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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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In the Matter of the Petition of :
:
MADISON CITY EMPLOYEES, :
LOCAL 60, (LIBRARY UNIT), :
AFSCME, AFL-CIO :
:
to Initiate Mediation-Arbitration : Case XCIX
Between Said Petitioner and : No. 31254
: MED/ARB-2195
: Decision No. 20807-A
CITY OF MADISON (PUBLIC LIBRARY) :
:
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APPEARANCES

Timothy Jeffery, Director of Labor Relations,
on behalf of the City

Jack Bernfeld, Staff Representative, on behalf
of the Union

On August 11, 1983 the Wisconsin Employment Relations Commission (WERC) appointed the undersigned Mediator-Arbitrator pursuant to Section 111.70(4)(cm)6b. of the Municipal Employment Relations Act (MERA) in the dispute existing between the City of Madison (Public Library), hereafter the City, Library, or Employer, and Madison City Employees, Local 60 (Library Unit) AFSCME, hereafter the Union. Pursuant to statutory responsibilities the undersigned conducted mediation proceedings between the parties on October 3, 1983 which failed to result in voluntary resolution of the dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on October 24, 1983 and November 14, 1983 for final and binding determination. Post hearing exhibits and briefs were filed by both parties and exchanged by February 3, 1984.

Based upon a review of the evidence and arguments and utilizing the criteria set forth in Section 111.70(4)(cm), Wis. Stats., the undersigned renders the following arbitration award.

SUMMARY OF ISSUE

This dispute covers the 1983 Agreement between the parties. Only one issue is in dispute and that pertains to the Library's transfer policy. The parties' prior Agreement contains no provision regulating said policy, and the City's position herein is to retain the status quo in that regard. On the other hand the Union has proposed a contractual transfer policy which is attached hereto as Appendix A.

UNION POSITION

The Union is seeking to establish identifiable parameters by which worker rights related to their job mobility and placement and the concomitant obligations of the Library are clearly defined. The Union proposes to define voluntary transfers, and involuntary transfers in the case of both permanent and temporary assignments, and to constructively codify how such actions shall occur in order to eliminate the unnecessary uncertainty which currently exists in the parties' relationship in this regard.

Library employees have historically been placed into positions with a specificity afforded virtually no other City employees. In notices for Library positions, not only is the department and job classification designated, but so is the specific

division or branch within the Library as well as the certified number of authorized hours of the position. Thus the Library, unlike any other City department, selects applicants for specific and precise positions. Employees transfer to other positions within the Library only at their choice.

While the rights of employees to a position appear to be secure, this area has not been trouble-free. This is especially true now when organizational changes are contemplated. The City asserts that positions are posted for transfer purposes, yet it freely utilizes a pool of employees who can be assigned at whim. While it asserts that the decision and procedures regarding voluntary and involuntary transfers are fair and reasonable, it refuses to commit to contract what those procedures and criteria are. The crux of the dispute is that the Union wants its members to know how and when they can transfer, and under what conditions.

The final offer of the Union is a culmination of more than two years of negotiations toward a resolution of this issue. While the City professes to desire resolution of the issue, it is and has been resolution only on its terms. Its obdurate posture is reflected in its final offer which, after two years of bargaining, proposes nothing. On the other hand, the Union's proposal is conservative, clear, and instructive, using terminology which is common parlance in labor relations.

The City attempts to paint a picture of the Union's proposal as an interminable quagmire. This is not the case. Its implementation will not cause the Library any unnecessary hardships or burdens. By offering employees an identifiable process for transferring and by respecting, in a small way, their worksite preferences by giving recognition to their seniority, the City goes a long way toward addressing significant employee concerns. This is clearly in the employees' best interests, the interest of the Library, and "the interests and welfare of the public."

This issue does not easily lend itself to comparison with other transfer procedures. Within City government, there is little evidence that other employees have the same historical expectation of specific assignments as is the case herein. Even within the other City bargaining units, however, work assignments and transfers may not be arbitrarily made. In this regard the agreement between the City and AFSCME Local 60 provides plentiful transfer opportunities within a broad bargaining unit. In contrast, here the City refuses to make any commitment to the employees who work in the Library. While it is true that the Union's proposal herein differs from the Local 60 Agreement in several respects, in this situation intra-divisional transfers must be specifically covered because of the specific nature of employee assignments, which results in a host of reasons why an employee might wish to transfer within their current division or branch, including changes to positions with different levels of certified hours, changes from LTE to regular status, and changes of duties.

