RECEIVED

JAN 27 1987

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of the SUPERIOR CITY EMPLOYEES UNION LOCAL #244, AFSCME,AFL-CIO to Initiate Final and Binding Arbitration between Petioner and the CITY OF SUPERIOR, WISCONSIN

Case 81
No. 36288 MED/ ARB-3760
Decision No. 23741-A

I APPEARANCES

For Local 244, AFSCME (Public Works Department)
Michael Ruinatdo, President, Local 244
David S. Sigfrids, Vice President, Local 244
Gilbert C.(Chuck) Miller, Stewart, Local 244
Jerome T. Bauchard
Dennis Flaherty
Steve M. Luliant
Michael Walsh
James A. Ellingson, Dist. Rep. District Council#40

For the City of Superior, Wisconsin
Leonard M. Peterson, Director of Public Works
Jack O'Brien, Superintendent, Public Works
Jeff Vito, Asst. Director, Public Works
Melvin Plaisted, Asst. Supt. Public Works
Steven Schweppe, City Attorney

II BACKGROUND

On December 27, 1985 the Superior City Employees' Union Local #244, AFSCME, AFL-CIO, hereinafter called the Union, filed a petition with the Wisconsin Employment Relations Commission to initiate Mediation/ Arbitration pursuant to Section 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 of Superior, Wisconsin, hereinafter called the Employer, on matters effecting the wages, hours and conditions of employment of employees represented by the bargaining unit. The Findings of Fact have determined that the City is the lawful employer and Local #244 is the exclusive collective bargaining representative for the Union consisting of employees in Public Works, Equipment Depot, Park and Recreation Department, and Sewage Disposal Plants and excluding representation to those expressly listed pursuant to Section 111.70 of the State Statutes. The parties exchanged initial proposals on August 27, 1985, and met on three(3) subsequent occasions in attempts to reach accord. After filing the petition an investigation into the matter was conducted by the Commission's investigator on February 12, 1986. The investigator finding the parties still at impasse, accepted their final offers on May 29, 1986, and notified the parties and the Commission that the parties were still at impasse and the investigation was closed. Subsequently, the Commission rendered a FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION OF RESULTS OF INVESTIGATION and ORDER requiring Mediation/ Arbitration.

The parties selected Donald G. Chatman as Mediator/ Arbitrator on July 28, 1986. A mediation meeting was held on September 22, 1986 at 10:00 A.M in the offices of the City of Superior, Superior, Wisconsin. The parties were unable to reach agreement on the issues in dispute and the mediator served notice to the parties of the prior written notice of intent to resolve the dispute by final and binding arbitration. The mediation hearing was closed at 12:00 noon on September 22, 1986.

III PROCEDURE

An Arbitration hearing was held in the offices of the City of Superior, Superior, Wisconsin at 12:05 P.M., September 22, 1986 before the Arbitrator. At this hearing both parties were given full opportunity to present their evidence and proofs, to summon witnesses, and to engage in their examination and cross-

examination. After presentation of evidence and the testimony of witnesses the parties elected to summarize their final arguments in the form of written briefs. The hearing was adjourned at 5:30 P.M. on September 22, 1986, until receipt of the written briefs. The briefs were received on November 22, 1986, and a period for rebuttal ensued. The hearing was closed on December 5, 1986 at 5:00 P.M.. Based on the evidence, testimony, arguments and criteria set forth in Section 111.70 (cm) 7 of the Municipal Employment Relations Act, the Arbitrator renders the following award.

IV STIPULATIONS AND ISSUES

The parties stipulate by testimony and their final offers that they have reached agreement on the following issues:

1. The 1986 wage increase will consist of a 2.0% increase January 1, 1986, and a 2.0% increase July 1, 1986, with a wage reopener in 1987.
2. Grievance Arbitration to be provided by the Wisconsin Employmewnt Relations Commission's Staff, with deletion of references to the American Arbitration Association in Section 10.04 of the Agreement.
3. Add a 13th paid holiday as a floating holiday.
4. All tentative agreements.

The issues in contention between the Union and the Employer are:

1. The Union's final offer proposal #4 to "add a 5th longevity step of $0.26 after 25 years". The Employer is opposed to this proposal.
2. Both parties are proposing to change Article IV.(Classification).

