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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BEFORE THE MEDIATOR-ARBITRATOR

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In the Matter of the Arbitration Between

LOCAL 133, DISTRICT COUNCIL 48, AFSCME, AFL-CIO

and

CITY OF OAK CREEK

* *

Case XXXVIII
No. 30059
Decision No. 20087-A
MED/ARB-1811

OPINION AND AWARD

APPEARANCES:

For the Union: Alvin R. Ugent, Esq., Podell, Ugent & Cross, Milwaukee

For the Employer: David P. Moore, Moore Management Services, Wauwatosa

BACKGROUND

On July 6, 1982, the Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliate Local (referred to as the Union) filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting that the Commission initiate Mediation-Arbitration pursuant to Section 111.70(4)(cm)(6) of the Municipal Employment Relations Act to resolve a collective bargaining impasse between the Union and City of Oak Creek (referred to as Employer) concerning a successor to the parties' collective bargaining agreement which expired June 30, 1982.

The WERC found that an impasse existed within the meaning of Section 111.70 (4)(cm). On December 1, 1982, after the parties notified WERC that they had selected the undersigned, the WERC appointed the undersigned to serve as mediator-arbitrator to resolve the impasse pursuant to Section 111.70(4)(cm)(6)(b-g). No citizens' petition pursuant to Section 111.70(4)(cm)(6)(b) was filed with the WERC.

By agreement, the mediator-arbitrator met with the parties in Oak Creek, Wisconsin on April 5, 1983 to mediate the above impasse. During mediation, some issues in dispute involving Article 20(c) were settled. In addition, the parties agreed to arbitrate separately through the WERC the appropriate job classification and rate of pay for the chief mechanic and auto serviceman. Finally, the parties agreed to exchange amended final offers for the arbitration phase of mediation-arbitration.

An arbitration hearing on the amended final offers was held in Oak Creek, Wisconsin, on April 29, 1983, at which time the parties had a full opportunity to present evidence and arguments. Briefs were subsequently filed and exchanged.

ISSUES UNRESOLVED

Delete sentence: "The City will pay the premium for such insurance until the employee is eligible for medicare benefits."

Substitute: For employees hired prior to July 1, 1983 the City shall pay 100% of the premiums and for employees hired on or after July 1, 1983 the City shall pay 50% of the premiums for such health insurance until the employee is eligible for medicare benefits.

Both parties' final offers contain identical positions on an Employer proposed dental insurance plan.

STATUTORY CRITERIA

Under Sec. 111.70(4)(cm)(7) the mediator-arbitrator is required to give weight to the following factors:

A. The lawful authority of the municipal employer.

B. Stipulations of the parties.

C. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

D. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

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

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

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

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

POSITIONS OF THE PARTIES

THE UNION

The Union contends that its wage demand is supported by appropriate comparables and that the proposed increase is needed to maintain the historic, relative position of these bargaining unit members. Moreover, the Union points out that no evidence was presented by the City that implementation of the Union's final wage offer would impose significant economic difficulty on the City or require layoffs or cuts in services to the public.

The Union strongly objects to the City's final offer on health insurance premiums upon retirement for newly employed members of the bargaining unit. It finds the City offer on this issue to be "radical," without precedent, and

particularly objectionable since it takes away from future employees a valuable benefit available to present members of the bargaining unit. The Union argues that no other City bargaining unit has accepted this change.

Finally, the Union objects to City reference to "a current economic atmosphere of wage freezes" since the City presented no evidence to this effect. Indeed, the Union points to comparable communities having granted wage increases in excess of the Union's final offer herein. It also objects to City claims that there has been a very low cost-of-living increase during the relevant period since no evidence whatsoever was introduced to this effect.

For all the above reasons, the Union claims its final offer package is more reasonable than that of the City.

THE EMPLOYER

The Employer characterizes the Union's final wage offer as requiring the payment of the highest or nearly the highest wage rates of the comparable communities. Using Union exhibits, the Employer calculates that, except for the laborer classification, its wage offer exceeds the "average rate" by "an impressive 54¢ per hour." The City characterizes its 5% offer as fair and reasonable, particularly in the "current economic atmosphere." The Employer further argues that its final wage offer is strongly supported by internal comparability, since police and fire units have agreed to a 5% wage increase and that same percentage was given to non-union employees.

Turning to the insurance issue, the Employer notes that its inclusion of dental insurance as of January 1, 1983 is the equivalent of a 2.13% wage increase for unit members. Therefore, its demand to decrease to 50% health insurance premium contributions by the City for newly hired employees when they retire is "a trade-off" for the new dental coverage. The City points out that no current member of the bargaining unit will be adversely affected. Indeed, the City's proposal does not affect anyone until 1993 and then only if no modifications were to be made by agreement of the parties in contract negotiations.

Based upon the above arguments, the Employer concludes that its offer should be selected.

DISCUSSION

There is no critical comparability dispute in this proceeding although there are several disagreements as to which communities constitute appropriate comparables. A far more serious problem, in the judgment of the undersigned, is that there is little assurance that, in the absence of job descriptions or knowledgeable testimony, the jobs classifications are themselves comparable from community to community. This problem is compounded because external comparable wage data, where provided, have not always been firmly established, may only cover part of the year in dispute here and, most important, do not address at all the total compensation (including various fringe benefits) factor. Accordingly, while external comparability data would normally play a critical role in determining the outcome of a proceeding such as this, insufficient evidence was submitted herein to permit the undersigned to give such data heavy weight. It appears from the exhibits and testimony received that implementation of either party's final offer would not place these bargaining unit members out of line with their counterparts in the southern area of Milwaukee County.

Accordingly, the undersigned must turn to internal comparables. It was established that both police and fire units in Oak Creek have agreed to a 5%

wage increase for 1983 (exclusive of roll-ups) and that same percentage was given to non-union city employees. That is the same percentage (exclusive of roll-ups) that the City calculates its wage increase of 43¢ per hour for the July 1, 1982 - June 30, 1983 period to be. The new benefit of dental insurance, effective January 1, 1983 is common to all. It would appear, in the absence of contrary external comparability data, that similar wage treatement for members of this bargaining unit would not be inequitable, particularly when the new benefit of dental insurance is considered.

This leaves the remaining issue of health insurance premiums for newly employed personnel upon retirement to be dealt with. The City proposes a reduction in this benefit, but only for newly hired employees. If the City is to receive a financial benefit from this bargaining demand it will not accrue until ten years from now, if at all. It is hardly a significant step toward municipal cost containment in the area of employee benefits, although that appears to be a motivating factor for the Employer demand. As the Union points out, there is no precedent for it. If this were the sole issue in dispute, it is clear that the Union should prevail. Since the undersigned has already determined that the Employer should prevail on the wage issue based primarily upon internal comparability, the only remaining issue is whether the City's "unprecedented" position on health insurance premiums for newly hired employees upon retirement should determine the final outcome herein. The undersigned believes that the wage issue, where the parties are approximately $14,000 apart (exclusive of roll-ups) is by far the more critical issue. If the Union continues to object to the City's treatment of new employees on this fringe benefit, it will have many future opportunities to negotiate provisions more to its liking.

AWARD

Based upon the statutory criteria contained in Section 111.70(4)(cm)(7) of MERA, the evidence and arguments of the parties, and for the reasons discussed above, the mediator-arbitrator selects the final offer of the Employer and directs that it, along with all already agreed upon items, be incorporated into the parties' collective bargaining agreement effective July 1, 1982 through June 30, 1984.

Dated: July 21, 1983
Chilmark, MA

June Miller Weisberger
Mediator-Arbitrator