualified Bargaining Unit employee before filling the vacant position with non-bargaining unit employees.

7. Holidays - Article XVIII

Change Item b to the following:

Employees who are required to work on the holiday shall be paid one and one-half ($1\frac{1}{2}$) times their rate of pay or be permitted to take equivalent time off at such time as they select within the succeeding thirty (30) days subject to schedule approval of the department head.

Delete iii:

Accidents sustained within sixty (60) days prior to the holiday.

8. Regulation of Pay Plan - Article XI

Change #2, Promotions with the following language and delete #10 of the second (2nd) paragraph.

2. Promotions: When an employee is promoted to a position in a higher class, the employees pay shall be increased to the minimum rate for the higher class. If the employee's present rate is equal to or exceeds this minimum, the employee's pay shall be increased to the next higher step in the new class. Any employee promoted having more seniority in a classification shall not be paid less than the most recent department employee having less seniority in the same department classification.

#10 Delete second (2nd) paragraph

9. Reclassification: Planning Aide to Grade 13
Income Maintenance Worker to Grade 12
Income Maintenance Asst. to Grade 10

10. One year contract: 1-1-82 to 12-31-82

11. Wage increase as of 1-1-82: 47¢

Despite the appearance of a large number of issues, there are only two in dispute. In the Union's final offer, only the upgrading of Site Managers is an unresolved issue. In the County's final offer, there is agreement on items #1-4 and 10. The Union does not have any dispute with the County's offer to implement items #6-9, although these are not items contained in the Union's final offer. The only item in dispute in the County's final offer is #5, relating to sick leave payout.

Site Manager Issue: Facts

The Union offered testimony concerning its offer to upgrade Site Managers. Site Manager Jahnke testified that the job has changed. There has been the addition of outreach and community support work, and there is much more work to do than formerly. The Site Manager coordinates approximately 80 volunteers, serving approximately 125 people a day. When she first took the job, Jahnke testified, it involved some 4-4½ hours per day, and it is now 5½ hours per day. She now is required to have a car for her work, which was not the case formerly. She received reimbursement for mileage, but she had to purchase the car.

Director of the County Office on Aging, Horwitz, testified under subpoena, that the Site Manager job began as a nutrition program, and changed as needs were recognized and funding changed. She described the changes in the past year and a half as significant.

Horwitz testified on cross-examination that as department head she has sought an evaluation of all of the positions in the department, not just Site Managers. She testified that such an evaluation should be the responsibility of the County Personnel Administrator.

The Union proposes to upgrade the Site Manager position from grade 8 to grade 10. For each of the affected employees (8), the increase would vary from 36¢ to 85¢ per hour, and the annual cost to the County, according to Union calculations, is \$6,279 for the year. The Union points out also that if its offer is implemented, the County will not then incur the added costs of upgrading of positions contained in the County offer. According to Union calculations, this will save the County \$5,803.20, and the net cost of upgrading will therefore be (\$6,279 less \$5,803.20) \$475.80.

The Union argues in its brief that the added duties and responsibilities of the Site Manager position fully justify the upgrade. It argues that the unique aspects of the County's program make comparisons with Site Managers in other jurisdictions inappropriate. The Union introduced a letter from the Lake Michigan Area Agency on Aging in support of that position.

The Union argues also that Site Managers should not be in the same grade as "Cleaners" (grade 8), but should be in the same grade (10) with "Outreach Workers and Volunteer Service Coordinators."

The County argues in its brief that as presently classified, ". . . the site manager is an entry level position that is like most other positions that are assigned to salary grade 8."

The County's comparisons of Site Managers in other locations are as follows:

<u>County</u>	<u>Salary</u>	<u>Part-Time</u>	<u>Fringe Benefits</u>
Sheboygan	1982 - 4.86-5.83	Yes	Fully paid life, health, dental Prorated vacation, holidays, sick leave
Ozaukee	1983 (new program) 4.13-4.96	Yes	No health or life
Washington	4.22-4.84	Yes	No health or life Prorated vacation and sick leave
Manitowoc	4.23-4.61	Yes	Prorated health
Dodge	3.35 3.50-1983	Yes	None
Door	4.85	Yes	None
Shawano	3.92	Yes	Partially paid health paid sick leave, vacation, floating holidays
Brown	3.80-4.50	Yes	50% health
Oconto	4.16-4.85	Yes	No life, health, Prorated vacation, holidays

The County argues in its brief that the Site Manager position is properly placed, and there is no difficulty filling the position at the current wage level. It concludes by stating, ". . . if this position is arbitrarily moved to a higher salary grade, the whole sequence of position assignments to specific salary grades would not follow a logical evaluation process."

