

OCT 01 1985

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF MEDIATION/ARBITRATION PROCEEDINGS

BETWEEN

PROFESSIONAL STAFF OF THE
MARINETTE COUNTY DEPARTMENT

and

MARINETTE COUNTY (DEPARTMENT
OF SOCIAL SERVICES)

Case 64 No. 34389
MED/ARB 3136
DECISION AND AWARD -
OF ARBITRATOR
Decision No. 22574-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. Professional Staff of the Marinette County Department of Social Services (Union) is the exclusive bargaining representative of certain employees of Marinette County (County or Employer) in a collective bargaining unit consisting of all professional staff of the County Department of Social Services (Department).

The Union and the County have been parties to a collective bargaining agreement that expired on December 31, 1984. On November 7, 1984, the parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement. On January 3, 1985, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting WERC to initiate mediation-arbitration proceedings. On April 8, 1985, the parties submitted to the WERC investigator their final offers as well as a stipulation on matters agreed upon.

On April 22, 1985, the WERC certified that the conditions precedent to the initiation of mediation-arbitration had been met. The parties selected Jay E. Grenig as the mediator/arbitrator in this matter. Thereafter, the WERC appointed him the mediator/arbitrator on May 8, 1985.

Mediation proceedings were conducted on July 9, 1985. The parties were unable to reach voluntary settlement and the matter was submitted to the Mediator/Arbitrator serving in the capacity of arbitrator at an arbitration hearing held on May 17, 1985. The County was represented by James E. Murphy, County Corporation Counsel. The Union was

represented by Paul G. Theis. The parties were given full opportunity to present relevant evidence and arguments.

II. FINAL OFFERS

A. THE UNION

1. A percentage increase of six percent.
2. A life insurance policy of \$10,000.
3. Return to the meal policy that existed before the passing of County Resolution No. 1, dated May 15, 1984, or \$10.00 per month.
4. An increase in beeper duty pay to \$100 per week.

B. THE COUNTY

1. Four percent increase.
2. Four dollar beeper increase to \$95 weekly.

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.

and conditions of employment through voluntary
h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, collective bargaining, mediation, factfinding, arbitration, or otherwise between the parties in the public service.

IV. FACTS

A. WAGES

The other bargaining units in the County are highway, courthouse, general hospital, Pine View, sheriffs, and nurses. The basic pay increases for employees in these bargaining units for 1985 was four percent (the sheriffs department employees had not settled at the time of the hearing).

Although there was generally no change in the fringe benefits, library employees received a four percent increase with the full cost of health and dental benefits.

In 1984 all the bargaining units received three percent increases. The Assistant district attorney received a four percent increase. Elected officers (District Attorney, Sheriff, Clerk, Treasurer and Coroner) received two percent in 1984 and seven percent in 1985.

In Oconto, non-union social workers received five percent increases for 1985. In Menominee (Michigan) social workers received six percent for 1985.

A member of the bargaining unit testified there was a 146% increase in child abuse/neglect cases in the County from 1983 to 1985. He stated that a majority of the unit deals with these calls, but that there has been an increase in workload in all areas. On cross examination he stated that the staff was not working more hours and was being paid for any overtime. One social worker has been added in adult services. According to the witness, little overtime is put in by bargaining unit members.

B. BEEPER PAY

Another bargaining unit member testified there has been a considerable increase in "beeper contacts." In 1982 there were 123 contacts. As of July 4, 1985, there had already been 117 contacts. Bargaining unit members are compensated

for beeper time at the rate of \$91 per week. County hospital employees receive \$1 per hour for being on call. They wear beepers only while on the premises.

Beeper pay in other counties is as follows:

Oconto	\$125
Florence	\$100
Grant	\$130
Shawano	\$150
Clark	\$115

C. LIFE INSURANCE

The 1980 collective bargaining agreement provided bargaining unit members with an employer-paid \$10,000 life insurance policy. Subsequent contracts did not contain a provision for life insurance benefits.

Although the Union asserted that a majority of the counties have life insurance for social workers, the Union did not know what percentage of the premium was paid for by the employers and what percentage of dental and health insurance premiums was paid for by the employers.