EXISTING 4.01 The Union may at any time request in writing to the Mayor for a review of the allocation of any position. An investigation shall be made of the position and the Mayor may affirm or alter the allocation with the approval of the Labor, Wage and Classification Committee and City Council.
THE PARTIES ARE NOT PROPOSING TO CHANGE THIS SECTION.

EXISTING 4.02 The pay range for the various classifications shall be established as agreed upon by Local 244 and the City of Superior, and shAll automatically become a part of this Agreement; see Addendum I.
THE PARTIES ARE NOT PROPOSING TO CHANGE THIS SECTION.

EXISTING 4.03 Regular seasonal, part-time and full-time employees will be fully classified for the entire year and will not receive less per hour when working in lower classifications. When working in higher classifications than his/her permanent one, he/she will receive the pay attached to the higher classification. The exception to the requirements mentioned herein is stated in 4.05 below.

UNION PROPOSAL 4.03 Regular seasonal, part-time and full-time employees will be fully classified for the entire year and will not receive less per hour when working in lower classifications. When working in higher classifications than his/her permanent or yearly rate, he/she will receive the pay attached to the higher classification. The exception to the requirements mentioned herein is stated in 4.06 below (Old 4.05).

EMPLOYER PROPOSAL 4.03 Each regular seasonal, part-time and full-time employee will be fully classified for each year and will not receive less per hour when working in lower classifications except when such employee bids on a job with a lower classification, fails to bid on a job within his/her classification, or is unqualified for work in his/her classification. When working in a higher classification than his/herclassification, he/she will receive the pay attached to the higher classification.

EXISTING SECTION 4.04 The permanent classification is based upon the one in which the employee spent the majority of his/her total manhours during the preceding calendar year.

EMPLOYER PROPOSAL 4.04 Delete Section 4.04 of the 1984-85 agreement and replace with the following language:
SECTION 4.04 A regular seasonal, part-time or full-time employee's classification is based upon the classification of the work which the employee actually performed the most during his/her total manhours in the preceding calendar year and annually may increase or decrease accordingly. The preceding sentence shall not cause any full-time employee employed on 1-1-86 to lose the classification he/she held on 1-1-86 unless that employee loses his classification due to his having bid on jobs with lower classification or having failed to bid on jobs within his/her classification. The provisions of Sections 7.02 and 17.05 notwithstanding, employees who are classified at a given rate will perform the available work at that rate unless bumped by an employee who has both more seniority and an equal or higher classification.

EXISTING SECTION 4.05 Seasonal employees in the Park and Recreation Department only shall be paid at a reduced rate when performing specific tasks at specific locations:

A. Municipal Golf Course
B. Boulevards- preening and cultivating of Boulevards, (i.e., around sign posts, trees and shrubs, etc)
C. Skating Rinks

Said employees may perform general laboring duties at the locations mentioned herein. To qualify for the reduced rate, they shall not operate any equipment other than a power hand mower or a small garden tractor with one blade. All other duties performed shall be compensated pursuant to addendum I. The wage rate for these special duties shall be: $3.80 per hour during the first season of employment; $4.10 per hour during the second season of employment; $4.75 per hour thereafter. Seasonal employees shall be covered under Article V beginning the second season of employment.

UNION PROPOSAL 4.05 to read as follows: All Employees hired after July 1, 1986 will not be covered by the yearly rate in Section 4.03. The existing section 4.05 would be renumbered section 4.06.

EMPLOYER PROPOSAL 4.05 to read as follows: Seasonal employees in the Park and Recreation Department only shall be paid at $3.80 per hour when working the skating rinks and $4.00 per hour when working the golf course, mowing grass and weeds, driving pick-up trucks, operating riding lawn mowers, preening and cultivating (i.e., around sign posts, trees and shrubs, etc.). Seasonal employees shall be covered under Article V beginning with the second season of employment.

The articles and sections referred to in the existing and proposed contract agreements are as follows:

Article V. FAIR SHARE AGREEMENT

Article 7.02 Employees of Local 244 may exercise their departmental seniority on a daily basis in bidding for jobs for that day, providing said employees are qualified to fill that particular position in question. Such bidding shall occur after 4:30 P.M. the previous day and before 8:00 A.M. that day, except when the Mayor declares an emergency in which case management reserves the right to assign work assignments without regard to bidding, but according to seniority and classification. Jobs on paving crews, garbage crews and in the sewage disposal plant shall be bid on a weekly basis only, providing further that in the sewage disposal plant, said weekly bumping will only be allowed where there is qualified replacement available at no additional cost to the City.

