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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of an Impasse Between :  
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 NEKOOSA SCHOOL DISTRICT :  
 :  
 and :  
 :  
 MAINTENANCE/CUSTODIAL WORKERS :  
 ASSOCIATION :  
 :  
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Decision No. 24810-A

Appearances:

Mulcahy & Wherry, Attorneys-at-Law, by Dean R. Dietrich, for the Municipal Employer.  
 Kelly & Haus, Attorneys-at-Law, by Robert C. Kelly, for the Union.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Dec. No. 24810-A, 9/29/87), the undersigned Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act resolving an impasse between the parties by selecting either the total final offer of the Employer or of the Union.

A hearing was held in Nekoosa, Wisconsin on December 17, 1987. A transcript was made. Briefing was completed on approximately April 18, 1988.

Background:

The collective bargaining unit has been developed in recent years by the parties through voluntary recognition of the Union and negotiations. It currently consists of "all full-time and regular part-time employees in the position of Maintenance/Custodian and/or Cleaner". The parties have also agreed that full-time employees work 30 hours or more per week.

At the time of the hearing herein there were five Maintenance/Custodians and all of them were full-time calendar year employees. There also were four Cleaners and all of them worked 30 hours or more per week, but only during the school year. There were no unit members working less than 30 hours per week.

In addition to the calendar year-school year distinction, the record also discloses the job content differences between the two classifications. Normally, the Maintenance/Custodians work a day and an evening shift, while the Cleaners work during the evening. There is considerable overlap among their day-to-day tasks especially regarding custodial work. On the other hand, the Maintenance/Custodians are called upon to perform a very broad spectrum of repair and maintenance work, including plumbing, electrical, carpentry, and mechanical duties. The Cleaners' work consists mainly of regular cleaning tasks, and some painting. Thus, there is an unmistakable difference in the skills required, despite the considerable overlapping.

The parties are seeking a collective bargaining agreement for the 1986-1987 and 1987-1988 fiscal years which end on June 30, 1988.

THE FINAL OFFERS:

Wages: The parties have agreed to wage rates for the Maintenance/Custodians for both years, and for the Cleaners for the first year. The Maintenance/Custodian top rates are \$9.90 and \$10.20, respectively. The Cleaner first year top rate is \$5.75. (In all instances the top rates follow two 90-day probationary rates.) In its final offer the Employer proposes a second-year top rate of \$5.92, whereas the Union proposes \$7.00.

Apparently, the agreed upon first year wage rate for Cleaners represents an approximate 5.4% increase. Otherwise, this represents an Employer policy of 3% increases in every instance, and a Union proposal of an approximate 22% increase in the second year for Cleaners.

Insurance: The Union proposes that the Employer pay 100% of the single health insurance premium and 90% of the family premium for all unit members. The Employer proposes to pay dollar amounts which are 3% higher than the 1986-1987 level of contribution and apparently equal 93% of the premiums.

The Union also proposes that the Employer contribute 100% and 90% of a dental insurance premium. The Board offer does not provide for any such contribution for the Cleaners, but for contributions of \$11.35 and \$35.06 for the Maintenance/Custodians. This has apparently been the subject of material confusion by both parties in that, as noted in the Employer's main brief, both parties' exhibits indicate that this offer was unit-wide.

The Union proposes that the life and long term disability insurance benefits that the previous labor agreement provided for the Maintenance/Custodians be extended to the Cleaners during the years in issue. The Employer would maintain those benefits, but only for the Maintenance/Custodians.

Sick Leave: Likewise, the Union proposes that the sick leave benefits of the prior agreement be continued and extended to the Cleaners; whereas the Employer would only maintain them for the Maintenance/Custodians.

Holidays: The parties have agreed to the following paid holidays for the Maintenance/Custodians: New Year's Day, Good Friday, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas Eve Day and Christmas. The Union proposes the same paid holidays for Cleaners, but the Employer offers only New Year's Day, Labor Day, Thanksgiving, Christmas Eve Day and Christmas.

Vacations: The Union proposes that the vacation benefits of the prior agreement be continued and extended to the Cleaners, whereas the Employer would only maintain them for the Maintenance/Custodians.

Retirement: The Union also proposes that the Employer contribution to the Wisconsin Retirement System beyond its statutory obligation be continued and extended to the Cleaners, whereas the Employer would limit its contribution for the Cleaners to its statutory obligation.

#### DISCUSSION:

The brief history of this bargaining unit and its recent accretion of school year employees highlight certain aspects of the Union's final offer.

First, the second year wage increase of approximately 22% proposed by the Union represents its goal of comparability to nearby unionized school districts, as well as its judgment that the Cleaners and Maintenance/Custodians have substantially similar responsibilities. There is material disagreement between the parties over the appropriate universe of school district comparables in this case, including whether nonunionized workers should be considered. In their respective arguments they also discuss the job content of workers elsewhere, and the compensation of apparently similar employees in nearby nonschool public sector and private sector employment. It is not necessary to sift through all of those varying contentions however, if as the Employer contends, a 22% wage increase is excessive essentially regardless of such contextual matters.

The Arbitrator, in general, prefers comparing rates of compensation to rates of increases. However, even where the rate of compensation is clearly relatively low, it is not necessarily appropriate, in the view of the undersigned, to catch up immediately through arbitration. As the Employer asserts, arbitration should respect collective bargaining as a model, and that process would probably provide for incremental catch-up where the gap is over 20%.

Furthermore, without putting too fine a point on the amount of time both classifications spend performing substantially the same work, because the record does not provide such evidence, there is really no doubt that the skills required of the Maintenance/Custodians justify a substantial disparity in compensation by conventional standards.

Secondly, the fact that the Cleaners work only during the school year is also fundamental in judging these final offers. Clearly the calendar year-school year distinction should be irrelevant to some issues of wages, hours and working conditions. But when it comes to holidays and vacations, for example, as it does in this case, it is very material. The Union proposal includes identical vacations and holidays regardless of the work year.

Indeed, the teacher bargaining unit at this district, as well as the school secretaries who are not unionized, are also school year employees and do not receive vacation benefits. 1/ [It is also the case that the teachers' collective bargaining agreement provides for the Employer to make a dollar amount contribution to health insurance premium funding.]

These factors convince the Arbitrator that the Employer's final offer should be selected, although they do not reflect all of the parties' contentions. Rather, they eclipse the other matters discussed by the parties including cost to the Employer, cost of living data, and other criteria for such decisions as specified in the Wisconsin Municipal Employment Relations Act.

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1/ In its brief the Employer asserts that it "may employ (Cleaners) during the summer months" but currently "they are employed and continue to work only during the school year with no assurance of summer work." The foundation of this assertion is not at all clear. If indeed the Cleaners become calendar year workers subject to layoff during the summer, the Arbitrator's conclusions in favor of the Employer's position should be completely reexamined.

AWARD

On the basis of the foregoing, the record as a whole, and due consideration of the "factors" specified in the Municipal Employment Relations Act, the undersigned Arbitrator selects and adopts the final offer of the Municipal Employer.

Signed at Madison, Wisconsin, this 21<sup>ST</sup> day of June, 1988.

*Howard S. Bellman*

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Howard S. Bellman  
Arbitrator