Sick Leave Issue: Facts

The County proposes to buy out all accumulated sick leave and substitute a new sick leave plan. The total payout that the County would make to members of the bargaining unit, as of November 30, 1982, is \$287,986.46. The County has been paying out increasing amounts for excess sick leave, having paid a total for all County employes of \$40,617.74 in 1979, \$52,029.85 in 1980, and \$56,751.35 in 1981.

The County put into evidence a letter from its Auditor, which states:

Sheboygan Countys unfunded liability for sick leave totaled \$2,527,467.21 on December 31, 1981. This compares with \$2,203,539.63 on December 31, 1980 and \$1,946,237.97 on December 31, 1979. If the same percentages hold true, this would mean that the December 31, 1982 figure should be in the neighborhood of \$2,920,000.00.

In addition to the increase in the unfunded liability each year, the following amounts were paid out in cash to employees in the following years:

1981 Year	\$210,286.92
1980 Year	\$211,346.76
1979 Year	\$151,303.41

The latter figures reflect payments for excess sick leave as well as payments of accumulated sick leave of employes who terminated, retired, or died.

The County also put into evidence Exhibit #6, which contained, among other things, the following data:

SICK LEAVE PROGRAM COMPARISONS
COUNTY OF SHEBOYGAN AND SURROUNDING COUNTIES

LOCATION	MAXIMUM DAYS EARNED	PAYOUTS				
		ANNUAL	RETIREMENT	DEATH	VOLUNTARY TERM	OTHER
SHEBOYGAN COUNTY	120	100% of all days over 120 days	100% of all accumulated earned sick days	100% of all accumulated earned sick days	100% of all accumulated earned sick days	100% of all accumulated earned sick days
BROWN COUNTY	120	No Annual Payout	50% of all sick days to a maximum of 45 days	50% of all sick days to a maximum of 45 days	No Payout	No Payout
CALUMET COUNTY	120	No Annual Payout	No Retirement Payout	No Death Payout	No Payout	No Payout
MANITOWOC COUNTY	120	1/2 of all days accum- ulated over 120 day maximum	1/2 of all sick days accumulated	100% of all sick days accumulated	No Payout	No Payout
WINNIBAGO (sic) COUNTY	120	No Annual Payout	All accumu- lated sick days in excess of 30 days at rate of \$15.00 per day	No Death Payout	No Payout	No Payout

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LOCATION	MAXIMUM DAYS EARNED	ANNUAL	PAYOUTS			
			RETIREMENT	DEATH	VOLUNTARY TERM	OTHER
FOND DU LAC COUNTY	102	50% of all sick leave hours over maximum	50% of all accumulated sick days above 50 days	50% of all accumulated sick days above 50 days	No Payout	No Payout
DODGE COUNTY	108	No Annual Payout	20% of all accumulated sick days after 5 yr. of serv. 30% of all accumulated sick days after 10 yr of serv. 50% of all accumulated sick days after 15 yr of serv. 60% of all accumulated sick days after 20 yr of serv.			No Payout
WASHINGTON COUNTY	90	No Annual Payouts	25% of all accumulated sick leave hours con- verted to cash.	25% of accu- mulated sick leave hours - lump sum payment.	No Payout	No Payout
OZAUKEE COUNTY	120	1/2 rate of pay for all sick days over 120.	No Retirement Payout	No Death Payout	No Payout	No Payout
CITY OF SHEBOYGAN	144	No Annual	Those hired before 1-1-76 100% of 72 days. After 1-1-75, 50% of 72 days, Max.	Same as Retirement	Same as Retirement	No Payout

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LOCATION	MAXIMUM DAYS EARNED	ANNUAL	PAYOUTS			
			RETIREMENT	DEATH	VOLUNTARY TERM	OTHER
SHEBOYGAN AREA SCHOOL DISTRICT	126	No Annual Payout	No Retirement Payout	No Death Payout	No Payout	No Payout
CITY OF SHEBOYGAN FALLS	120	No Annual Payout	75% of earned days paid out at retirement	75% of earned days paid out at death	75% of earned days paid out	No Payout if fired
CITY OF PLYMOUTH	No Limit	No Annual Payout	Street Dept. & union: 72 day max. payout. Police Dept.: 78 day max. payout	Same as retirement	Same as retirement	Same as retirement No payout for police if terminated

In its post-hearing brief, the County states a three-fold purpose for its proposed revision of the sick leave program, "to (1) provide the employee with a greater number of sick days; (2) to buy-out all current accumulated sick days at the employee's current rate of pay, plus longevity; and (3) to remove the unfunded liability portion of the sick leave program."

