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IN THE MATTER OF MEDIATION/ARBITRATION PROCEEDINGS
BETWEEN
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL
48, LOCAL 2, AFSCME, AFL-CIO

and

CITY OF GREENFIELD (CLERICAL)

Case 78 No. 34246
MED/ARB 3081
DECISION AND AWARD
OF ARBITRATOR
Decision No. 22413-A

I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 of the Wisconsin Municipal Employment Relations Act. AFSCME Local 2 (Union) is the exclusive bargaining representative of certain employees of the City of Greenfield (City or Employer) in a collective bargaining unit consisting of all regular full-time and regular part-time clerical employees in the City Hall, Fire Department and Police Department, excluding the Deputy City Clerk, Secretary to the Director of Public Works, Secretary to the Police Chief, and all supervisory, professional, confidential and managerial employees.

The Union and the City have been parties to a collective bargaining agreement that will expire on December 31, 1985. On October 16, 1984, the parties exchanged their initial proposals on matters to be reopened in the collective bargaining agreement. On December 10, 1984, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting that the Commission initiate mediation-arbitration proceedings. On February 11, 1985, the parties submitted their final offers to the WERC investigator.

On March 7, 1985, the WERC certified that the conditions precedent to the initiation of mediation-arbitration had been met. The parties thereafter selected Jay E. Grenig as the mediator/arbitrator in this matter.

Mediation proceedings were conducted on May 17, 1985. The parties were unable to reach voluntary settlement and the matter was submitted to the Mediator/Arbitrator serving in the capacity of arbitrator on May 17, 1985. The City was represented by Gary M. Ruesch, Attorney at Law, Mulcahy & Wherry. The Union was represented by Anthony F. Molter,

Staff Representative, AFSCME Council 48.

The parties were given full opportunity to present relevant evidence and arguments. Upon receipt of the parties' briefs, the record was declared closed on June 21, 1985.

II. FINAL OFFERS

This case involves two issues: 1. dental insurance and 2. safety and health aspects of video display terminals.

The collective bargaining agreement does not presently provide public works employees with dental insurance. The City has proposed no change in the current contract language. The Union has proposed the implementation of a dental plan in accordance with its offer attached to this award as Exhibit A.

With respect to video display equipment, the Union has proposed the addition of a new article to the collective agreement. The proposed article provides as follows:

Section 1. The parties agree to form a Committee, with three (3) members appointed by the City and three (3) members appointed by the Union, to meet in the future, at the request of either party, to discuss and address issues and/or problems which may arise after further use of video display equipment. The parties recognize that the introduction of video display equipment into the work area is relatively new, and, therefore, ongoing communication is essential. Recommendations approved by the Committee shall be brought to the Council for final approval. This section shall be implemented within ninety (90) days of the signing of the Agreement.

The City proposes continuing the status quo (no contract language specifically covering video display equipment).

III. STATUTORY CRITERIA

In determining which offer to accept, the Arbitrator must give weight to the following statutory (Wis. Stats. sec. 111.70(4)(cm)7) criteria:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and 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 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 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 employees, including direct wages, 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 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, factfinding, arbitration, or otherwise between the parties in the public service.

IV. POSITIONS OF THE PARTIES

A. THE UNION

1. DENTAL INSURANCE

The Union argues that the comparables favor its position. The Union submits as its list of comparable communities West Allis, Wauwatosa, Oak Creek, Hales Corners, and South Milwaukee. It notes that all of these communities have negotiated dental insurance plans with their unions.

With respect to internal comparables, the Union asserts that the police bargaining unit received a three-year wage increase of 19.1% while the clerical employees received a three-year increase of 16.9%. The public works employees and the fire fighters received substantially the same increase as the clerical employees. The police supervisors received a three-year increase of 19.1% and the non-union employees received 18%. According to the Union, granting dental insurance to a bargaining unit on the low end of the wage increase range "would not upset an apple cart that is already turned over."