ARTICLE 17.05 OVERTIME Should it be necessary to require that working day employees, on duty when the decision to work said overtime is made shall be entitled to work said overtime regardless of seniority. In the event that overtime is to be scheduled, employees will be called to work such overtime work according to seniority rights, provided such employees are qualified to perform the work scheduled. Senior employees who are not consulted or given priority on such scheduled overtime jobs and therefore do not work such jobs, may file grievance to receive pay for the number of hours worked by a junior employee. Said grievance shall be filed before the end of the next working day.

Issues

Shall the 1986 Agreement contain the final offer of the Union? The Union's final offer seeks a minimum change in Article IV and the addition of a fifth longevity step of $0.26 per hour after twenty-five years. The Agreement change sought is that new employees hired after July 1, 1986 will not be covered by the permanent job rate, but by a yearly rate.

Shall the 1986 Agreement contain the final offer of the Employer? The Employer's final offer seeks a definitive change in Article IV. The Agreement change sought will change employee classifications from permanent to one which fluctuates yearly for future employees or present employees whose classifications changes upward. The Employer seeks to cap the rate of pay for seasonal employees as well as change the extent of duties which these seasonal employees could perform at the indicated pay rate. Along with the change in Article IV the Employer seeks to have independent agreement provisions (Article 7.02, and Article 17.05) held in abeyance to Article IV.

V CONTENTIONS OF THE PARTIES

The Union contends that the wages of Local 244 are higher at the top of the salary schedule because they have had a long bargaining history that has established these long term permanent wage rates. Now that the Union has made concessions to waive the permanent rates of employees hired after July 1, 1986 it must make efforts to improve their wage rates in the future. The Union agrees that wages are not the current factor in the current negotiations. Local 244 has achieved it status as the highest paid blue collar union in Northwestern Wisconsin by virtue of its economic strength,direct action and the possibility of direct action prior to the passage of the Med/Arb law. The Union contends that its membership is entitled to the same increases in wages and benefits as those secured by other Wisconsin public sector unions. Having stipulated to the new salary schedule, direct wages are not an issue.

However, the Union maintains the Employer has sought to change or alter the status quo in eight(8) ways, without offering solid reasons for so many changes. The Union contends that the Employer is using the proposed final offer changes in Article IV as a subterfuge for the elimination of permanent rates,the alteration of some established past practices, and the disruption of the daily bumping system, all of which have been in effect for over twenty years. The Union contends the Employer's proposed changes have the intent of circumventing Article VII (Promotions) by limiting the mobility of current senior employees. The Union maintains that the proposed changes in Article IV have economic impact and represent take-aways from the normal agreed-upon settlement of 2% at the beginning of the contract period and 2% after six months of the agreement year.

The Union argued and presented testimony that its posting language and daily bumping procedure has been in effect for over twenty years. In fact the current Asst. Supt. of Public Works testified that he was a beneficiary of the bumping procedure prior to obtaining his current position. The Union asserts that now the Employer is attempting to subvert Article VII, through the proposed language in Article 4.04. The Union maintains the Employer seeks to change five area relating to job

classification, job mobility, posting procedure, job rates and job duties without offering a"quid pro quo". The Union offered as evidence in support of its position the opinions of other arbitrators, that major benefits should not be awarded to a party where there is no evidence of reciprocity for such benefit.

With regard to seasonal employees, the Union contends it has made a major concession in its final offer. The Union argues the existing contract language was carefully crafted over years of negotiations to eliminate any potential abuse of seasonal employees. These seasonal employees are not allowed to drive trucks or use riding lawn mowers as specified in the 1984-85 agreement. The Employer's final offer proposal would alter this status. The Employer's proposal would lower the pay of those performing seasonal duties particularly if they drive trucks or use riding mowers, and could potentially reduce the number of full-time Union positions.

Finally, the Union contends that the successor agreement should contain a fifth longevity step. In support of their position the Union presents evidence that other local governmental units in the area have equal or better longevity plans. The Union maintains it has offered a significant "quid pro quo" for this item by proposing in the Union's final offer that permanent classification be eliminated for employees hired after July 1, 1986. For the above reasons the Union contends its offer is in the public's best interest and is the least disruptive of the collective bargaining relationship between the parties.