The County contends that in comparison to other jurisdictions, its sick leave program is "excessive and costly."

The Union argues in its post-hearing brief that the current sick leave program resulted from voluntary agreement between the parties in the collective bargaining process. Moreover, the Union notes that the identical sick leave program that the County wants to eliminate is contained in the 1982 collective bargaining agreements between the County and its other bargaining units (Highway; Institutions; Law; Institutional Nurses; Public Health Nurses; Social Services; Lightfoot Teachers).

The Union argues also that if the County proposal were adopted, it would result in unlimited sick leave accumulation with no payout at retirement, a program which the Union contends cannot be justified based upon the comparables put into evidence by the County (shown above).

Lastly, the Union contends that the County's proposed program would be unfair to the older workers who have accumulated their sick leave days, and who would get much lower benefits from the County's program than they would if they continued to accumulate sick leave days and received a payout at retirement.

DISCUSSION

In making his decision, below, the arbitrator has considered the application of the statutory criteria (111.70(4)(m) to the issues in this case.

Criteria (a) lawful authority of employer, (b) stipulations of the parties, (e) cost-of-living, and (g) changes in (a through f) during the pendency of the arbitration proceedings, have no particular application or relevance to this dispute. The remaining criteria are discussed as they relate to the disputed issues.

Site Manager Issue: Discussion

The evidence of comparable pay for Site Managers both within or outside of the County (criteria (d) and (f)) suggest that the County position is more reasonable. The Union may be correct

that the Site Manager position as performed in the County is different, and the duties more demanding and more responsible, than those done by Site Managers in other jurisdictions, but the Union offers no better basis for external comparisons.

While the Union may also be correct that there is a basis within the County classification program which justifies upgrading of the Site Managers, that is not clear. Job evaluation is a complicated "art" or "science" depending on one's perspective, and it is subjective at best. The arbitrator does not view the evidence in the record as sufficiently detailed or comprehensive about job duties in the County classification program to be a sound basis for a decision to change the present classification of Site Manager. Such changes should be made as part of a thorough study of jobs, or through negotiations, but the arbitrator is reluctant to change job classifications through mediation-arbitration, and certainly that is so based on the record in this case. Were the Site Manager upgrading the only disputed issue, the arbitrator would rule in favor of the County.

Sick Leave Issue: Discussion

Several of the statutory criteria apply to the sick leave issue. Criterion (c) is relevant insofar as "the interests and welfare of the public" are concerned. The question of an ever-increasing unfunded sick leave liability is something that the County must confront, and it is attempting to do so here. At the present time, however, and based on the evidence in this record, the arbitrator is not persuaded that there is any question of "the financial ability of the unit of government to meet the cost of any proposed settlement."

The County has shown persuasively that its current program of sick leave payouts is more generous than those paid in other jurisdictions. The Union points out however, that if the County's proposal were implemented, the County program would then not be comparable to those of other jurisdictions insofar as it would not make sick leave payouts upon an employee's retirement. Among the 12 jurisdictions in the County's comparisons, only 3 have no payout of sick leave at retirement.

What is of far greater importance, in the arbitrator's opinion, is the matter of internal comparisons in the County (criteria (c) and (f)). Each of the other units has a collective bargaining agreement with the County, and in each of them the County has agreed to the very same sick leave program which it seeks to eliminate in this case. The County has offered no persuasive reasons in support of a position that says, in effect, the sick leave program is acceptable for the rest of the County's employees

but not for those in the Courthouse. Undoubtedly a ruling in favor of the County in this unit would help the County's bargaining position vis-a-vis other units in 1983 bargaining in attempting to eliminate or modify the existing sick leave program, but that is not a relevant consideration in this case.

Were the sick leave issue the only issue in dispute in this case, the arbitrator would rule in favor of the Union.

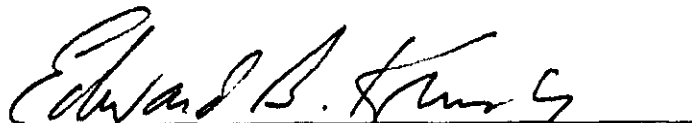
Conclusion

Under the statute, the arbitrator must rule in favor of the entire final offer of one party. The arbitrator may not arrive at a compromise position. In this case the arbitrator has applied the statutory criteria and has decided in favor of the Union's position. The sick leave issue is a far more weighty issue than the Site Manager issue, and thus on balance the Union's position is more justifiable based on the application of the statutory criteria.

Based on the foregoing facts and discussion, the mediator-arbitrator makes the following AWARD

The final offer of the Union is selected.

Dated at Madison, Wisconsin this 10th day of February, 1983.


Edward B. Krinsky, Arbitrator