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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Arbitration Between

GENERAL DRIVERS, DAIRY EMPLOYEES and HELPERS
LOCAL UNION NO. 579

and

GREEN COUNTY HIGHWAY DEPARTMENT

Case LVIII
No. 28877
Decision No. 20280-B
MED/ARB-1449

SUPPLEMENTARY ARBITRATION AWARD

APPEARANCES:

For the Union: Marv Lewis, President, Local Union No. 579, Janesville.

For the Employer: Jack D. Walker, Esq., Madison.

BACKGROUND

On November 23, 1981, the General Drivers, Dairy Employees and Helpers Local Union No. 579 (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 Green County Highway Department (referred to as Employer) concerning a successor to the parties' collective bargaining agreement which expired December 31, 1981.

On January 25, 1983, the WERC found that an impasse existed within the meaning of Section 111.70(4)(cm). On February 7, 1983, 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 Monroe, Wisconsin, on March 30, 1983 to mediate the above impasse. Based upon information developed and exchanged in mediation, the parties reached a tentative agreement on all outstanding issues except one. They requested that the undersigned issue a consent award as to issues agreed upon and to issue a supplementary arbitration award on the one outstanding issue in dispute. The requested consent award was issued on April 1, 1983. Thereafter, the parties by agreement submitted written briefs and attached exhibits to the mediator-arbitrator on the one outstanding issue in dispute.

UNRESOLVED ISSUE

The sole issue that remains unresolved relates to new language which the Employer proposes in its final offer to add to Article XXXVI of the parties' expired collective bargaining agreement. More specifically, the Employer seeks to add the following language to the end of the first paragraph of Article XXXVI.

> Nothing in this section or this Agreement prohibits the Employer from implementing its proposals or parts thereof if such implementation is otherwise lawful.

With the exception of new dates, the Union's final offer contains no changes to Article XXXVI. That section contains the following termination language:

> In the event such (termination) notice is served, the parties shall operate temporarily under the terms and provisions of the Contract until a new contract is entered into, at which time the new contract shall be retroactive as of the last date of termination of this Agreement.

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 sets forth three main reasons to support its position retaining the status quo in this proceeding. First, it points to a number of municipal agreements which have the same or similar language providing for continuation of contract terms until the parties have concluded a successor agreement. Specifically, the Union points to various contracts of the City of Milton, the City of Whitewater, City of East Troy, Lake Geneva Schools and the Evansville Community School District.

Second, the Union notes that the parties' collective bargaining agreement already provides for this benefit and that the language which it seeks to retain without change is "of real importance" to the Union and Unit members. The latter is particularly true because the hiatus between contract expiration and the time a new contract is entered into may be quite extensive under the procedures of 111.70(4)(cm) of MERA. Additionally, WERC caselaw recognizes the strictly contractual nature of two key union benefits, the grievance arbitration clause and the fair share agreement.

Finally, the Union notes certain recognized policy considerations which it argues, support its position. These relate to the desirability of orderly resolution of impasses which would be seriously interfered with by unilateral employer changes during the critical contractual hiatus. The Union cites Arbitrator William Petrie in an MIA award in the Village of Whitefish Bay (Decision No. 17256) for support of its policy arguments.

The Union concludes that its final offer should be selected herein.

THE EMPLOYER

The Employer relies upon internal comparables, outside comparables (highway and social services departments) and policy arguments to sustain its position in this proceeding. The Employer first notes that continuing contract language had been contained in prior agreements between the County and the Deputy Sheriff's Association, AFSCME (Nursing Home) and Local 579 (social services Department). Either through interest arbitration or negotiations, the Employer was able to obtain its desired change eliminating required contract continuation during the hiatus following contract expiration. The County believes that these internal comparables merit great weight since uniformity is functionally important to the County in this type of situation, a position supported by Arbitrator James Stern in City of Greenfield (Decision No. 15033).

