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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

EDWARD B. KRINSKY, MEDIATOR-ARBITRATOR

In the Matter of Mediation-
Arbitration Between

DANE COUNTY

and

DANE COUNTY UNION LOCAL 65,
AFSCME, AFL-CIO

Case 105
No. 36325
MED/ARB-3775
Decision No. 23332-A

Appearances:
Mulcahy & Wherry, S.C., Attorneys at Law, by
Mr. John T. Coughlin, for the County.
Mr. Darold O. Lowe, Council 40 Staff
Representative, for the Union.

On April 3, 1986, the Wisconsin Employment Relations Commission appointed the undersigned as mediator-arbitrator in the above-captioned case. Mediation was conducted at Madison, Wisconsin, on July 14, 1986. A tentative agreement was reached on all issues. Thereafter the Union gave notice that the tentative agreement had been rejected by the Union membership.

An arbitration hearing was held at Madison, Wisconsin, on October 14, 1986. A transcript of the proceedings was made. At the hearing both parties had the opportunity to present evidence, testimony and arguments. The record was completed on December 17, 1986, with the exchange by the arbitrator of the parties' post-hearing briefs.

The arbitrator is required by statute to select the final offer of one of the parties in its entirety. The final offer of the County is as follows:

1. The term of the contract shall be for one (1) year, December 22, 1985 through December 20, 1986.

2. Effective January 1, 1986, the Employer shall pay the employe's share of the retirement contributions but not to exceed six (6) percent of salary.

3. Wages shall be increased by three (3) percent effective December 22, 1985 through December 20, 1986.

The final offer of the Union is as follows:

1. Create Section 14.01 (a) 1:

   During the term of this agreement, the Employer shall pay any increase in the cost of the "single plan" and up to fifteen dollars ($15.00) per month above the current contribution caps(s) for the "family plan," referred to in Section 14.01 (a) above.

2. Add to 14.03:

   "As of January 1, 1986, the Employer shall pay the employees' contribution not to exceed six percent (6%) of salary."

3. Amend the second paragraph of Article XIX to read:

   This agreement shall be effective as of December 22, 1985 and shall remain in full force and effect through December 19, 1987. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing on or before the first day of August of any year in which the agreement is in force that it desires to modify this agreement. In the event that such notice is given, negotiations shall begin not later than thirty (30) days after August 1st; this agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this agreement is provided to the other party in the manner set forth in the following paragraph. However, nothing said herein shall prevent the parties from altering or amending, at any time, any part hereof by mutual consent.

4. Wage rates shall be increased as follows:

   (a) 4% effective 12/22/85
   (b) 4% effective 12/21/86

The final offers are identical with respect to the issue of retirement contribution. The remaining issues are wages, duration and health and dental insurance premiums.

The statute directs the arbitrator to weigh certain factors in making his decision. In this case there are no issues raised with respect to factors: (a) lawful authority of the municipal employer; (b) stipulations of the parties; (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; and (g) changes in circumstances during the pendency of the arbitration proceedings. 1/

Wage and Duration

For 1986 the County offers a 3.0% wage increase while the Union's offer is 4.0%. The Union offer is for an additional 4.0% in 1987. The County makes no offer for 1987.

The bargaining unit in this case is one of eight bargaining units representing County employees. It represents approximately 199 of 1,280 represented employees. At the time of the arbitration hearing all of the bargaining units had reached two-year agreements for 1986 on everything and for 1987 on everything except a wage reopener. One of the units had agreed on a wage freeze for 1987 in exchange for a reduction in the work week.

1/ At the conclusion of the hearing on October 14th the parties stipulated that the record would be closed as of that date, except for the correction of inaccuracies in the data submitted. On January 5, 1987, the Union submitted an arbitration award for 1987 between Dane County and the Joint Council of Unions.

The County did not communicate any objection to the submission of this award. The arbitrator has read it and considered it, but it does not alter his conclusions concerning which final offer should be awarded here. Even though it awards a 4% increase for 1987, which is the same as the 1987 portion of the Union's final offer in the present case, the arbitrator believes that it is not appropriate to utilize the 1987 award in determining whether or not the bargainers to the present 1986 dispute should have entered into a one year or a two year agreement, or in determining what the bargain should be for 1986.