The evidence demonstrates that few library systems in Wisconsin are unionized, thus the sample from which to gather appropriate external comparisons is limited. The City argues that the West Allis and Milwaukee libraries are comparable, however both are part of overall city bargaining units, thus the interests of the library workers are submerged by the greater interest of other city employees. Furthermore, Milwaukee has a population base greater than 3.5 times that of the City, with more than 1.5 million more volumes. These size differences require that the Milwaukee library system not be considered an appropriate comparable. Oshkosh and Eau Claire are smaller systems and therefore, they also are not very comparable. They take opposite approaches to transfers, with Oshkosh providing few rights for its workers and Eau Claire providing rights which are stronger than those contained in the Union's final offer.

Because of its many similarities, Brown County provides the most valid comparison to utilize herein. Like Eau Claire, employees are granted strong seniority based transfer rights. While there is no denying that the language of the Brown County agreement is perhaps somewhat cryptic, the local AFSCME President confidently testified as to how the transfer provisions of the Agreement are administered. The record provides a vivid description of the strength of the seniority based transfer practices afforded the Brown County workers.

In contrast, here the City offers no proposal on a matter of great concern to the employees, and instead is content to portray the Union's proposal as a "monstrosity."

The Arbitrator should not select a final offer that enhances the possibility of conflict. The City's failure to address the issues raised herein will create disputes because it does nothing but create uncertainty.

The Union has demonstrated that a need exists to codify transfer procedures. There is ample proof that the Library's practices have not been followed consistently, and ample evidence exists that the Library has and will face organizational changes that create uncertainty, which substantiates the need for contractual language that provides a measure of protection for the affected employees. It is simply not fair to allow an employee who was hired, promoted or voluntarily transferred into a specific position to be moved involuntarily anywhere the Library desires. Such matters are of legitimate paramount concern to employees, affecting their morale, efficiency, and job satisfaction.

The Library employees in question have little upward job mobility. Under the Union's proposal, employees will know that as their years of service accumulate, their rights to select more preferable work or worksites are enhanced. Now they have no such hope.

This Arbitrator should not underestimate the importance of this issue to the Union's members. Library employees have worked without a contract for more than one year and such sacrifice is not easily made. The Union has carefully constructed language that will protect the rights of the employees and provides the City with broad flexibility in order to maintain quality of service and management discretion.

EMPLOYER POSITION

The transfer language proposed by the Union is radically and fundamentally contrary to the language governing transfers in any other City labor agreement. The transfer language contained in the Union's final offer is radically more restrictive and cumbersome than any of the transfer provisions found in these other agreements, including other AFSCME agreements with the City. The Union's attempt to secure through arbitration language radically different than that under which other City Union employees are governed must be viewed with disfavor because Wis. Stat. Sec. 111.70(4)(cm)7.d. specifically instructs the arbitrator, in making his decision, to give weight to "comparisons of wages, hours and conditions of employment" between the employees in this arbitration and "other employees performing similar services and with other employees generally in public employment in the same community." The application of the above statutory factor renders the Union's final offer completely without merit since the Union is unable to point to any other City labor agreement which supports its final offer. In fact, a review of other City labor agreements serves only to highlight the fact that the Union is seeking through arbitration a condition of employment radically different from other City employees. Such an attempt must be rejected by the Arbitrator.

Furthermore, the transfer language contained within the Union's final offer is without precedent in other library labor agreements

within the State. A review of all the labor agreements introduced by both the Union and the City shows that the Union's proposed transfer language is radically different from the transfer language found in any of the submitted agreements.

The Arbitrator's attention is again drawn to Wis. Stats., Sec. 111.70(4)(cm)7. which directs the Arbitrator to give weight to the conditions of employment of other public employees in comparable communities. An examination of this factor renders the Union's final offer unreasonable because no support whatsoever can be found for the Union's proposal among the library labor agreements in comparable communities. To the contrary, the transfer language in these agreements generally supports the City's final offer.

The Union's final offer, moreover, seeks to establish a highly cumbersome, mechanistic and potentially disruptive procedure governing the transfer and assignment of employees. A review of the Union's final offer and the Union's evidence and arguments demonstrates that the Union intends to apply its transfer proposal to a wide variety of changes in an employee's work status, including changes in work location, duties, number of hours, temporary or permanent status, as well as the filling of permanent and temporary vacancies. The application of the Union's final offer to the above listed situations would create an administrative nightmare. In its efforts to protect the few employees who might be affected by a transfer, reassignment, change in hours or work location, the Union has proposed a procedure which has the potential of disrupting substantial numbers of employees. The Union's final offer, if adopted, would constitute an almost insurmountable obstacle to the efficient, orderly and humane operation of the Library.

