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In the Matter of the Mediation/Arbitration Between	
Clark County Courthouse	
-and-	Case 28
	No. 34039
Clark County Non-Professional Employees	Med/Arb 3009
Local 546-B, AFSCME, AFL-CIO	Dec. No. 22200-A

Appearances:

Mulcahy & Wherry, by Stephen L. Weld, for the County.

Christel Manz, Staff Representative, Wisconsin Council 40, for the Union.

On January 10, 1985 the undersigned was appointed as mediator-arbitrator by the Wisconsin Employment Relations Commission in a dispute between the above-captioned parties. On March 8th mediation was attempted for some three and a half hours, but it was unsuccessful and none of the outstanding issues were resolved. Also on March 8th an arbitration hearing was conducted in which the parties had the opportunity to present evidence, testimony and arguments. No transcript of the proceedings was made. The arbitration record was completed with the exchange by the arbitrator of the parties' reply briefs on July 9, 1985.

The statute requires that the arbitrator select the final offer of one of the parties in its entirety. The final offers presented by the parties are as follows on the remaining issues in dispute:

"County Final Offer

(1) 3.5% wage adjustment (off Oct 1, 1984 Rates)

(2) 6.2 adjusted, in relevant part, to read:
Courthouse: 8 am - 5 pm

While the normal courthouse hours are 8 am to 5 pm, starting times and finishing times may be adjusted due to computer scheduling needs. Any permanent shift changes will be posted. In the event no bargaining unit members apply the county may go outside the unit to fill the new shift. The parties recognize that this may result in layoffs. Any temporary shift changes will be preceded by a 1 week's notice. No temporary shift would start before 6 am or after 12 noon. The county may not institute split shifts. All hours in excess of 8 in a day or 40 in a week shall be considered overtime."

"Union's Final Offer

Wages:

(1) 4% across the board effective January 1, 1985.

(2) Longevity - In recognition of the employees' service to Clark County, full-time employees shall receive their longevity payments in addition to their regular salary based on the following schedule, based upon their date of hire:

A) After 3 years - $ 50.00/year
B) After 6 years - $100.00/year
C) After 10 years - $150.00/year
D) After 15 years - $200.00/year

Employees completing their length of service according to the above schedule by November 30, of each year, shall receive their longevity payment in a separate paycheck the first payday on or after December 1 of each year.

Upon voluntary termination with at least two (2) weeks notice, or termination by discharge, death or retirement, the employee or designated heir shall receive the longevity payment, which shall be prorated at the rate of one-twelfth (1/12) the amount for each complete month of service since the previous November 30.

The arbitrator will consider each of the issues separately prior to selecting one of the final offers.

Wages

The Union offers to raise wages 4.0%; the County offers 3.5%. These

percentages are based on the employes' year-end wage rates. Since in 1984 there was a two-step wage increase, the County argues that the most appropriate calculation is to weigh the new proposed wage rates for 1985 against the average wage rates received by employes for the entire year, 1984. When this is done, according to the County's calculations, the Union's wage offer is 7.0%; the County's is 6.29%.

The statute specifies the factors to be considered in weighing the parties' offers. There is no issue with respect to (a) lawful authority of the municipal employer, or (b) stipulations of the parties. The third factor is (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.

There is no issue presented with respect to the financial ability of the unit of government to pay the costs of either offer. The County argues, without effective rebuttal, that the population and economy of the County are largely rural and agricultural, The County presented numerous news reports and articles and statistics showing the difficult plight of the farm economy at the present time. The Union argues that the farm problem can only be settled at the federal and state levels, and the burden should not fall on Courthouse employees. The County's argument is more persuasive in the arbitrator's view, that the interests and welfare of the public in Clark County would be enhanced at the present time by lower rather than higher wage increases in government, if such a choice must be made at this time.

The fourth factor (d) is comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other

employees performing similar services and with other employees generally in public employment in the same communities and in private employment in the same community and in comparable communities.

In two prior arbitration awards involving the County, arbitrators have identified nine counties appropriate for purposes of comparison. The parties have argued in their briefs about which are the most appropriate comparisons. This arbitrator does not view it as necessary for him to refine or redefine the list. The counties used by these arbitrators for comparison purposes are Chippewa, Jackson, Lincoln, Marathon, Monroe, Pierce, Polk, Taylor and Wood.