The Employer contends that its proposal to change Article IV is an attempt to resolve some difficult problems between the Union and itself in a reasonable manner. The Employer argues that: 1. The contract language in Article IV should be changed such that "for future employees and for present employees who are reclassified upward, the classifications will fluctuate yearly based on the classification of the majority of the work performed during the preceding year". This would enable the Employer to more efficiently train and place its employees for the City's best benefit. The Employer contends that it should be enabled to assign an employee to work within his classification even though an employee with a lower classification, but with more seniority bids for the work. This the Employer maintains would allow more effective utilization of its workers. The Employer contends its final offer proposal is reasonable and it compares favorably with all other public employee agreements. The Employer contends the existing employee's classification is protected by the predominance of the type of work performed by the employee in the preceding year. The intent of the proposal is not directed at the Union but to clarify language and end some perceived absurdities through the present meaning attached to "permanent". The Employer presented testimony that employees were bumped into higher classification jobs, which their current seniority would not permit them to keep. The Employer must now pay them at that higher classification rate even though they may not perform these classification duties for years. The Employer maintains it is possible for employees to promote themselves and management has no control over who works which jobs on a daily basis. The Employer argues that the existing "permanent" classification system fails when compared to the working conditions of other City Employees, or other comparable public works public employees, for no comparable public employee system exists.

The Employer contends that its proposal on seasonal employees is justified by comparables in other communities. The Employer maintains seasonal employees have been paid $3.80 per hour for a number of years (The Union maintains this issue is presently a matter of grievance arbitration). The Employer offered evidence (City Exhibit, 6) for cities and counties in Northwestern Wisconsin to show that the City of Superior rates for non-mechanical operators is in the middle range of rank of rates paid to groundskeeping personnel. The Employer offerred testimony that there was no shortage of applicants for positions

at the current $3.80 nor at the proposed $4.00 per hour in the Employer's final offer. The Employer contends that this testimony is significant because the parties have stipulated that Article 18.01 (referred to by the Employer as 19.01) justifies the ability to offer a lower salary.

> 18.01 In establishing the salary schedules and wage rates for the City of Superior, it is agreed that consideration shall be given to the rates paid in comparable employment by industry and other governmental units within the area; the general level of payment required to secure persons properly qualified to perform the duties of the positions and to retain them in the service and the City's ability to pay.

The Employer argues that Wisconsin Statute 111.70(cm)(7), requiring the Arbitrator to consider the level of payment required to secure persons properly qualified to perform the duties of the position and retain them,would fall under Article 18.01. Since the Union has stipulated agreement with this article, and $3.80 per hour meets this criteria, the Employer maintains its position on this issue ought to be sustained. The Employer argues that seasonal employees are frequently excluded from the provisions of the collective bargaining agreement and their wages are in the control of management. While the Employer does not seek to remove these employees from contract coverage, it does seek to pay them a rate comparable to workers performing comparable work in other communities.

The Employer contends the Union's proposal to add an additional longevity step is not justified. The Employer maintains this proposal would place the Union out of step with the other City of Superior employees. The Employer argues that the Union presents selective data for its comparisons, and the Union ignores the differences in the top wages between employees in this bargaining unit and other comparable public employee units. Further, the Union neglects to consider that this Union is one of the highest paid of its comparable groups in this area.

Finally, the Employer maintains its final offer should prevail because it exceeds the increases in the CPI, is comparable to other public employees settlements and similar to the settlement of the other AFSCME local in the City.

VI DISCUSSION

The contentions of the parties, while very simply presented, have vistas similar to an iceberg. There is clearly more than is apparent and the direction in which the unseen mass of disquietute lies is often difficult to discern. Therefore, prudence is indicated as the precepts of Sec. 111.70 offer few guideposts for issues which are only transcendently economic.

The parties have furnished the following statutory data on Sec.111.70, including:

a. The lawful authority of the Municipality;
b. The stipulations of the parties;
c. The interest and welfare of the public and the 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 cost of living;
f. The overall compensation presently received by the municipal employees including direct wage 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 and traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in public service or in private employment.

However, none of the subsections specifically address the main impasse differences between the parties.

There is no question of the authority or ability of the Employer to meet the proposed final economic offers. The parties have mutually stipulated in their final offers to agreement on all financial issues with the exception of the Union's proposal for an additional longevity step of $0.26 per hour after twenty-five years of employment. This exception would add less than $1,500 per year through 1990 (Union Exhibit, 4). The merit of this proposal will be discussed later. The end result is that the differences between the parties lies in Section 111.70(cm)7h, in that an interest dispute on non-economic issues is present.