With respect to the other County employees, five bargaining units received 1986 wage increases of 3.5% and one received 3.3%. The non-represented employees received 3.0%. The other units also received two additional half-holidays, as well as a possible increase in health and dental insurance premiums. The Union puts a value of 3.88% on the settlements for the five bargaining units.

One of the statutory factors is (d), part of which 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 . . . generally in public employment in the same community . . ." This bargaining unit is the last County unit to settle for 1986. In the arbitrator's opinion, absent a showing of compelling justification which does not exist in this case, there is no reason to award the employees in this bargaining unit a greater increase than those employed in the County's other bargaining units. This unit represents only a small percentage of the County's unionized work force. There is no showing that it has historically been the pattern setter. Here, the pattern has been set by others and all other units have subscribed to it except this one. The bargaining patterns in the County would be upset in this bargain and in future ones if a holdout unit would be awarded a higher level of settlement than those representing the majority of employees which have settled voluntarily.

Having said that, why though should this unit be given less than the pattern? As the County explained in its post-hearing arguments, the 3.0% offer was made prior to the voluntary settlements in the other units. Thereafter, this bargaining unit had the opportunity to settle for the pattern and chose not to do so. In the arbitrator's opinion, the inequities of giving this unit more than the settlement pattern would outweigh the inequities of giving it less than the pattern. Thus, in his opinion the internal wage comparisons with other bargaining units of the County strongly favor the County's final offer.

Since the final offers of the parties contain different offers on duration of the Agreement, this conclusion would necessarily mean that the County's one year offer would be favored over the Union's two year offer. Is that a reasonable outcome? The arbitrator believes that it is. To favor the County's offer for one year allows the Union to bargain for 1987. To favor the Union's offer would result in this bargaining unit being the last to settle for 1986, and at a higher rate than that bargained for all other employees

of the County, and moreover would set the rate for 1987 in a situation in which the parties have not really focused on what wages should be for 1987. 2/

The statute also directs the arbitrator to consider wage comparisons with other public employees in the same community. The Union has presented wage data showing that for 1986 the employees of the City of Madison and the Madison School District received increases of 4.0%. State of Wisconsin employees, of which there are a large number in Dane County, received 6.0%. These increases taken by themselves would favor the Union's offer. However, these settlements were known also to the bargainers in the other County bargaining units when they settled for a 3.5% pattern. The external comparisons of the City of Madison, Madison Schools and State do not justify a greater settlement for this bargaining unit than for the other bargaining units of the County. Under these circumstances, it is the arbitrator's opinion that the internal wage settlements should be accorded more weight than the external settlements.

The Union cites the prior award between these parties of Arbitrator Michelstetter in 1984 in which he placed primary weight on comparisons within Dane County, namely, the City of Madison, Madison Schools and State of Wisconsin. The arbitrator notes, however, that Michelstetter did not make judgments in the abstract concerning the relative weight that should be given to those comparisons and the internal comparisons with other bargaining units within Dane County employment. Michelstetter was faced with a situation in which the only internal comparison known at that time was in one bargaining unit, a settlement that had been determined by an arbitration in which the other issues involved were given greater weight than the wage issue. This is in contrast to the present case where all of the County's other bargaining units have settled and adhered to virtually the same pattern of settlement. Thus, the arbitrator here is faced with a different fact situation than was Michelstetter, and one which in his judgment dictates primary attention to the internal comparisons.

2/ Although the 1987 wages for the Joint Council of Unions have now been established by the January 5, 1987 Award, there were no 1987 rates established at the time the present case was heard, nor had the County at that time proposed 1987 rates in this or other units.

The "comparison" factor also directs the arbitrator to consider "wages, hours and conditions of employment . . . in private employment in the same community and in comparable communities." The one private sector settlement presented by the County, while favoring its position, is an inadequate basis for making any judgments about which final offer is to be preferred. The Union offered no private sector data.