2. VIDEO DISPLAY TERMINALS

The Union asserts that there is substantial documentation of the negative health effects of VDT's on workers. It says there is little doubt that as a result of work station design, VDT operators are suffering more headaches, body fatigue and other health problems. It claims that worker morale and job satisfaction have deteriorated after uncontrolled introduction of VDT equipment.

According to the Union, its offer contains a method to resolve these issues and avoid future dilemmas. A labor/management committee can effectively manage these problems through cooperative investigation and resolution. It points out that other communities are now creating committees to perform these exact functions.

B. THE CITY

1. DENTAL INSURANCE

Pointing out that no City employees received dental insurance benefits in 1983, 1984 or 1985, the City argues it has attempted to establish a policy of relative consistency with respect to wage increases and fringe benefits among City employees. According to the City, granting a new benefit to one bargaining unit would set a precedent, not only for that bargaining unit, but for all others in the City.

For external comparables, the City has used the communities comprising the metropolitan area. These communities are Brown Deer, Cudahy, Franklin, Glendale, Greendale, Hales Corners, Oak Creek, St. Francis, Shorewood, South Milwaukee, Wauwatosa, West Allis, West Milwaukee and White Fish Bay. The City claims that its pool of comparable communities is the more appropriate for use in these proceedings based on population, geographic location, number of bargaining unit employees, equalized valuation and full tax rates. In addition, it says that these comparables were utilized by Arbitrator Zeidler in *City of Greenfield (Police)*, Dec. No. 20611-B (1983).

The City asserts that only six of the fourteen comparable communities provide dental insurance for their clerical employees. Only five of the most comparable communities (using Arbitrator Zeidler's two-tier analysis of comparables) provide dental benefits to their clerical employees.

The City stresses that maintenance of the status quo is especially important in the context of a limited reopener of a multi-year agreement. It says the Union has failed to

establish a compelling need for a change in the current benefit levels.

According to the City, City employees represented by the Union received a wage increase during the term of the collective bargaining unit which was in excess of that received by employees in the comparable communities.

The City argues that the Union's final offer is vague and ambiguous because it fails to address the cost impact of the dental insurance plan.

2. VIDEO DISPLAY TERMINALS

The City contends that the Union has not established any need for the language proposed in its final offer. The City claims it cannot "fathom" why the Union has proposed a significant change in the collective bargaining agreement, that can, and should be addressed individually on a case-by-case basis as problems arise."

According to the City, the comparative data does not support the Union's proposal on video display equipment. It notes that of the fourteen communities, only two provide any type of language addressing the issue of video display equipment.

It appears to the City that the Union's offer is an abuse of the mediation/arbitration process. The City argues that it is a well-established tenet of arbitration that the mediation/arbitration process should not be used to attempt to gain that which could not be gained through collective bargaining. The City concludes that the Union knows its offer on safety and health aspects of VDT's is not only unsupported by the comparables but is also an issue to which the City would never agreed in collective bargaining.

V. ANALYSIS

A. DENTAL INSURANCE

The population of the City was 32,255 in 1983. The populations of the comparables proposed by the Union range from a low 6,859 (Hales Corners) to a high of 64,755 (West Allis). The populations of the comparables proposed by the City range from a low of 3,540 (West Milwaukee) to a high of 64,755 (West Allis).

Both parties' comparables are geographically proximate to the City. The City's equalized valuation (\$824,096,200) places it third among the fourteen comparables proposed by the City. The City's 1983 full value tax rate for 1983 (\$29.38) is slightly below the average tax rate of the comparables (\$31.41) proposed by the City.

The City's comparables have bargaining units larger and smaller than the bargaining unit here. All but one of the comparables have bargaining units at least twice as large as the bargaining unit here.

Based on geographic location, population, number of bargaining unit employees, equalized valuation, and full value tax rates, the comparables proposed by the City would give a more complete picture than the Union's. A further reason for using the City's comparables is the use of these comparables by Arbitrator Zeidler in another interest arbitration involving the City and another bargaining unit.