The City of Marinette has life insurance covering city employees. County employees in the sheriff's department and librarians receive life insurance coverage.

D. MEAL POLICY

In 1985 the County removed the meal policy from the contract without negotiations. The Union feels that the matter is negotiable.

V. POSITIONS OF THE PARTIES

A. THE UNION

The Union asserts there is a feeling of frustration at being arbitrarily told what the wages will be. According to the Union, despite the addition of another social worker, there has been an increase in work. It notes that elected County officials received a seven percent increase.

The Union argues that its six percent offer is justified because of the additional expense of arbitration.

The Union points out that it previously had life insurance.

With respect to beeper pay, the Union stresses that the workers at the hospital receive \$1 per hour for being on call.

B. THE COUNTY

The County asserts that its offer is the same as that offered every other employee in the County. It claims there has been no showing of any need for catch up. According to the County, while there may be additional work, the employees are working the same number of hours.

VI. ANALYSIS

A. WAGES

In determining which party's offer is more reasonable, arbitrators attempt to determine what the parties would have settled on had they reached a voluntary settlement. Since the parties did not reach a voluntary settlement, one of the most important aids in determining where the parties would have settled is an analysis of salaries paid similar employees by other comparable employers.

In addition, arbitrators have given great weight to settlements between an employer and its other bargaining units. See *Brown County*, Dec. No. 20455-B (Michelstetter, 1983); *Manitowoc County*, Dec. No. 19942-B (Weisberger, 1983); *Milwaukee County*, Dec. No. 20562-B (Fleischli, 1983); *City of Brookfield*, Dec. No. 19573-B (Rice, 1982); *City of Oconto*, Dec. No. 19800-B (Monfils, 1982).

The frustration of a union's being locked into an established pattern of settlement is understandable, but, in the absence of compelling circumstances, late settlements above a pattern established earlier penalize employees involved in voluntary negotiations. This is destructive of the collective bargaining system and discourages voluntary settlements.

The record shows the established pattern of settlement in the County for 1985 is an annual wage increase of four percent. Acceptance of the County's offer of four percent would maintain the settlement pattern established in the other County bargaining units while the Union's wage offer would result in a percentage increase 50% higher than the established pattern.

The Union has failed to show the existence of circumstances justifying disregard of the established pattern of settlement in the County. First, there is no basis in the statutory criteria for taking into account the "additional expense of arbitration" in determining the reasonableness of the parties' offers.

Second, what evidence there is with respect to comparable employers is insufficient to justify disregarding the established pattern of settlement in the County. The evidence shows that social workers in Oconto and Menominee

(Michigan) received six percent wage increases. These two settlements (one involving employees in Michigan) do not show a pattern of settlement among comparable employers. Further, evidence of the percentage rate of increase alone is of little help in analyzing the settlements in the absence of evidence of the dollar increase and the total compensation paid employees in the comparable employers. The six percent increase could have been agreed to as a catch up.

While the record shows there has been an increase in the number of child abuse/neglect cases handled by members of the bargaining unit, the record also shows there has been no increase in the number of hours worked or in the need for overtime. Furthermore, the record does not show that the bargaining unit members handle significantly more cases than social workers employed in other Wisconsin counties. Thus, the increase in the number of child abuse/neglect cases does not provide a basis for selecting the Union's offer.

Accordingly, it is concluded the County's wage offer is more reasonable than the Union's offer.

B. BEEPER PAY

On its face, the evidence regarding the beeper pay would seem to support the Union's position. However, there is no evidence showing whether the beeper duties, responsibilities or on-call hours of the employees in other counties are similar to the beeper duties, responsibilities or on-call hours of County employees.

Additionally, the comparability of the on-call duties or obligations of County hospital employees and the on-call duties or obligations of the County social workers has not been established.

The Union's proposal would increase beeper pay by nearly 10%. The Employer's proposal would increase beeper pay by more than four percent.

It is concluded the County's proposed increase in beeper pay is more reasonable than the Union's.