The statute at factor (d) also directs the arbitrator to consider comparisons ". . . with the wages, hours and conditions of employment of other employees performing similar services . . . and with other employees generally in public employment . . . in comparable communities."

The Union has drawn comparisons with the seven largest counties, including Milwaukee. The County comparisons are with the largest counties, excluding Milwaukee, as well as with the counties contiguous to Dane County.

There is data presented by both parties for 1986, shown below. The Union argues that its offer brings the bargaining unit closer to its relationship with the other counties as it was in 1983, citing wage deterioration that has occurred since that time. The reasons for that deterioration are not demonstrated. The arbitrator is not persuaded based on the record before him that there is adequate justification presented for a special catchup increase for the bargaining unit employees.

The County's data show that under either final offer the bargaining unit would rank third in comparison to other comparable counties, using as benchmarks the maximum wages of Highway Laborer, and Mechanic/Hvy. Equip. Mech. The rank is fourth under either offer for Janitor I, Patrolman and Skilled Labor (Hvy. Equip. Oper.). The rank is third at each of these benchmarks if total compensation, not just wages, is considered.

The Union's data show the following increases for 1986: Milwaukee 4%; Waukesha 3% (Co.) or 4% (U); Brown 4%; Kenosha 4%; Rock 3.5%; Sheboygan 4%; and Racine 2% + $200.

The Union showed historical data for 1983 and 1985 for these counties except Milwaukee. They show that Dane County's rate for patrolman was 35 cents per hour above the median of the other counties in 1983. In 1986, depending on which final offer is selected, and depending on the outcome of negotiations in Waukesha County, Dane County's rate would be 5-11 cents per hour above the median if the County's offer were selected, or 15-21 cents per hour above the median if the Union's rate were selected. Thus both offers evidence deterioration since 1983. The 1985 figures show, however, that in that year Dane County's rate was 9 cents per hour above the median. Thus the County's offer for 1986 might

leave the Patrolman rate in approximately the same relationship to other counties that it had in 1985, although the Union's offer would bring the relationship a bit closer to what it was in 1983.

Once again, however, it is the arbitrator's opinion that under all of the circumstances presented here, greater weight should be given to the pattern of settlements with other Dane County employees than to external comparisons.

The statute directs the arbitrator at (e) to consider the "average consumer prices for goods and services, commonly known as the cost-of-living." The relevant period to review would be the year prior to the effective date of this new agreement, that is, from December 1984 through December 1985. It is that period that the parties would have considered in determining appropriate wages for calendar 1986. During that period the index for all urban consumers rose 3.8%. The index for urban wage earners and clerical employees rose 3.6%. If only the wage rate is considered, the change in cost of living would slightly favor the Union's offer. The County argues that it is appropriate to factor in the step and longevity increases that members of the bargaining unit will receive. This would raise the value of the County's offer to 3.5% and the Union's to 4.5%. This would result in the County's offer being very slightly less than the cost-of-living increase, while the Union's would be slightly above it. In the arbitrator's opinion, the cost-of-living factor would very slightly favor the Union's offer.

In their post-hearing briefs, neither party discussed that part of the Union's final offer which provides for the County to "pay an increase in the cost of the 'single plan' and up to fifteen dollars ($15.00) per month above the current contribution caps(s) for the 'family plan,' . . ." Because this provision was given to those units which followed the settlement pattern, it would favor the Union's final offer, but the arbitrator does not have any other sound basis for evaluating it. The data presented by the County pertaining to factor (f), overall compensation, would indicate that County employees are not disadvantaged with respect to the level and scope of their benefits. However, there is no particular reason to exclude this bargaining unit from this benefit.

As noted at the outset, the arbitrator is required by statute to choose one final offer in its entirety. Of the issues in dispute in this case, he attaches greater weight to the wage issue than to any of the others. For the reasons given above, the arbitrator favors the County's offer over the Union's with respect to wages and duration. In his opinion the County's offer, for the reasons given, is more equitable and it is also more likely to contribute to more sound and stable collective bargaining relationships,