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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF MEDIATION/ARBITRATION PROCEEDINGS

BETWEEN

DANE COUNTY

and

DANE COUNTY ATTORNEYS ASSOCIATION

Case 103 No. 35135
MED/ARB 3310
DECISION AND AWARD
OF ARBITRATOR
Decision No. 22840-A

I. BACKGROUND

This is a matter of final and binding interest arbitration under Section 111.70(4)(cm)6 of the Wisconsin Municipal Employment Relations Act. Dane County Attorneys Association (Union or Association) is the exclusive representative of all attorneys employed by Dane County (County or Employer). On April 17, 1985, the County and the Association exchanged proposals for the negotiation of a successor to the 1984 contract. Thereafter, the parties filed a joint petition with the Wisconsin Employment Relations Commission (WERC) requesting that mediation-arbitration proceedings be commenced.

On May 23, 1985, the parties submitted their final offers on the issues still in dispute and the WERC certified there was an impasse on August 19, 1985. The parties selected Jay E. Grenig as the Mediator/Arbitrator and the Wisconsin Employment Relations Commission (WERC) appointed Jay Grenig the mediator/arbitrator on September 12, 1985.

In accordance with the stipulation of the parties, an arbitration hearing was conducted on October 30, 1985. The County was represented by John T. Coughlin, Attorney at Law, Mulcahy & Wherry. The Association was represented by John R. Burr. The parties were given full opportunity to present relevant evidence and arguments. Upon receipt of the parties' briefs, the hearing was declared closed on November 25, 1985.

II. FINAL OFFERS

There are three issues before the Arbitrator:

A. Wages

The County proposes that the salary schedule be

adjusted upward by 4.0% retroactive to December 23, 1984. The Association proposes that the salary schedule be adjusted upwards 4.95% retroactive to December 23, 1984.

B. Management Rights

The County's proposes that the following language be added to Article II, Section 1 of the collective bargaining agreement:

> The employer agrees to bargain the demonstrable financial impact (i.e., reduction in hours or lay-off) experienced by a collective bargaining unit member(s) covered by this contract (excluding LTE's), only when said impact is a result of the discontinuation of County services or subcontracting of work previously and customarily performed by a member(s) of this particular bargaining unit.

The Association proposes that the status quo be maintained.

C. Health and Dental Insurance

The County proposes that the following language be added to Article XIV, Section 1 of the collective bargaining agreement:

> (d) Effective January 1, 1986, for permanent employes working less than full time, the County shall pay the health and dental premium contributions as provided in (a) above on a pro rata basis to the closest 10% incremental equivalent, as determined by the percentage of time compensated the employe. Time worked shall be initially established by the number of hours budgeted for the position, based upon a full time equivalency of 2,080 hours in a payroll year. When a department head determines that an employe's work time will increase or decrease by more, the County's health and dental premium shall be adjusted accordingly, effective with the next premium contribution payment by the County. Permanent part time employes and job sharers who are currently receiving the full County health and dental premium contribution as of March 16, 1985 shall be grandfathered (i.e., continue to receive the full contribution until such time as the employe resigns, retires or assumes permanent full time employment).

The Association proposes that the status quo be maintained.

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 COUNTY

The County contends that internal comparability dictates acceptance of the County's offer. According to the County, it is a well-accepted precept in public sector bargaining and interest arbitration that internal settlement patterns and benefit packages among the employee bargaining units of the same employer should be accorded great weight by arbitrators. It states that internal wage settlement patterns are normally accorded greater weight than the other criteria in the determination of wage issues.

The County also argues that, where an employer has persuaded the other groups of employees with which it bargains to adopt a uniform contribution toward health insurance, a final remaining group should not be able to use interest arbitration to achieve a result different than that achieved by other groups unless there is a good reason for such a difference.

According to the County, its final offer is more reasonable when viewed in light of the historical settlement pattern that has been routinely maintained among all public employee groups in Dane County. The Employer points out that, over a three-year period, the settlement pattern within the County has only varied by a few hundredths of a percent. It notes that other arbitrators have ruled in favor of the County on the basis of the internal pattern.

The County contends that the overall classification and compensation system for the County was established by a 1974 salary study. The County claims the impact of the Association's offer would alter that system.

The County asserts that the record is devoid of any evidence which would establish that attorney salaries in the County have fallen out of line either with other County employees or their counterparts in other public agencies. The County argues that under the Association's offer the salary scale for the attorneys would exceed salaries for the top elected officials in the County and would result in bargaining unit attorneys being paid more than persons who have line responsibility over the attorneys or who have positions of similar or greater responsibility.