C. LIFE INSURANCE

The arbitration process should not be used to initiate changes in basic working conditions absent a showing that the conditions at issue are unfair, unreasonable, or contrary to accepted standards in the industry. *Village of Milwaukee*, Dec. No. 12444-B (Krinsky, 1974).

The introduction of a new benefit such as life insurance has far reaching consequences. It is preferable that such a benefit be mutually agreed upon rather than

imposed by an arbitrator. See *City of Racine*, Dec. No. 15001 (Stern, 1977).

It is the Union's position that life insurance is not a new benefit--that it was provided by the 1980 collective bargaining agreement. However, the record shows the benefit was not included in subsequent agreements. Nothing in the record suggests a reason for its deletion. In addition, the evidence shows the Union agreed to the contract that expired December 1984 even though it did not include a provision for life insurance. It appears the Union is asking for the reinstatement of a benefit that it voluntarily relinquished.

Although deputy sheriffs and County librarians have paid life insurance, they are the only ones in the County who have the benefit according to the record. Even if a majority of the counties in Wisconsin provide social workers with life insurance, the evidence does not show what portion of the premium is paid by the employers or what other health and welfare benefits are received by those social workers.

It is determined the County's proposal to maintain the status quo with respect to life insurance is more reasonable than the Union's.

D. MEAL POLICY

Nothing in the record provides support for the Union's proposal to reinstitute the old meal policy. If as the Union argues, adoption of the meal policy by the County was the unilateral change of a negotiable working condition, this is an issue for the WERC or grievance arbitration.

Because of limitations on the arbitrator's authority in this proceeding, it must be concluded that the Employer's proposal is more reasonable than the Union's.

E. POST HEARING SUBMISSION OF EVIDENCE

After the close of the hearing the Union submitted evidence relating to wage increases in the City of Marinette. Although there was no objection by the City to its submission by the City, the arbitrator has some concerns about their admissibility as well as its probative value.

First, the information consists of notarized statements of persons whose identity is undisclosed. All the notarization attests to is that the person signing the document identified himself or herself to the notary. Notarization does nothing with respect to questions of accuracy or credibility.

Second, the Employer has had no opportunity to question the persons making the notarized statements. While hearsay evidence relating to wages and benefits of comparable

employers is routinely admitted in interest arbitration proceedings, the Employer (as well as the arbitrator) should have an opportunity to examine the original documents (e.g., collective bargaining agreements, salary schedules) or contact the employers in question to verify the data.

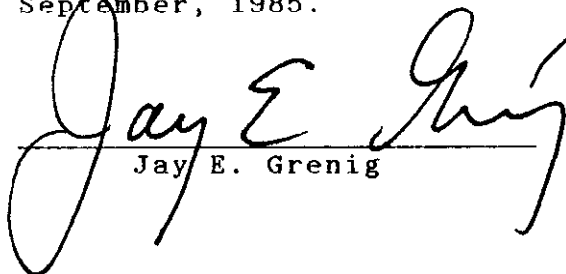
Even if the evidence were admitted, it would not change the result. First, the annual increase received by City of Marinette employees was not six percent. The notarized statement indicates that the City employees received four percent on January 1, 1985, and two percent on July 1, 1985. While this results in a six percent lift at the end of 1985, the annualized increase is approximately five percent. Nothing in the statement shows what the dollar increase was, how the wage rates of the County and City compare, or whether there are City employees doing work similar to that performed by the bargaining unit members.

There is insufficient information with respect to the comparison between the wages paid a Social Worker I and that paid an IM Worker to permit a reasoned comparison. Even if there were a valid comparison between the two positions, a comparison of only two positions does not provide a compelling reason for accepting a party's offer. In addition, it is inappropriate for a party to submit a new theory or line of argument after the record is closed.

VII. CONCLUSION

Having considered all the relevant evidence and arguments of the parties, it is determined that the County's offer is more reasonable than the Union's. The parties are directed to incorporate into their 1985 collective bargaining agreement the County's final offer together with all previously agreed upon items.

Executed at Waukesha, Wisconsin, this 27th day of September, 1985.


Jay E. Grenig