The Union has shown in its Exhibit #8 that in 1984 the employes in Clark County had the following rank(s) in what the Union regards as benchmark positions: Clerk Typist I maximum (7 of 7); Clerk/Typist II maximum (6 of 6); Clerk Typist III maximum (3 of 3); Deputies maximum (6 of 6); Account Clerk I maximum (6 of 6); Tax Lister 1 maximum (5 of 6); Secretary I maximum (7 of 7); Custodian maximum (4 of 6).

The County presented evidence with regard to 1985 increases given in the comparison counties for six benchmark positions: Deputy County Clerk; Deputy Clerk of Courts' Secretary I, II; Clerk Typist II and Custodian.

As mentioned earlier, two prior arbitration awards determined comparable counties to Clark County. Arbitrator Flaten found Taylor and Jackson to be most comparable. Jackson County has not settled with its employes for 1985. The Taylor County employes got 4.2%. They are not unionized.

Arbitrator Imes put primary emphasis on Lincoln, Monroe, Pierce and Polk Counties. Lincoln and Pierce have not settled for 1985. Monroe's

employes are not unionized. The increase given was from 3.6 to 3.8%. Polk County settled for 4.0%. The County also presented data for Wood County in which two of the comparable positions were increased 6.5% and 7.0% in 1985. The County showed also that the increases for 1985 in Chippewa County were from 5.2% to 6.1%.

It would appear from this very incomplete data that the Union's offer is more reasonable than the County's in terms of "new" money granted for 1985. The County's offer would be more reasonable using its method of calculation, but in the arbitrator's opinion the split increase for 1984 should be counted as 1984 wage increase, not 1985 wage increase, when making comparisons to what the other counties have done for 1985.

Using the County's exhibits, the arbitrator has looked at the relationship of Clark County's position to that of only those comparable counties whose 1985 settlements are known, and has compared their relative standing in 1984 and 1985. The 1985 settlement figures are available for Chippewa, Monroe, Polk and Taylor, and in some cases Wood. In making these comparisons, the arbitrator is not suggesting that these are the most appropriate comparisons. Rather, he is using them to see what difference either party's offer makes in comparison to what existed in 1984 and what will exist in 1985. The figures shown below are for Chippewa, Monroe, Polk and Taylor Counties, except where otherwise designated.

	1984 Median	1985 Median
Deputy County Clerk Clark County	$1279 (-$97)	1331.50 Co. offer (-$ 108.50) Union offer (-102.50)
Deputy Clerk of Cts. Clark County	$1269.50 (-$ 87.50)	1320 Co. offer (-$97) Union offer (- 91)

* Secy I Courthouse Clark County	$1136.50 (-$ 264.50)	$1193.50 Co. offer (-$290.50) Union offer (-286.50)
Secy II Courthouse Clark County	$1126 (-$149)	$1169.50 Co. offer (-$158.50) Union offer (-153.50)
** Clerk Typist II Cthse Clark County	$1117.00 (-$174)	$1168.00 Co. offer (- $192) Union offer (-177)
Custodian Cthse Clark County	$1106 (-$31)	$1151 Co. offer (-$38) Union offer (-33)

* Includes Wood, not Monroe
** Includes Wood, not Taylor

In all cases Clark County's relationship to the comparison median decreases from 1984 to 1985, with the Union's offer resulting in slightly lower decreases than if the County offer is implemented. That is, if the arbitrator found in favor of the Union's offer, he would maintain the relationship to the median slightly more than if the County's offer were implemented.

The County presented data for the other bargaining units within Clark County. The Law Enforcement unit negotiated a 3.5% increase for 1985. The arbitrator agrees with the Union that a small bargaining unit (approx. 27) of law enforcement personnel should not necessarily set the pattern for a larger unit (approx. 220) such as is involved in this case. However, it is still a relevant consideration that the increase offered by the County in the present case is not less generous in percentage terms than the increase offered to its law enforcement personnel in a voluntarily negotiated settlement. The County also presented evidence concerning the increase given to its Highway Personnel, a unit represented by AFSCME. The rate increase is the second year of a two year agreement negotiated in

1984. It provides for a second year increase of .35/hour which translates in percentage terms to slightly less than 4.0%. The Union notes that the wage level is much higher in the Highway unit than in the Courthouse unit, and thus the same percentage increase generates more money for Highway employes. The Union sees this as further justification for its 4.0% offer. In the arbitrator's opinion, the Union's offer is slightly more in line with the increase given to the Highway unit.

