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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Petition of

ASHLAND CITY HALL EMPLOYEES LOCAL NO. 216-K, AFSCME, AFL-CIO

To Initiate Mediation-Arbitration Between Said Petitioner and

CITY OF ASHLAND

Case XXXVII
No. 32879 MED/ARB-2656
Decision No. 21513-A

Sherwood Malamud
Mediator/Arbitrator

APPEARANCES

James A. Ellingson, District Representative, Route 1, Box 2, Brule, Wisconsin 54820, appearing on behalf of the Union.

Scott W. Clark, City Attorney, City Hall, Ashland, Wisconsin 54806, appearing on behalf of the Municipal Employer.

JURISDICTION OF MEDIATOR/ARBITRATOR

On April 10, 1984, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Mediator/Arbitrator to attempt to mediate issues in dispute between Ashland City Hall Employees, Local No. 216-K, AFSCME, AFL-CIO, hereinafter the Union, and the City of Ashland, hereinafter the City. If mediation should prove unsuccessful, said appointment empowered the Mediator/Arbitrator to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6.c. of the Municipal Employment Relations Act. A mediation session was conducted on August 27, 1984, which was followed by hearing in the matter. At the hearing, which was conducted at the City Hall in Ashland, Wisconsin, the parties presented testimony and evidence. The parties submitted briefs and another Med/Arb decision by November 24, 1984. No objection was made to any of the submissions made subsequent to the hearing; by December 1, 1984, it was clear that no further submissions were to be made. Based upon a review of the evidence and arguments submitted, and upon the application of the criteria set forth in Sec. 111.70(4)(cm), Wis. Stats., to the issues in dispute herein, the Mediator/Arbitrator renders the following Arbitration Award.

SUMMARY OF ISSUES

In the final offers certified by the investigator of the Wisconsin Employment Relations Commission, there are approximately six issues listed. At the hearing, the parties agreed that on the matter of duration, Veterans Day holiday in calendar year 1985, health insurance coverage language, and percentage longevity effective January 1, 1984, appeared in the identical terms in both offers. The parties agreed to move these matters to the stipulation of agreed-upon items. Therefore, the duration of the successor agreement is for calendar years 1984 and 1985. Veterans Day will be added as a holiday beginning in calendar year 1985. The following language will be added to the agreement concerning health insurance coverage. The language is:

> "If the health insurance carrier is changed, that coverage will be equal to past coverage or improved. No employee or dependent will lose coverage because of a change in carrier."

Finally, the parties agreed on "percentage longevity effective January 1, 1984."

The dispute between the parties concerns salary and clothing allowance. On these issues, the Union's offer is:

UNION'S OFFER

Salary

Effective June 1, 1984, increase all wage rates by 7%.
Effective January 1, 1985, increase all wage rates by 5%

Clothing Allowance

The Union makes no proposal on this issue.

The City makes the following proposal on the remaining two issues:

CITY OFFER

Salary

Effective June 1, 1984, 6.01%.
Effective January 1, 1985, 5%.

Maintenance Men-Clothing Allowance

Employees shall be reimbursed 50% up to $100.00 for work-related clothing items purchased by the Employee. Payment to be made upon presentation to the City Clerk of receipts for purchase of qualified clothing items. Qualified clothing items shall be limited to the following:

Safety shoes or safety boots
Safety glasses with corrective lenses
Coveralls
Rubber work gloves
Sorrell safety boots
Choppers

STATUTORY CRITERIA

The criteria to be used for resolution of this dispute are contained in Sec. 111.70(4)(cm)7, as follows:

In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interest 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, 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 to 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 Argument

The Union notes that there are two dimensions to the salary issue dispute between the parties. First, there is a difference in what the Union terms the "W-2 form money" and the lift resulting from the salary proposals of both the City and the Union. The Union's proposal would generate 4% "W-2 form money," or actual dollars in pocket, for calendar year 1984, while the City's offer would generate 3.5% actual dollars in pocket for 1984. The Union argues that the City's offer in this regard is lower than the 4.5% actual dollars in pocket offered to the police and 4.2% offered to the Department of Public Works employees for 1984. The DPW settlement provides 3.5% "W-2 form money" but what is also provided in that settlement is 0.7% in the form of a newly-negotiated clothing allowance for calendar year 1984. The Union argues that both the City and the Union recognize the relatively low pay of City Hall employees. Both attempt through their offers to correct this inequity through a split on wages for 1984. The Union argues that the City's offer does not go far enough. In this regard, the Union provides examples of counties with financial limitations who have provided splits and deferred compensation to employees. These communities have made the deferral of compensation attractive to employees by providing less in-pocket money for a particular year but a slight penalty in the wage rate to make such a proposal attractive to a Union. Sawyer County and Douglas County are referred to by the Union as communities which in the past several years have either provided split raises to one group or another of its employees, or have paid a little extra in the rate in order to make such a deferral of income attractive to a Union. The Union notes that in this case, the City of Ashland announced that it was budgeting only 3.5% for wage increases for 1984. Therefore, the Union argues that the split it proposes places that little extra into the rate to make the deferred compensation plan inherent in both the Union's and the City's offers more attractive.