With respect to a comparison of the County's salary structure with those of the State of Wisconsin and the City of Madison, the County contends that its salary structure is unique inasmuch as all attorneys in the County, regardless of classification, can reach the maximum salary after a period of time. However, the State of Wisconsin salary schedule requires that an attorney be reclassified or promoted in order to advance on the salary schedule. The City of Madison has six ranges of attorneys which require promotion and action by the Common Council prior to advancement to the next grade and the higher pay level.

Acknowledging that the average Assistant City Attorney salary in Madison is higher than the average Dane County attorney salary, the County says this is logical because the City's professional employees are generally paid substantially more than their counterparts in Dane County. The County also notes that the percentage salary increase for Madison attorneys was 4.0% for 1985. The average percentage increase for State of Wisconsin attorneys was 4.92% for 1985. Both offers here would result in a three-year salary increase (1983, 1984 and 1985) exceeding

the percentage increase for the same period for attorneys employed by the City of Madison and the State of Wisconsin.

The County asserts that the appropriate comparable external employers are the ten largest counties in the state, excluding Milwaukee County. Among these counties, the the County's assistant district attorney wage rates ranked first relative to the maximum rate in 1984 and remained in first place in 1985. The average percentage increase in the ten comparable counties in 1985 was 4.06% and the median increase was 4.0%. The County's offer is closer to both the median and the average increase than the Association's. The County's offer is also closer to both the emdian and the average dollar increase than the Union's offer.

The County points out that it pays the full amount of any applicable health insurance plan and that it also provides bargaining unit members with fully paid dental insurance--a benefit not universally enjoyed by other comparable attorney groups.

Noting that the increase in the Consumer Price Index for the period from December 1983 to December 1984 was between 3.5% and 4.0%, the County argues that both offers exceed the increase in the cost of living.

According to the County, the language in its final offer broadens the rights of employees in the event that subcontracting occurs. It says this reflects significant improvement over the language in the prior agreement. The County declares that the language in its proposal is found in agreements between the County and two AFSCME unions representing 69% of the County employees represented by unions.

The County argues that its offer for pro rata insurance payments for part-time employees is reasonable, equitable, and has been voluntarily accepted by the vast majority of County employees. The County points out that its proposal does not reduce the benefits of part-time employees who were receiving full County health and dental benefits on March 16, 1985, and it provides health and dental insurance benefits to those part-time employees working less than 50%. The County acknowledges that all part-time employees in the bargaining unit work at a level of 50% or more.

The County explains the rationale behind its proration proposal is that every other benefit for part-time employees is pro-rated. Furthermore, the County says it is attempting to contain health care costs without hurting current employees. Based on an analysis of previous interest arbitration awards, the County contends internal comparability is the controlling criterion when fringe benefits are determined and, in particular, when the

insurance benefits for part-time or job sharing employees are involved.

According to the County, its proration proposal is identical to the language voluntarily negotiated with bargaining units which represent a substantial majority of County employees. It states that 76% of organized Dane County employees have agreed to language identical to that proposed by the County. The County says its proposal is supported by the external comparables.

B. THE ASSOCIATION

The Association contends the County's final offer is clear and unambiguous and may not be modified without the consent of the Association. The Association argues the testimony of the County's witness in which he stated that the provisions of the proposed change to the health insurance would not be applied to job-shared assistants in the manner in which the final offer provides was an attempted modification of the County's health benefits proposal.

With respect to internal comparables, the Association contends there are significant areas in which employees represented by the Association and other non-management employees of the County are not comparable. Unlike other employees, Association members do not receive overtime pay. Members are the only employees required to have law degrees and other County employees can accumulate more sick leave than can the employees represented by the Association.

Acknowledging that in some instances the maximum salary received by bargaining unit members is higher than that received by management personnel in the County, the Association asserts that it takes sixteen years for a bargaining unit member to reach the maximum salary.

The Association proposes that the proper comparable employers are Racine County, Brown County, the City of Madison, and the Attorney General's Office. It points out that a previous arbitrator found Racine and Brown counties should be considered as comparable counties.

