

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of the
TEAMSTER UNION LOCAL 662
and
CITY OF MEDFORD
(PUBLIC WORKS AND WATER UTILITY)
For Final and Binding Arbitration to
Resolve the Dispute between the Parties

CASE 16
No. 34215 MED/ARB
Decision No. 22396-A

I APPEARANCES

For the City of Medford
Arthur Salwedel, Mayor City of Medford
Raymond Lange, Alderman-Supervisor, Spokesperson
Charles Heglund, Alderman
Delores Meyer, Alderman-Supervisor
Bill Tylka, Director of Public Works

For Local 662 General Teamsters Union
Jerome Hansen, Business Agent, Local 662
Gerald Allain, Business Representative, Local 662
Merle Baker, Business Representative, Local 662

II BACKGROUND

On December 3, 1984, the City of Medford (Public Works and Water Utility) hereinafter called the City and Teamsters Union, Local 662 hereinafter call the Union, filed a petition requesting the Wisconsin Employment Relations Commission to initiate Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act, for the purpose of resolving an impasse arising in collective bargaining between the Union and the City. An investigation into the matter was conducted by a member of the Commission's Staff on January 21, 1985. The investigator, finding the parties still at impasse, accepted the parties final offers on February 19, 1985, as well as stipulation on all matters agreed upon. Thereafter the investigator notified the parties and the Commission the investigation was closed, and the parties remained at impasse. Subsequently, the Commission rendered a FINDINGS OF FACT, CONCLUSION OF LAW, CERTIFICATION OF RESULTS OF INVESTIGATION, and ORDER requiring Mediation/Arbitration.

The parties selected Donald G. Chatman as Mediator/Arbitrator on March 22, 1985. A mediation meeting was held on April 30, 1985, at the city hall offices of the City of Medford, Wisconsin at 1:30 P.M. in an attempt to resolve the sole outstanding issue in dispute. The parties were unable to reach agreement and the mediator/arbitrator served notice of the prior written stipulation to the parties to resolve the dispute by final and binding arbitration. The mediation meeting was closed at 3:30 P.M. on April 30, 1985, and an arbitration hearing on the issue at impasse was held.

III PROCEDURE

A hearing on the above matter was held on April 30, 1985, at 3:35 P.M. at the Medford City Hall, Medford, Wisconsin before the Arbitrator, under rules and procedures of Sec. 111.70(4) of the Municipal Employment Relations Act. At this hearing both parties were given full opportunity to present their evidence, testimony and arguments, to summon witnesses, and to engage in their examination and cross examination. The parties agreed to the submission of final arguments presented to the Arbitrator in the form of written briefs. The arbitration hearing was adjourned on April 30, 1985, until the receipt of the written briefs. The exchange was completed on May 14, 1985, and the hearing was closed at 5:00 P.M. Based on the evidence, testimony, and arguments of the parties and the criteria set forth

in Sec. 111.70(4)(cm)6 of the Municipal Employment Relation Act, the Mediator/Arbitrator renders the following award.

IV ISSUE AND FINAL OFFERS

Shall the 1985 successor collective bargaining agreement between the City and the Union contain a provision requested by the Union commonly called "Fair Share Language". The proposed provision would read as follows:

Article-Fair Share

Section 1. Membership in the Union is not compulsory. An employee may join the Union and maintain membership therein consistent with its Constitution and By-Laws. No employee will be denied membership because of race, color, creed or sex. This Article is subject to the duty of the Wisconsin Employment Relations Commission to suspend the application of this article whenever the Commission finds the Union has denied an employee membership because of race, color, creed or sex.

Section 2. The union will represent all the employees in the bargaining unit, members and non-members, fairly and equally, and therefore, all employees shall pay their proportionate share of the costs of the collective bargaining process and contract administration by paying an amount to the Union equivalent to the uniform dues required of members of the Union.