An examination of the benefits provide by the comparable employers shows that six of the fourteen provide dental insurance benefits to their clerical employees. City clerical employees received a 1985 wage increase greater than that received by clerical employees in the comparable cities. (The wage rate increases ranged from 3.0% to 5.5%).

With respect to internal comparables, no other bargaining unit of City employees has dental insurance. Over the past three years, fire fighters and public works employees received the same wage increase as clerical employees. The police and police supervisors received a larger increase. Nonunion employees also received a larger increase. Although some bargaining units in the City may have received a larger three-year wage increase than the bargaining unit represented by the Union, the record indicates that two other bargaining units received the same increase as the Union. Even if this difference provided a basis for some sort of increased benefit, the evidence does not show how much the Union's proposal would cost. In the absence of this information, it cannot be determined what the effect of the Union's proposal would be on the employees' total compensation.

Because the introduction of a new benefit such as dental insurance has far reaching consequences for the City and the Union it is preferable that such a benefit be mutually agreed upon by the parties rather than instituted by an arbitrator. Changes in the basic working conditions should not be initiated through interest arbitration in the absence of a showing that the conditions at issue are unfair or unreasonable or contrary to accepted standards. Interest arbitration should not be used to expand the rights of either party beyond what they might be absent compulsory arbitration.

Since the evidence shows that only a small portion of the comparable employers provide their clerical employees with dental insurance and none of the other City employees are provided with dental insurance, it has not been shown that that the conditions existing in the City with respect to dental insurance are contrary to accepted standards.

Furthermore, the evidence does not establish that the present working conditions with respect to dental insurance are unfair or unreasonable.

Because the record does not provide a compelling reason to disturb the status quo at this time, it is concluded that the City's dental insurance proposal is more reasonable than the Union's.

B. VIDEO DISPLAY TERMINALS

Of the fourteen comparables, only two have contract provisions relating to video display terminals. In addition, Milwaukee County has agreed to a collective bargaining agreement provision concerning the use of video display terminals.

In 1981 the National Institute for Occupational Safety and Health reported that fatigue of the major postural musculature as well as the manipulative muscles has been demonstrated in VDT operators. It also reported that there is the potential for chronic visual problems relating to changes in the visual function given long term VDT use. The Institute reported that a high percentage of operators reported acute visual complaints such as heavy eyes, burning eyes, itching eyes, tearing eyes, eyestrain or eye soreness. According to the Institute there have been high levels of psychological distress reported by VDT operators.

In 1983 the American Council on Science and Health reported that health complaints relating to the use of VDT's are attributable to poor workplace design and maintenance.

On October 19, 1983, the American Optometric Association urged workers who use video display terminals to undergo annual eye examinations because of conflicting evidence on the effect of the terminal screens on their vision. The Association relied on a survey performed by the Mount Sinai School of Medicine which indicated that users of VDT's suffer increased eye strain, fatigue, headaches, dizziness and other health problems.

A 1985 survey by the National Institute for Occupational Safety and Health found there was a "recurring pattern of musculo-skeletal and visual symptoms among VDT operators engaged in sustained, repetitive tasks."

Although an analysis of the comparables supports the City's position more than the Union's, the evidence shows that some of the comparables have agreed to provisions relating to video display terminals. More importantly, the evidence that studies by the American Council on Science and Health, the American Optometric Association, the Mount Sinai School of Medicine, and the National Institute for Occupational Safety and Health found that users of VDT's

suffered certain health problems indicates there are persuasive reasons for including a provision in the collective bargaining agreement addressing these possible health problems.

The Union's proposal attempts to address these possible health problems, while the City takes a wait and see approach. The Union's proposal is consistent with the concept of collective bargaining and exclusive representation. The Union's proposal would attempt to prevent possible health problems, while the City suggests that problems be addressed as they arise on a case-by-case.