The County also presented data showing that its offer is consistent with increases given to its non-represented employes, and with private sector increases for which the data were available. The County showed that its wages are higher for selected positions than those paid to non-represented employes by the City of Neilsville, the County seat. The arbitrator has taken note of these, but he does not view them as having the same weight as the data cited above concerning other collectively bargained settlements.

The fifth factor to be considered (e) according to the statute, is the average consumer prices for goods and services, commonly known as the cost of living. The County presented data showing that the US City Cost of Living Index rose 3.6% in 1984, and the US Urban and Clerical Index for cities rose 3.3%. These figures, show that the County's offer is closer to these increases, by a slight margin, than is the Union's. This is true with regard to the wage offer alone, and also if the cost of the longevity issue, considered below, is added. Both offers are greatly in excess of the cost of living increase if the 7.0% and 6.29% full-year wage increase figures are used. Those are the appropriate figures to use in making comparisons with what has happened to the cost of living during the full year, in the arbitrator's opinion.

The sixth factor to be considered is (f) overall compensation. This factor is considered below, after the discussion of longevity.

The Union argues that the most relevant consideration in this case is that even if its offer were to be implemented, the relative rankings of employes in Clark County would not improve in comparison to similar employes in the other counties. It is not disputed that the employes in this unit are paid less than those in units in other counties. In fact the County's exhibits show that the rates paid to its employes are far below those paid to comparable employes in some categories.

Both parties' offers will retain Clark County's relative ranking in relationship to the comparison counties, although it will deteriorate somewhat monetarily. Clark County's position with regard to wages appears to be at or close to the bottom. The arbitrator does not know if that has been the case historically, but whether or not there would be justification for wage increases to close the gap with other counties, economic conditions at the present time would not provide a favorable climate for special catch-up adjustments.

The difference between the two wage offers is not large. The Union's is more justifiable based on comparison with courthouse pay increases in other counties, both unionized and nonunionized and in comparison to the rate negotiated with the Highway workers in Clark County. The County's offer is more justifiable measured against the police settlement and the increase given by the County to non-unionized employes, and by the data presented about the private sector economy and the general economic condition in Clark County as well as the increase in the cost of living. It is the arbitrator's conclusion that on balance, the Union's offer is slightly more favorable.

Longevity

The Union proposes to add a longevity benefit for the bargaining unit, a benefit not currently in place. The cost for 1985 is $4900 according to the Union, and $5150, according to the County. Whichever figure is used, the cost of this benefit for 1985 is small, and it adds only about one-half percent to the Union's package.

Applying the statutory factors to this benefit, the interests and welfare of the public factor would favor the County's offer, for the reasons stated earlier. The cost of living factor would also favor the County's position, since both parties' offers are greater than the cost of living increase even before the inclusion of longevity. The comparisons within Clark County also favor the County. There is no longevity for the non-represented employes, and just one group of County employes has longevity, that being the Social Service employes. They received that benefit as part of a final offer arbitration award, not as the result of voluntary agreement, and Arbitrator Imes would not have granted longevity had that been the only issue in dispute. Nonetheless, the fact remains that there is a unit in the County receiving longevity.

With regard to comparisons with the other counties, Taylor and Monroe do not provide longevity. The others do. The Union in its Exhibit #9 presented the longevity data for each of the counties except Jackson. These show that Wood, Lincoln and Chippewa have plans which have lower benefits than the one proposed by the Union. The arbitrator cannot readily compare the offer with the plan in effect in Pierce County. The Union's offer appears to be quite close to the benefits paid in Polk County.

The arbitrator is not persuaded that this is the appropriate time for initiating a new benefit, and he believes that where possible new benefits

should be negotiated, not imposed by arbitration. Even though the cost of longevity is small initailly, the cost will increase as the work force gets older. The arbitrator is of the opinion that the County's offer is more reasonable on the longevity issue when the statutory factors are considered.

The statute directs the arbitrator to also consider the overall compensation received by the employes, including wages, vacations, holidays, excused time, insurance and pension, medical and hospitalization benefits... There is no showing that the employes of this bargaining unit are treated less favorably by the County than the employes in the other bargaining units when it comes to these benefits. The Union, in its Exhibit #9, drew comparisons of benefits paid by Clark County with those paid by the comparison counties. While Clark's benefits are comparable in some categories, behind in others, and more favorable in some, the data do not persuade the arbitrator that one party's economic offer should be favored over the other based on the total compensation factor.