The Union has failed to demonstrate a compelling need for its proposed language changes. The number of so called voluntary transfers have been few, and most have occurred without difficulties. The few transfers that did raise concerns were either resolved to everyone's satisfaction or were not pursued by the Union. The City has over the years exercised its rights regarding transfers in a fair and equitable manner. Through its past practices and policies it has given attention to the concerns and interests of employees, while at the same time being concerned about the quality of Library services. The record is devoid of any evidence that the City has abused its rights or that it has exercised those rights in an arbitrary, capricious or discriminatory manner. In the absence of such evidence, the Union must not be allowed to secure through arbitration, a crippling restriction on the City's existing rights to handle transfer matters in the most efficient and effective way possible.

Finally, the concerns reflected in the Union's final offer should be addressed at the negotiation table and not by a decision of an arbitrator. The record is clear that the City and Union lack a mutual understanding of the terms and intent of the Union's final offer which is fraught with words and phrases whose meaning is unclear and which could be subject to a variety of interpretations. If the Union's final offer were imposed upon the parties, it would undoubtedly spawn numerous confrontations and grievances over its interpretation and application. The Union's transfer language was first submitted to the City as a final offer and is radically different from any of the Union's previous proposals made at the bargaining table. There has been little, if any, face-to-face negotiations between the City and the Union over the terms of the Union's final offer. Thus, the interests of both parties would be badly served by the selection of the Union's final offer since it would only serve to aggravate the labor-management relationship by giving rise to widespread and long-term controversy over its meaning and intent.

DISCUSSION

Essentially, in this dispute the undersigned is confronted with two final offers which represent rather extreme positions on a single issue, neither of which really merits selection in this proceeding.

While the City's position is consistent with the status quo and generally is supported by the transfer policies which appear to be in effect in the majority of the cited comparable library systems, it fails to adequately or effectively address legitimate employee concerns regarding their conditions of employment, particularly in light of the organizational changes which appear to be on the horizon in the City's library system. The City's failure to address these concerns in its final offer, and its resulting failure to offer any degree of predictability as to how transfers will be handled in the future, unquestionably raises serious doubts in the employees' minds as to whether any legitimate interests they might have with respect to this issue will be given consideration by the Employer in the implementation of its transfer policy. While there is no evidence that there has been widespread Employer disregard of such employee interests in the past, the concerns which have been expressed herein do merit a constructive Employer response setting forth predictable standards and procedures for dealing with this problem, even though comparable Wisconsin library systems do not appear to date to have addressed this issue in any detailed manner.

In this regard, while comparability often is given significant weight in proceedings such as this, where, as here, legitimate employee concerns affecting their conditions of employment exist, in the undersigned's opinion, an employer has some responsibility to address those concerns in a reasonable fashion. The Employer's failure to do so here in its final offer seriously jeopardizes the reasonableness of its position.

On the other hand, the Union's proposal appears to go too far in that in addition to addressing legitimate employee concerns, it creates a somewhat burdensome procedure which is encumbered with such things as significant bumping rights, which are normally not associated with policies and procedures related to employee transfers. Although many of the concepts proposed by the Union appear to be relatively non-controversial and essentially sound, particularly in a unit such as this which is composed of employees assigned to clerical and para-professional positions, the Union has failed to incorporate those concepts in a procedure which is administratively efficient and which will minimize disruption. Thus, while it may be perfectly reasonable for such employees to expect that seniority will be given consideration assuming that two or more employee applicants for transfer are relatively equally qualified to fill a vacant position, and that qualified volunteers for transfers will be given first consideration when filling position vacancies, and that in the event involuntary transfers become necessary, the least senior qualified employees shall be so transferred providing the remaining employees are capable of performing the available work, it is neither customary nor reasonable to provide for the potential of multiple bumping among the employees who are subject to involuntary transfer, which is essentially what the Union has proposed herein.