While the union itself has proposed a change in ARTICLE IV of the Agreement, its proposed alteration is of a minimal nature. The proposed change appears to be more of a reactive recognition that the terms and conditions under this Article IV are becoming untenable. The Union's proposed change of eliminating section 4.04 for employees hired after July 1, 1986, would appear to limit the promotion of these employees. However, as the contract, data, and testimony presented shows, these employees effect on management's ability to make changes in the public works department would appear to be minimal for a number of years. In this Arbitrator's opinion the Union's proposed change of Article IV is of minimum significance to the current operational mode of the Agreement.

The Employer, on the other, hand is seeking radical change in both the language and interpretation of Article IV. The Employer maintains these proposed changes are necessary to regain management of this department.Both sides presented creditable evidence and testimony that the existing language and practices covered by Article IV are of long duration and practice. As such, the Union argues the Employer has provided no "quid pro quo" for these radical changes as some arbitrators propose. Although the Union, while presenting detailed evidence that its members have had daily bumping rights for over twenty years, it never presented any evidence or testimony that these bumping rights ever were or could be construed to be in the interest of the City. This perceived lack of benefit gives the Employer's stated desire for change in the manner in which employees self-select jobs on a daily basis great merit. However, this phase of the working relationship between the parties is discussed in the Agreement in Article VII, Section 2, not Article IV. While this Arbitrator is sympathetic to the employers need for change, inserting umbrella clauses into Agreement sections is not deemed an acceptable manner for attainment of that end. If the Employer desires specific changes in Article VII (Promotion), and Article XVII (Overtime) these changes should be specifically addressed under the appropriate article, rather than some omnibus change. In this Arbitrator's opinion this separation is necessary because of the twenty years of known practice history between the parties. The same requirement of specifically addressing the problem in the article of the agreement where it is mentioned is also the case if the parties desire to fix positions, job duties, and/or job responsibilities. This is a necessary task because these seasonal and part-time employees are entitled to representation by the Union under this agreement.

The Arbitrator particularly noted the Employer's argument that the Employer had no control over employee's bumping themselves into higher or lower classifications on a daily

basis. This status was the result of a unique set of Agreement clauses between the parties. However, the Arbitrator also noted the absolute failure of either side to present evidence or documentation of any type that would define job classification, description, or responsibilites of a particular position. Thus no inferences on the efficacy of this practice could be drawn.

Finally, the Arbitrator is cognizant that the changes proposed by the Employer are the result of a twenty year collective bargaining history between the parties, some of which predate the Municipal Employment Relations Act. The parties have developed relationships between themselves which are unique in public arbitration precedent for this State. In an examination of the labor-management precedent in the private sector the issue of bumping is almost exclusively related to layoff. Where there is bumping (Transportation Industry) there is no equivalent for daily bumping upward through job classifications. Thus, the Arbitrator is unwilling to undertake a precedent-setting determination on the basis of an omnibus section change in a corollary Article. It is the Arbitrator's opinion that such change,if undertaken,will sharply alter the parties' working relationships, and to do so without the parties clearly identifying the issues would be obscurantism. For the above reasons the Employer's final offer fails to prevail.

With regard to the Union's proposal, for an additional longevity step after twenty-five years of employment,some comment appears necessary. There does not appear to be sufficient evidence to commend this final offer proposal on its own merit. Specificially, the Union demonstrated that its hourly rate at this level of employment far exceeds hourly rates plus longevity payments of comparable public employee groups with this longevity step. The Union fails to demonstrate that the longevity step was a common practice among other public employee groups. Therefore, its inclusion on the final offer proposal is solely part of the baggage necessary for settlement in total final offer selection by the parties.

AWARD

The 1986 collective bargaining agreement between the Superior City Employees Union Local #244, AFSCME, AFL-CIO and the City of Superior,Wisconsin shall contain the uncontested provisions of their previous(1984-1985) Agreement, the issues stipulated to by the parties as stated in part IV of the Arbitration decision and, the final offer of the Superior City Employees Local #244, AFSCME,AFL-CIO.

Dated this 26th day of January, 1987, at Menomonie, Wisconsin.

Donald G. Chatman
Donald G. Chatman
Mediator/Arbitrator