Furthermore, the Union notes that because of the low increase in health insurance premiums, the total package offer for 1984 under the City's and the Union's proposals is much lower than the 7.5% package negotiated in Sawyer County and the 6.5% package agreed to in Bayfield County.

The Union analyzes some of the evidence presented by the City during the course of the hearing. The Union argues that the 2% cost attributed to the increase in health insurance premium was not explained by the City Clerk, especially in light of the fact that the same increase in premium was costed by the City itself in the MIA proceeding involving Local No. 216-H, the Police unit, at 1%. As far as this Union is concerned, the firefighters' settlement can only be viewed in terms of the diminished bargaining power of the firefighters in light of the City's threat to go to a volunteer fire department.

The major objection which the Union voices to the offer made by the City in this case stems from the fact that the lift over the two-year 1984 and 1985 period provided in the Department of Public Works settlement is 11.7%, whereas in the City Hall proposal, the lift is but 11% over the same period of time. The Union sees this disparity as illogical, unreasonable and unfair.

With regard to the information provided by the City on comparables, the Union notes that the City did not mention any comparables during the bargaining. Although the City used the communities of Merrill, Onalaska and Rhinelander as comparables, the source for its figures was the Department of Administration survey which the Union criticizes for its inaccuracy and self-serving nature of the responses reflected in that survey by the cities of the state. Furthermore, the Union notes that the City selected three communities at random for its comparability evidence. No cities from northwestern Wisconsin were used by the City of Ashland. The Union concludes in these words:

> Finally, the Mediation/Arbitration law calls for fairness in the internal treatment of employees by an employer. For an employer to offer a patchwork of wage settlements with no reason is simply repugnant to any sense of justice or fair play.

The City Argument

The City argues that its proposal for this unit is as large or larger than what it has offered three other City employee groups. The City notes that in the fire department, the City has settled with the firefighters at 3.25% for 1984, effective January 1, 1984, and 5% effective January 1, 1985. The City notes that it has settled with the employees of the Department of Public Works for 1984 and 1985 with a proposal at 6% commencing June 1, 1984 (an effective rate of 3.5%) and an additional 5% commencing January 1, 1985. Non-union officers and employees of the City received a 3.5% increase effective January 1, 1984. The City notes that the wages paid to the secretary and bookkeeper employed by the City of Ashland are the highest of the communities of a similar size and which are comparable to the City of Ashland as reported by the State of Wisconsin Department of Administration Survey on Wages and Benefits.

The City objects to the evidence presented by the Union at the hearing on several bases. First, the City notes that no job descriptions were provided for the positions suggested by the Union as positions subject to comparison. The Union provides no information with regard to the duties performed by occupants of these positions in the communities which the Union lists on its exhibits. As a result, the Arbitrator does not know the duties and responsibilities of the bookkeeper in the City of Ashland, as compared to the duties and responsibilities of the bookkeeper listed for the communities alleged by the Union to be comparable to the City. Secondly, the Union listed the monthly salaries for these employees. It is unclear the number of hours per week worked by employees in these alleged comparable communities. The City of Ashland City Hall employees work 35 hours per week. The Arbitrator was provided only with the unsubstantiated testimony of the Union's representative as to the number of hours worked by employees in these communities. Since the evidence presented was based on monthly salaries, the figures provided therefor are misleading.