While the City has raised several arguments regarding the ambiguity and unworkability of the Union's proposal, the undersigned is persuaded by this record that on its face the proposal poses only two significant problems. As indicated above, in the undersigned's opinion the proposed bumping procedure is much too complex and burdensome to be a legitimate part of a transfer policy. In addition some of the Union's proposed restrictions on the Employer's right to make temporary assignments appear on their face to be unwarranted and unreasonable, particularly where, for example, due to circumstances beyond the Employer's control, such assignments would have to

exceed the time limits contained in the Union's proposal. In addition, the proposal which provides for the right of employees who have voluntarily laterally transferred to move back to their original positions could have significantly disruptive consequences, particularly if such transfers were accompanied by other involuntary transfers and multiple employee bumping.

While other problems of definition and/or application might arise under the Union's proposal, in the undersigned's opinion this record does not demonstrate that on its face, said proposal is sufficiently ambiguous or unworkable to cause significant numbers of such disputes. Particularly noteworthy in this regard is the fact that the definition of the term "position" as it is used in the Union's proposal does not appear to change the meaning of said term as it is used in the parties' prior Agreement, and therefore the Employer's expressed concern over the potential ambiguity which exists with respect to the use of said term appears to be somewhat unwarranted, unless of course the use of said term in the prior Agreement has caused the parties problems, which does not appear from this record to be the case.

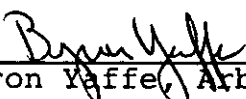
Based upon the foregoing considerations the undersigned is forced to choose between two positions which will present continuing problems for the parties which will need to be addressed in future rounds on negotiations. Under such circumstances, conventional wisdom would dictate that the undersigned preserve the status quo, allowing the parties to tackle the problem again in the next round of negotiations. Had the City incorporated into its final offer minimal assurances addressing the issue at hand, that would have been the undersigned's approach herein. However, in view of the City's unwillingness to do so, and in view of the undersigned's belief that the Union's approach, though seriously flawed in some respects, is basically sound conceptually, the undersigned believes that it will foster more meaningful negotiations of the issue if the Union's proposal is selected herein and is used as a basis for such future negotiations. In this regard it should be noted that this dispute involves the parties' 1983 collective bargaining agreement, and that as soon as it is resolved, the parties will be negotiating a successor contract. It is anticipated by the undersigned that in such negotiations the parties will be able to address the issues raised herein and to correct the problems resulting therefrom. In the interim, this award and the parties' 1983 Agreement will legitimize the issues raised by the Union, and hopefully, the legitimate concerns raised by both parties herein will more effectively be addressed in the parties' future collective bargaining agreements.

Based upon all of the foregoing considerations the undersigned hereby renders the following

ARBITRATION AWARD

The final offer submitted by the Union herein shall be incorporated into the parties' 1983 collective bargaining agreement.

Dated this th 28 day of March, 1984 at Madison, Wisconsin.


Byron Yaffe, Arbitrator

APPENDIX A

Final Offer of
AFSCME Local 60 (Paraprofessional Library Unit)
To
City of Madison

Highlight of language changes from current Article IX. Changes are in bold print.

1. Article IX - Promotion, **Transfer**, Trial Period, Job Posting.
9.01 Promotion: A promotion shall be defined as the advancement of an employee to a higher vacant position within the bargaining unit with a higher salary range.

2. 9.02 Lateral Transfer: A lateral transfer shall be defined as the movement of an employee from a position to another position in the same or a different division or branch of the library and within the same salary range.

A) Voluntary Lateral Transfer: A voluntary lateral transfer is the movement of an employee from one position to another as defined in 9.02 that is due to a vacancy caused as the result of a termination, promotion, transfer or the creation of a new position.

B) Involuntary Lateral Transfer: An involuntary lateral transfer is the movement of an employee from one position to another as defined in 9.02 that is caused by the permanent reallocation of existing staffing levels between or within divisions and/or branches.

9.03 Trial Period: In cases of promotion or **voluntary lateral transfer**, the employee shall serve a trial period of six (6) months following the date of promotion or **voluntary lateral transfer** during which time the employee shall be entitled to return to his/~~her~~ former position if either the employee or Employer so decides. Upon successful completion of the trial period, the employee shall be "permanent" in the new position. This provision shall also apply to employees promoted or transferred to positions outside of the bargaining unit.

9.04 Job Posting and Filling:

A) 1. The Employer shall post notices of all position vacancies. The Employer may decide not to fill a vacancy or pending vacancy and shall notify the Union of such intentions. Vacancy notices shall be posted on all bulletin boards used by unit employees and such other places as the Employer decides. Such notices shall be posted for at least five (5) working days which days shall be in two (2) separate weeks before the final date of acceptance of applications. Notices shall be as informative as are reasonably possible. When minimum qualifications are required of applicants, such information shall be provided on the job position notice. Minimum job qualifications must be reasonably related to the job.