In addition, the Employer presents extensive documentation for its argument that recognized and established external comparables support the County's position. These include Dane, Lafayette, Iowa, Sauk and Columbia counties and their various units including highway and social services departments, sheriff's department, nursing home, courthouse and hospital units and, to a lesser extent, Richmond County. (The County recognizes that one Rock County contract does have continuing contract language but rejects it as an appropriate comparable.) None of the comparables contain language supporting the Union's position herein.

Third, the Employer documents its need to be able to implement its position during the hiatus by detailing its earlier problem and actions regarding escalating health insurance premium costs for 1982. On April 1, 1982, the County unilaterally implemented new insurance arrangements for all four bargaining units, a change later agreed to by all units. Unfortunately, the delay in implementation for the first three months in 1982 required the County and the employees to pay higher than necessary premiums, a loss which will never be recovered. The County cites another example involving sick leave abuse problems with nurses' aides employed by Green County. Where problems such as these need corrective action, the Employer believes that it should have the right to implement changes after good faith bargaining to impasse.

Finally, the Employer notes that MERA requires that a collective bargaining agreement not exceed three years. It argues that the Union's proposal makes the contract illegal because the agreement is in excess of three years.

For all these reasons, the Employer concludes that its position is more reasonable.

DISCUSSION

Using internal and external comparables, the Employer presents a strong case for its position. Further, it is understandable why this Employer desires the flexibility of being able to change unilaterally contract terms once the contract has expired and an impasse reached. It is also understandable that the Union vigorously objects to the Employer's position since it clearly weakens the Union's power and rights.

Unfortunately, the flexibility desired by the Employer was restricted by mutual agreement during prior collective bargaining. Article XXXVI of the parties' collective bargaining agreement contains provisions which the Union believes are beneficial for unit members. Although neither party submitted evidence as to what the Union "gave up" in order to get agreement on the restrictions imposed upon the Employer by that Article, it must be presumed that there was some quid pro quo secured by the Employer for its prior agreement to Article XXXVI. It is a well understood and accepted principle of voluntary collective bargaining and interest arbitration that, if a party wishes to remove an unfavorable or restrictive provision already contained in the parties' agreement, that party is expected to provide a special concession for the deletion of the objected to provision. Put somewhat differently, there is a burden placed upon the party wishing to decrease an existing benefit.

In this proceeding, the Employer has not argued nor demonstrated that other concessions already agreed to for the successor contract are such that its position on the one remaining issue in dispute is to be preferred. Further, both parties have put forth strong policy reasons to support their respective positions. The Employer's desired flexibility argument and the Union's argument favoring certainty and stability during a potentially lengthy hiatus each reflect important public interests. Thus, there is no clearcut policy analysis which clearly favors either party's position. While the comparability arguments of the Employer might normally prevail, all other points being equal, such comparability evidence is insufficient to support the deletion of a significant Union negotiated benefit in the absence of evidence that there is also overall comparability. In the absence of an overall comparability argument, is is reasonable to presume that the Union "paid" for the benefits of Article XXXVI and it should not be deprived of this benefit without some appropriate quid pro quo not presently demonstrated. At the expiration of this successor agreement, the Employer will have another opportunity to "bargain out" the restrictions it objected to herein. While it is inconvenient to have some internal inconsistency among bargaining units, this is not a compelling argument.

Lastly, the undersigned believes there is little merit in the Employer's argument that the existing terms of Article XXXVI are illegal under MERA in that the parties may be required to comply with stated contractual benefits for a period in excess of three years. A provision explicitly requiring the continuation of the status quo following a contract expiration date and before a new agreement is entered into does not by itself amend the contract termination or expiration date.

For all these reasons, the undersigned concludes that the Union's position (retaining Article XXXVI as is except for the substitution of new dates) is more reasonable.

AWARD

Based upon consideration of the statutory factors set forth in Section 111.70(4)(cm)(7) of MERA and the written arguments and evidence of the parties submitted to the undersigned, the mediator-arbitrator selects the final offer of the Union.

Dated: July 20, 1983
Chilmark, MA

June Miller Weisberger
Mediator-Arbitrator