Hours

The County's offer contains a proposal that would change the hours provision of the Agreement. The existing Agreement lists the hours for the Courthouse employes as 8:00 a.m.-5:00 p.m. Monday through Friday.

It states that these are intended to be "the normal hours of work and shall not be construed as a guarantee of hours per day or per week or as a guarantee of days of work per week."

The County's proposal states 8:00 to 5:00 as "the normal courthouse hours" but goes on to state that the "starting times and finishing times may be adjusted due to computer scheduling needs." The proposal includes the

possibility of permanent shift changes, but says that those will be posted. It permits the County to hire from the outside if bargaining unit members don't apply, and it recognizes that layoffs of bargaining unit members may result. The proposal also provides for temporary shift changes being possible, with agreement by the County to give one week's notice. The proposal puts boundaries on the starting time (not before 6:00 a.m. or after 12-noon) and prohibits split shifts.

The County has recently installed a new computer system and in order to make maximum use of its investment it seeks to have the computer operational for more than 40 hours per week. The County points out that under the Management Rights section of the Agreement it has, "except as otherwise specifically provided in this Agreement," the right to determine "the scheduling of operations and starting time of shifts..."

At the time of the arbitration hearing in this case, there was a grievance arbitration pending over the County's change of the work schedule for some employes. Arbitrator Briggs determined that temporary changes in hours need not be considered as changes from the "normal" hours, and therefore the County had the right to adjust hours temporarily, where the County could show it had legitimate organizational reasons for so doing. The arbitrator in this case does not take issue with Arbitrator Briggs' decision insofar as temporary changes in hours are concerned.

In the Briggs Award the County has received reenforcement for its position that it has the right and flexibility to accomplish its goals through temporary changes in hours. The arbitrator is not persuaded that the County needs the right to change hours permanently in order to accomplish those goals. Because of the Briggs Award, the only remaining controversial part of the County's final offer language is that which

states, "Any permanent shift changes will be posted. In the event no bargaining unit members apply the county may go outside the unit to fill the new shift. The parties recognize that this may result in layoffs." Since it is not clear to the arbitrator that the County has the unilateral right under its Agreement to impose permanent shift changes, and this language of its offer could be construed as effectively changing that, the arbitrator is of the opinion that any such change should be bargained by the parties and not imposed by an arbitrator. For this reason the arbitrator favors the Union's position on this issue. The arbitrator is mindful of the arguments made by the County in its brief that "the County is contemplating the permanent adjustment of one employee's shift," but the language it proposed did not contain such a limitation and could be used, as the Union argues, to justify wholesale permanent changes in hours if allowed to remain in the Agreement.

Conclusion

It is the arbitrator's task under the statute to choose the final offer of one party or the other in its entirety. In this case both parties' offers contain issues which should be bargainined (Union-initiation of longevity; County-initiation of possible permanent hours changes), not imposed through arbitration. Whichever of the two offers is selected, therefore, the result will be the implementation of a proposal that should more appropriately have been bargained and implemented by agreement.

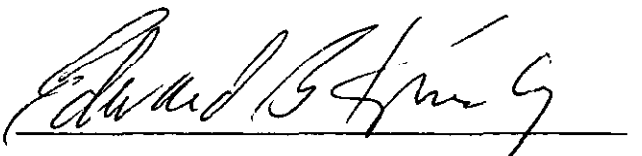
The choice is difficult. For reasons stated above, the arbitrator very slightly favors the Union's wage offer at this time. He favors the County's position on longevity, and the Union's position on hours.

It is the arbitrator's decision based on all of the facts and arguments presented by the parties, that the Union's offer is slightly more favorable and should be implemented. In determining that the Union's position should be upheld, the arbitrator has reached the conclusion that there is less potential harm to, and less potential for conflict in, the parties' on-going collective bargaining relationship by allowing longevity to be introduced than by allowing the County to make permanent changes in hours of work through the med/arb process rather than through agreement with the Union (or if agreement is not possible, through the grievance arbitration process where a thorough airing is possible of the issue of whether the County has the right under the existing contract language to make permanent changes in hours).

Based on the above facts and discussion the arbitrator hereby makes the following AWARD

The Union's final offer is selected.

Dated this 16th day of August, 1985, at Madison, Wisconsin.



Edward B. Krinsky
Mediator-Arbitrator