The Association notes that the starting salary for an Assistant City Attorney in Madison was $26,664 in 1984 and the starting salary for an Assistant District Attorney in the County in 1984 was $24,066. Maximum salary for an Assistant City Attorney was $50,731 and for an Assistant District Attorney $45,822. Assistant City Attorneys in Madison received a 1.4% salary increase in 1984 and a 4.0% salary increase in 1985. In 1984 Dane County attorneys received a 1.4% pay increase.

Attorneys employed by the Attorney General's Office

received a salary increase of 3.8% for the fiscal year ending June 30, 1985. They received a salary increase of 6.0% for the period July 1, 1985, through June 30, 1986. The attorneys employed by Brown County received a 5.0% pay increase in 1984 and a 5.0% in 1985. Racine County attorneys received a 5.0% increase effective July 1, 1984, an additional 3.0% effect January 1, 1985, and an additional 3.0% effective on March 1, 1985.

If the Association's offer is found to be more reasonable, the Association says its members will receive a wage increase lower than three comparables and greater only than the City of Madison.

With respect to the County's proposals regarding management rights and health and dental insurance, the Association argues that the County bears the burden of proof. It contends that the language should not be changed in arbitration in the absence of an affirmative demonstration of need by the moving party. It suggests the arbitrator should consider whether a legitimate problem exists which requires contractual attention and whether the proposed changes were reasonably designed to effectively address the problem.

Turning to the management rights proposal, the Association contends that the duties of the assistant district attorneys cannot be subcontracted by the County as a matter of law. It claims that the proposed language addition involving subcontracting would be contrary to state statute and against the public interest. It is the Association's position that the Arbitrator may not legally impose this contractual language on the Association.

As to the health benefits proposal, the Association argues that the County has avoided any increased cost in health benefits by forcing one of the two individuals wishing to job share to waive benefits and now seeks to reduce the benefits of the one employee in the job-shared position that has health and dental benefits. It also argues that adoption of the County's proposal would result in an employee, who had agreed after March 15, 1985, to become a full-time employee for a short period and who later returned to a job share position, losing half of her benefits.

V. DISCUSSION

Limiting the comparable counties to only Brown and Racine counties does not seem appropriate in this case. An examination of the rates of increase in two counties is insufficient to establish a meaningful pattern of negotiation or settlement.

The Wisconsin Municipal Employment Relations Act does not require that employers be "identical" in order to be comparable. It is sufficient if they are equivalent or similar. Since a significant portion of the population Dane County is employed by the State government or the University, there is no other county in Wisconsin quite like Dane County. However, a comparison of Dane County with other counties in Wisconsin can still be of assistance in determining the reasonableness of the parties' offers.

The population of Waukesha County (280,326) is closer to that of Dane County (323,545) than any other county in Wisconsin. While Waukesha County is contiguous to Milwaukee County and some of its residents work in Milwaukee County, Waukesha County is more than a "suburb of Milwaukee." Waukesha has a substantial metropolitan area (Waukesha, Pewaukee, New Berlin and Brookfield) and significant industrial and commercial enterprises. Waukesha County even has social and cultural resources (including a symphony) and institutions of higher education. Waukesha County is also geographically closer to Dane County than either Brown County or Racine County.

Considering population, geographic size, and the functions of the attorneys employed by the counties, it is concluded that the ten largest counties (excluding Milwaukee County) should be utilized in comparing the parties' offers. Because Rock County had not settled at the time of the hearing, it will not be utilized as a comparable.

Because the Wisconsin Attorney General's Office and the City of Madison attorneys perform functions similar to those of the members of the bargaining unit here and perform those functions in the same community, these two employers should also be utilized in comparing the parties' offers.

Both parties' offers would result in a 1985 monthly maximum salary higher than the 1985 monthly maximum salaries of the nine comparable counties. Both offers would result in a monthly minimum salary higher than the monthly minimum salaries of five of the nine comparable counties. (Brown County and Racine County have lower minimum monthly salaries than that provided by either party's offer.)

Of the comparable counties, only Brown County (5.0%) and Racine County (6.1%) had a rate of increase greater than the County's offer. The percentage increases of the remaining counties ranged from 3.0% to 4.0%. Only Racine County had a 1985 dollar increase greater than the dollar increase provided by either the County's offer or the Association's offer.

The County's offer would provide a two-year increase of 5.4%, which is .4% greater than that received by the attorneys employed by the City of Madison. The

Association's offer would provide a two-year increase of 6.35%, which is 1.35% greater than that received by Madison attorneys. However, both offers would result in a 1985 minimum and maximum salary lower than that of the City of Madison.