2. In the event that an employee shall have secured a leave of absence of at least three (3) months or in the event that it is anticipated that an employee may be absent because of illness or injury for sixty (60) days, such vacancy thus created either directly or indirectly shall be posted as a temporary vacancy consistent with Paragraph 1 above. **In filling temporary vacancies created by these and other causes, the Employer may temporarily reassign existing staff for no more than three (3) months (60 days for the causes listed above.)** Such reassignment shall be made first through qualified employee volunteers, provided that the remaining employees are capable of performing the available work. If not accomplished by this means, the City may then reassign the junior qualified employee(s), provided that the remaining employees are capable of performing the available work. Any temporary vacancy in excess of three (3) months or sixty (60) days, as the case may be, shall be posted as a temporary vacancy consistent with paragraph 1 above. The Employer shall have the option to fill or not fill such vacancies.

3. Such temporary vacancies shall be filled by "acting" employees. **"Acting" employees shall be hired consistent with the provisions of this Agreement** and shall be eligible for the same rights and benefits as the employee on leave or **consistent with the provisions of this agreement** if not replacing an employee on leave, except that if the

vacancy results in a new classification, the salary shall be subject to the collective bargaining process. Should the employee on leave return to work in that position or should the position be terminated, the "acting" employee, if said employee held a position with the City immediately prior to the temporary appointment shall be returned to their position and pay and other benefits as though no temporary appointment had taken place. In the event that it is determined that the employee on leave will not return or a new position is made permanent, the "acting" employee will have the title "acting" removed from their job title.

B) Employees applying for a promotion or lateral transfer vacancy shall direct written application to the Employer's personnel office. Date of receipt of the application or date of stamp cancellation when mailed shall be considered the date of receipt in the event of any question concerning deadlines.

C) In filling vacancies, the Employer shall first make voluntary lateral transfers to accomplish same if bargaining unit employees make application pursuant to "B" above. Such lateral transfer shall be filled on the basis of qualifications provided that if two (2) or more applicants are relatively equal in qualifications, seniority shall be the determining factor.

D) If the City desires to reallocate existing staff between or within divisions or branches, the City shall first attempt voluntary lateral transfers as described in 9.04 (C). If, after attempting such voluntary transfer, the desired staff allocation is not accomplished, the City may make involuntary lateral transfers as follows:

1. The City shall identify the division(s) or branch(es) with excess staffing and solicit qualified employee volunteers from among the employees in the classification to be reduced. If the City does not obtain a sufficient number of volunteers through solicitation, then the junior employee(s) within the classification in the division(s) or branch(es) being reduced shall be transferred, provided the re-

remaining employees are capable of performing the available work. Any employee so transferred shall be entitled to exercise his/her seniority rights by bumping the junior employee within their classification in any other division or branch. Solicitation and bumping shall continue in like manner until the desired allocation is achieved.

E) If a lateral transfer is not possible or if no qualified employees apply, the vacancy shall be filled as a promotion according to the following criteria:

1. All applicants who meet the minimum training and experience requirements for the vacancy shall be considered. The Employer shall consider for appointment the applicants with the four (4) highest composite scores.
2. The Employer shall establish eligibility lists of qualified ranking candidates selected in accordance with this article for a period not to exceed six (6) months unless there are less than four (4) qualified candidates in which case there will be no eligibility list.
3. Candidate evaluation as provided below shall be conducted in a manner designed to evaluate the applicant's qualifications relative to the vacant position.
 - a) Testing, written, oral and/or performance. Maximum points - 50.
 - b) Evaluation of experience and training (Appendix "B"). Maximum points - 50.
 - c) Maximum points - 100. Veterans' points to be added as provided by law.
 - d) Upon complaint from an employee applicant concerning this section (E 3), the Union shall be entitled to examine all materials and tapes related to this section ("a" through "c" above). The intent of this provision is to ensure a fair and equitable selection procedure.

E) The Employer shall have the option of restricting the areas of examination and may choose one of the following plans:

1. Open and Competitive: Open to City and non-city employees.
2. City-wide: Open to all City employee but not to non-city employees.
3. Unit-wide: Open only to employees within the bargaining unit.

In any event, the test procedure outlined shall be used.