The City argues that its proposal exceeds the cost of living as of May 22, 1984, or August 22, 1984, which were 3.1%. The City argues that the total package cost of its offer for 1984, excluding the increase in health insurance premiums, is 4.26% and 9.40% for 1985, a total of 13.66% for the two years. The City argues that the Arbitrator should keep in mind the entire benefit package and overall compensation received by City Hall employees in making his determination. In this regard, the City refers to its exhibit "f" in which the fringe benefits provided by the City are detailed. These fringe benefits will be provided to City employees during the term of the successor agreement. The City notes that its proposal contains several new benefits. Veterans Day is a holiday in 1985; security language with regard to health insurance if the carrier should be changed; and a maintenance worker's clothing allowance comparable to employees in the Department of Public Works,

Police and Fire Departments. The City argues that the Arbitrator should take note of the increase in health insurance premiums. The City cites Marion School District, (19418-A) 7/82, in support of its argument that such increase in premiums should be considered. The City notes that the increase in premiums for 1984 totals for the City Hall unit is $3,785.73. The City concludes that its final offer is the most reasonable and should be adopted by the Arbitrator.

DISCUSSION

The Nature of the Dispute

The final offers of the City and the Union on the economic issues in this dispute are relatively close. Since the entire dispute is limited to the first year of a two-year agreement, that disagreement carries over into the second year. As a result, over the two-year life of the successor agreement, the difference between the parties is magnified.

Both the City and the Union adopt identical formats for the wage increases to be provided during the term of this agreement. For 1984, they both provide that the first year increase be effective June 1, 1984. For 1985, they both agree that the year-end wage rates for 1984 should be increased by 5% effective January 1, 1985.

In the first year, the Union proposes that wages be increased by 7.0% and the City proposes that wage rates be increased by 6.01%. The City proposes to include a new benefit in the successor agreement; a clothing allowance with a cost impact of .16% in this unit. The same clothing allowance has a cost impact of .7% in the DPW unit. The variance between the cost impacts of the DPW and the City Hall units as a result of the City's offer of a clothing allowance is the nub of the difference between the parties.

Comparability - External Comparables

In the presentation of their evidence and arguments to substantiate their positions, both sides presented data and argument concerning external comparables. The comparability issue frequently is the threshold issue in a Med/Arb proceeding. For its part, the City chose but three communities which are geographically located far from each other. The City presented no evidence which would indicate that the economic underpinnings for the Cities of Rhinelander, Merrill and Onalaska (a community situated in close proximity to LaCrosse) share anything in common other than size with the City of Ashland.

The Union presented extensive data as to the settlements involving employees in counties contiguous to Ashland County, the City of Superior and several school districts located in the northwest corner of the state. The Union also presented data with regard to the monthly salaries paid by some of these communities to positions titled as bookkeeper, secretary/receptionist, custodian and deputy clerk. Unfortunately, not all the same municipal employers were used for all of the positions noted. Furthermore, although the Arbitrator requested at the hearing that both the City and the Union furnish the Arbitrator with supporting data such as salary schedules for the communities suggested by each as comparable, that information was not provided to the Arbitrator.

The data available to the Arbitrator concerning the comparability factor does not permit him to establish those communities or municipal employers which are comparable to the City of Ashland. Certainly, it is noteworthy what the County of Ashland, Bayfield County, Sawyer County, Iron County and Douglas County, as well as the City of Superior, pay their employees. However, without additional data with regard to the nature of these units of employees, the Arbitrator is unable to establish a list of comparables. Furthermore, neither the Union nor the City cited any prior Med/Arb decisions in which the comparability issue was discussed and determined. As a result, this Arbitrator makes no finding with regard to the question of which municipal employers are comparable to the City of Ashland and its City Hall unit.

In the absence of a determination of the comparables, and in the absence of supporting data for those employers selected by the parties as comparable, the Arbitrator cannot draw any conclusions from an analysis of the external comparables.[1]

Comparability - Internal Comparables

However, the focus of both the Union's and the City's arguments concern the internal comparability of their respective offers for 1984. The essence of the City's position in this case is that its offer to City Hall employees is identical to the offer it made to, and which offer was accepted by, the employees of the Department of Public Works represented by this very same AFSCME union. The Department of Public Works employees were offered 6.0% and a clothing allowance in 1984; City Hall employees are offered here 6.01% and a clothing allowance in 1984.

The essence of the Union's position is that the clothing allowance offered by the City has a cost impact of 0.7% in the Department of Public Works unit, but only three of the 14 unit employees in the City Hall unit may avail themselves of the clothing allowance offered by the City. As a result, the cost impact of the City's clothing allowance is but 0.16%. Accordingly, the Union proposes a 7% increase in the wage rates for 1984 so that the total cost impact of its offer is 4.08%. Although it does not equal the increase achieved in the DPW unit, it more closely approximates that increase, than does the City's offer.