When the 1984-1985 and 1985-86 salary increases of the attorneys employed by the Attorney General's Office are computed on a calendar year basis, results in a 4.92% increase for calendar year 1985. The Association's offer is closer to this figure than the County's.

With respect to internal comparables, three represented units have negotiated or received 4% wage increases for 1985. The County's offer is closer to this rate of increase than the Association's. Both offers would result in salaries for bargaining unit members that are greater than the salaries received by elected officials or persons who have line responsibility over the attorneys.

Subcontracting or a reduction in force is not a serious concern of the Association, since the prosecution of criminal cases is delegated by statute to the District Attorney and his or her assistants. See Wis. Stats.§§ 59.45 and 59.47.

Because there are no part-time employees working less than 50% in the bargaining unit, no bargaining unit employee would benefit from the Employer's agreeing to provide such part-time employees with pro-rata health and dental benefits.

Both offers provide wage increases greater than the increase in the cost of living.

VI. CONCLUSION

The Association's argument that the County's proposal conflicts with statutory authority ignores the fact that the collective bargaining agreement already contains language stating that the County has the right to "contract out work . . . ." The County's proposal does not purport to grant it the power to subcontract, rather it seeks to give the Association the right to bargain over the financial impact resulting from "the discontinuation of County services or subcontracting of work . . . ." The Association has not established that this proposal by the County is in conflict with the law.

However, any benefit this proposal may have to the Association and its members is insignificant since it is highly unlikely that the County can or will discontinue or subcontract the services or work performed by members of the bargaining unit represented by the Association.

Both salary offers provide increases within the range of increases provided by the comparable employers for 1985. Both offers will provide maximum salaries higher than that of elected County officials and County managers. The Association's offer will provide a maximum annual salary only $435 a year ($47,655 vs, $48,090) greater than the maximum annual salary provided by the County's offer ($48,090 vs. $47,655). This works out to a difference of $36.25 per month or $8.36 per week. While the Association's offer has a greater impact on the wage system of the County, it is not much more of an impact than that of the County's own offer.

The County's offer is closer to the median and average increases provided by the comparable employers than the Association's. The County's offer provides a percentage increase closer to the percentage increase granted employees in other County bargaining units. Thus, while the Association's wage offer is reasonable, it appears from a comparison of the rate of increases in the County and in the comparable employers that the County's wage offer is slightly more reasonable than the Association's.

The County has proposed a significant change in the existing health and dental benefits. While internal settlements are to be given great weight, internal settlements are not conclusive. It is essential to consider the circumstances giving rise to the internal settlements. When the other bargaining units agreed to a proration of the County's contribution to the health and dental insurance premiums these bargaining units received two items of importance to them: a provision relating to negotiating the impact of discontinuance of services or subcontracting of work and pro-rata health and dental benefits for employees working less than half-time.

It appears the bargaining units that agreed to the change in health and dental benefits received something of value in return for agreeing to a proration of health and dental benefit contributions. The County's proposal provides nothing of value to the employees represented by the Association in return for agreeing to a reduction in the County contribution to health and dental insurance premiums for part-time employees. First, as discussed above, subcontracting is not a concern to bargaining unit members here. Second, there are only five part-time employees in the bargaining unit, and none work less than half-time. Because the circumstances in this case are different than the circumstances involved in the other agreements, internal comparability does not dictate acceptance of the County's offer.

The County has neither shown a legitimate problem exists which requires contractual attention nor provided something of value in return for a reduction in benefits.

In addition, as the County's proposal is written, it would deprive at least one employee who agreed to return to full time status temporarily at the request of the County of a significant economic benefit. It is concluded the Association's health and dental benefit proposal is more reasonable than the County's.

VII. AWARD

While the County's wage offer is more reasonable than the Association's, the Association's health and dental benefit offer is more reasonable than the County's. Because the Association's offer is within the range of wage increases by the comparable employers and would result in a maximum wage less than that paid by the Attorney General or the City of Madison and the County's offer would result in a reduction of benefits, it is concluded that Association's total final offer is preferable to the County's.

Based upon the criteria of the Wisconsin Municipal Employment Relations Act and the evidence and arguments of the parties, the Association's offer is selected to be included in the 1985 collective bargaining agreement between the Association and the County.

Executed at Waukesha, Wisconsin, this 18th day of January, 1986.

Jay E. Grenig
Mediator/Arbitrator