Section 3. The employer agrees to deduct the amount of dues certified by the Union as the amount Uniformly required of its members from the earnings of the employees affected by this Agreement and pay the amount so deducted to the Union on or before the end of the month in which the deduction is made.

Section 4. As a convenience to the employees who desire to become full Union members, the Employer agrees to deduct from their pay the initiation fee required for membership or installments thereof, as certified by the Union, and to pay the amount to the Union on or before the end of the month in which such deduction is made, provided the employee has signed a check-off authorization and assignment for this purpose.

The City is opposed to the inclusion of this provision in the successor agreement and proposes that existing Article 22, "Dues Deduction" adequately covers the situation.

V CONTENTIONS OF THE PARTIES

The Union contends the fair share provision is necessary to insure the stability of the represented organization in the City of Medford. The Union asserts that the Public Works and Water Utility Employees were first organized in 1968 and were represented by the General Teamsters, Local 446. That subsequent loss of paying membership resulted in the unit becoming non-functioning. The Unit was subsequently reorganized in 1980 and chose representation by the Teamsters on an 8-0 vote, and had all dues paying members; that it is newly hired employees who have elected not to pay dues, thus placing representation again in jeopardy.

The Union contends that most of the organized public employment organizations in the County and surrounding area have fair share agreements. To substantiate this contention the Union offered as evidence the contracts of Taylor County and surrounding public sector bargaining units, and offered unrefuted testimony that the county's largest private sector employer Agreement has a fair share provision.

The Union contends it must represent all employees within the bargaining unit, yet does not require union membership, that this

duty to represent bargaining unit members remains as long as the Union is the exclusive bargaining agent. Thus, employees who are not members of the Union, but members of the bargaining unit, still receive the benefits of the Union's efforts and should pay their fair share of the costs of these efforts. The Union maintains that both final offers are within the lawful authority of the City, that the Union's offer presents no additional costs to the City, and the Union's position should be sustained.

The City did not argue or attempt to refute any of the Union's statements, testimony, or documentation presented as evidence.

The City contends that "Fair Share" language was discussed in the initial contract talks and agreement was reached to leave out such language. The City contends that while the law for inclusion of a fair share agreement is legal, it is not just, that it violates the employees' civil rights and, that neither management nor labor should have the authority to bargain away these individual rights. The City contends that non-union employees have stated to the city in writing their individual desire not to be represented by Union. The City submitted as evidence of their position letters from two purported bargaining unit members which request the City to represent them in not paying Union dues. The Union objected to the submission of the letters as evidence because the Union maintains it had no opportunity to examine or authenticate such letters. The City offered no other evidence, testimony or witnesses in defense or support that its position on dues collection should be sustained.


VI FINDINGS AND OPINIONS

The Unions contentions for inclusion of a fair share provision in the successor agreement appear to be based on a demonstrated benefit to bargaining unit security. The inclusion is within the lawful authority of the City, and there is unrefuted testimony that a large number of public sector employee groups have a comparable benefit. The City's contentions that the issue was discussed and left out of the initial agreement, does not address the issue of non-representation and subsequent reorganization by the same Union by unanimous vote in 1980. The City's contention that while the "fair share provision is legal, but not just", does not address the issue. If employees are dissatisfied with the fair share provision they have some recourse through the Wisconsin Employment Relations Commission. It is not incumbent on the City to become advocates for matters within the exclusive mandate of the recognized bargaining agent. The Union has offered a rationale in addition to comparability for the inclusion of a fair share provision in the successor agreement. The City has not refuted the Unions' claims, nor provided a contention based on the employers' merit alone as to why a fair share provision should not be in the successor agreement. Thus, the final offer of the Union is preferred.

VII AWARD

The 1985 Collective Bargaining Agreement between the City of Medford, Wisconsin (Public Works and Water Utility) and Teamster Local 662 shall include the final offer of General Teamsters Union, Local 662.

Dated this 4th day of June 1985, at Menomonie, Wisconsin


Donald G. Chatman
Mediator/Arbitrator