In this case, the internal comparability factor is the determining factor. Although the City presented an argument concerning the total cost and overall compensation received by City employees, they presented their costing data with regard to salary only. They then related the increase in costs of insurance and the costs of other benefits in relation to the base salary-only figures. They did not relate them to the total cost figures for salary and all other benefits. The lack of external comparables noted above precludes use of that factor in determining this case. Furthermore, given the narrow difference between the parties, the cost-of-living factor provides little assistance in distinguishing between the offers of the parties.

The Arbitrator's discussion of this internal comparable issue, therefore, provides the basis for his selection of the final offer of the City or the Union. It is the City which proposes to include a new benefit in the parties' successor agreement and cost that benefit against the Union. For its part, the Union has not included within its final offer a demand for a clothing allowance. Instead, in order to achieve a settlement in 1984 which <u>costs</u> the same as the offer made to and accepted by the Department of Public Works employees, the City Hall employees seek a larger increase in the wage rate for 1984. The Arbitrator finds that the Union is justified in its attempt to achieve the same increase as employees of the Department of Public Works. There is no indication in <u>this</u> record to support different treatment for City Hall or DPW employees.

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[1] In order to demonstrate the problem of putting the data presented to meaningful use, the Arbitrator attempted to establish some basis of comparison among the monthly earnings provided by the Union for the employers it deemed to be comparable to the City of Ashland. On the basis of the data provided, the Arbitrator was able to convert the monthly earnings to an hourly rate. Where hours of employees differ, i.e., some work 35 hours per week as do the employees in the City of Ashland, some 37.5, and some 40, the hourly wage rate becomes a more meaningful figure as a basis for comparison. Furthermore, it is helpful in making such comparisons if a selection of positions is to be made, selecting those positions which are employed by all the comparables. However, it would be speculative to rely on these calculations in the absence of supporting data requested by the Arbitrator.

But, a closer look at the Union's offer reveals the following. The difference in total cost impact between the Department of Public Works settlement (4.2%) and the City's offer in this case (3.66%) is 0.54%. The Union seeks to equate matters between the units by seeking an increase in the wage rates which is 1% greater than the wage rate increase achieved in the Department of Public Works unit, but which is just 0.12% lower than the cost of the DPW settlement. Since the 1% differential in lift will serve as a basis upon which future increases, including the second year increase in this case, will be calculated, the 0.12% differential in cost impact between the Union's offer in this case and the settlement in Public Works is minimized. That slight differential is obliterated when it is noted that the difference in the cost impact of the City's offer in this unit as compared to the Public Works unit results from the varying cost impacts of the clothing allowance. This allowance is not included in the wage rate and is not subject to expansion as a result of percentage increases. Any dollars added to the clothing allowance must be clearly identified and costed on that basis. The Arbitrator concludes, therefore, that the 7% increase in wage rates proposed by the Union for 1984 to be effective June 1, 1984, with a cost impact of 4.08%, when viewed over a period of two years, exceeds the cost impact of the settlement achieved in the Public Works unit which received a clothing allowance of $100 in 1984, which is to continue at the same dollar amount into 1985. Simply put, the lift in wage rates for City Hall employees under the Union proposal for the two-year term of the agreement is 12%. The City settlement in the DPW unit, even counting the clothing allowance as part of the rate, is 11.7%. While the Arbitrator agrees that the City Hall employees be accorded the same percentage increase as that offered to and accepted by employees of the Department of Public Works of the City of Ashland, the Union's offer fails to achieve this goal. Its offer is higher rather than the same as the City's offer in the DPW unit. The Arbitrator finds that the evidence submitted with regard to the settlements achieved in the Police and Fire units would not alter this conclusion. Therefore, the Arbitrator prefers the final offer of the City of Ashland on the salary issue.

On the basis of the above Discussion, the Mediator/Arbitrator issues the following:

AWARD

Based upon the statutory criteria contained in Sec. 111.70(4)(cm)7a-h of the Municipal Employment Relations Act, the evidence and arguments of the parties, and for the reasons discussed above, the Mediator/Arbitrator selects the final offer of the City of Ashland for inclusion together with the stipulations of the parties in the Collective Bargaining Agreement for calendar years 1984 and 1985.

Dated at Madison, Wisconsin, this 13th day of February, 1985.

Sherwood Malamud
Mediator/Arbitrator