Because the Union's proposal seeks to prevent possible health problems identified in the studies in evidence, it is immaterial that there have been no grievances filed or complaints to management. The Union is not required to wait until someone is injured or becomes ill before presenting its proposal.

Unlike the Union's dental insurance proposal, its VDT proposal does not seek to increase present benefit levels. The Union's VDT proposal merely sets up a system for addressing potential health and safety problems. Final approval of any recommendations would be in the hands of the City Council.

There is no merit to the City's contention that the Union's offer is an abuse of the mediation/arbitration process. The fact that the City contends it would never voluntarily agree to the Union's proposal merely demonstrates there was a bargaining impasse and the Union was entitled to submit the matter to mediation/arbitration.

Although the evidence relating to comparables favors the City, the Union has presented persuasive reasons for justifying a departure from the comparables. The Union's proposal addresses the possible health problems identified in the studies in evidence while the City's does not. Accordingly, it is concluded that the Union's proposal relating to video display equipment is more reasonable than the City's.

C. CONCLUSION

The City's dental insurance proposal is more reasonable than the Union's and the Union's video display equipment proposal is more reasonable than the City's. The Arbitrator has no authority to pick and choose among the issues; the Arbitrator must select one or the other offer based on the statutory criteria.

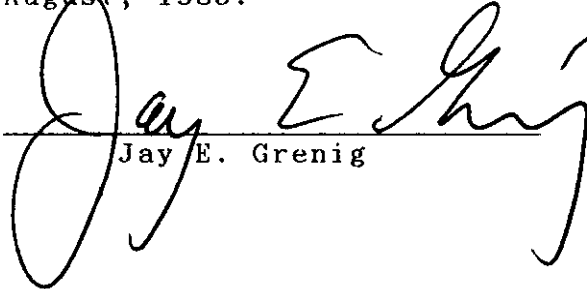
Because the dental insurance proposal would have the greatest impact on the parties and the City's collective bargaining with other bargaining units, it is concluded that

the City's final offer is slightly more reasonable than the Union's.

VI. AWARD

Having considered all the relevant evidence and the arguments of the parties, it is concluded that the City's final offer is more reasonable than the Union's.

Executed at Waukesha, Wisconsin, this sixth day of August, 1985.



A handwritten signature in cursive script, appearing to read "Jay E. Grenig", is written over a horizontal line. The signature is fluid and somewhat stylized, with a large loop at the beginning and a long, sweeping tail.

Jay E. Grenig

Final Offer of Local 2 (Greenfield Clerical)

Affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO

To

The City of Greenfield

1. All other provisions of the current Agreement (January 1, 1983 thru December 31, 1985) shall remain unchanged except as follows:

a) City to provide the following dental plan and to pay the full premium for the single and family plan;

FIREMAN'S FUND DENTAL PLAN

<u>Class 1 - Preventive Services</u>	100%
Oral Examinations	
X-rays	
Cleaning	
Fluoride Treatment	
Space Maintainers	
<u>Class 2 - Basic Services</u>	85%
Emergency Treatment	
Amalgam, Silicate, Acrylic Fillings	
Endodontics	
Periodontics	
Oral Surgery	
Local Anesthesia	
Extractions	
Stainless Steel Crowns	
<u>Class 3 - Major Services</u>	50%
Gold Foil Fillings	
Inlays and Onlays	
Crowns	
<u>Class 4 - Prosthodontic Services</u>	50%
Removable or Fixed Bridgework	
Partial or Complete Dentures	
<u>Class 5 - Orthodontic Services</u>	50%
Teeth Straightening Procedures	
<u>Deductible</u>	\$25.00
Applies to Class 2, 3 and 4 Services Only	
<u>Annual Non-Orthodontic Maximum</u>	\$1,500.00
<u>Lifetime Orthodontic Maximum</u>	\$1,500.00