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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of the	*	
	*	
AFSCME LOCAL 332-A,	*	
LINCOLN COUNTY	*	
COURTHOUSE EMPLOYEES	*	Case 78
	*	No. 39693
To Initiate Arbitration	*	INT/ARB - 4643
Between Said Petitioner and	*	Decision No. 25391-A
	*	
LINCOLN COUNTY	*	
	*	

APPEARANCES:

Charles A. Rude, Personnel Coordinator, on behalf of Lincoln County

Philip Salamone, Staff Representative, Wisconsin Council #40,
AFSCME, AFL-CIO, on behalf of the Union

INTRODUCTION

On May 10, 1988, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Mediator-Arbitrator pursuant to Section 111.77 of the Municipal Employment Relations Act (MERA) in the dispute existing between the Lincoln County (hereinafter the "Employer" or the "County") and the AFSCME Local 332-A (hereinafter the "Union"). On July 25, 1988, an arbitration hearing was held between the parties pursuant to statutory requirements and the parties agreed to submit briefs and reply briefs. Briefing was completed on August 9, 1988. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.77 (6), Wis. Stats. (1985).

ISSUE

Should the final offer of the Union or the final offer of the County be incorporated into the labor agreement between the parties?

WAGES

The Union's Position:

The Union has submitted a wage schedule which calls for increases in compensation in excess of those tentatively agreed to between the parties before this arbitration proceeding began. In testimony at the hearing and in its brief, it argues that it had attempted to "buy-out" the fair share grandfather clause in the contract by tentatively accepting a wage settlement lower than it felt was justified. When the County Board rejected that tentative agreement, the Union felt discharged of its previous position on wages and has submitted here what it feels is a more reasonable wage request.

The Union points out that only three job areas are in dispute here. All others have been agreed to in the stipulated contract terms agreed to by the parties. Of the three, the Union would accept extension of the agreed wage adjustments granted to most bargaining unit members to two of the disputed job classifications. The parties disagree on how to resolve the third classification, which is the Correctional Guards job classification.

The Union finds no justification for singling out a single classification (Solid Waste Equipment Operator) held by a single individual for separate treatment. It argues that in the absence of some justification, this individual should receive the 3% wage adjustment agreed to for other employees, rather than the \$.10 per hour increase contained in the County's final offer.

It is the Union's position that separate treatment of the Building Maintenance Workers is a reflection of bargaining difficulties that have historically plagued this unit. Of the two workers in this classification, one has been receiving a higher hourly pay than the other because of a merit rating system no longer in place. She is one of 17 "red-circled" unit members. Yet, her pay classification is the only one singled out for special treatment. This treatment would grant her an increase substantially below that received by other workers, while her fellow employee would receive an increase substantially higher than other workers.

The Union attributes this special treatment on the one hand to Union activities of the "red-circled" employee and on the other to the strong anti-union sentiments of the lower paid employee. That person is one of the bargaining unit members who signed the anti-fair share letter addressed to the County Board. Not only that, the Union believes that he has had separate discussions with County officials about his wage rate and that this proposal is the result of that activity. The Union urges the arbitrator to place these positions in the same wage adjustment category as all other unit members.

The Correctional Officers are the largest group of disputed employees when it comes to wage adjustments. The Union believes they have been subject to increased training requirements and that public employers have been responding to the up-grading of the position by increasing wages paid to Correctional Officers. As a result of this trend, the Lincoln County employees have fallen behind their fellow Correctional Officers in adjoining and comparable counties.

The Union believes that the County's offer of \$.50 per hour beginning July 1, 1988, no cents per hour increase in the second year of the contract, and a refusal to include the Officers in the 3% increase offered to all other unit employees for 1988 will result in a further disparity between them and their fellow Correctional Officers in other comparable counties.

The County's Position:

The County would have the arbitrator recognize the differences between using civilian employees without the power of arrest as Correctional Officers and using sworn deputies. Lincoln County Correctional Officers belong to the former category. Sworn deputies are required to complete 320 hours of initial training as contrasted with the initial training required of Lincoln County's non-sworn officers (presently 96 hours).

Furthermore, a catch-up increase beyond that offered by the County in its Final Offer is not warranted when the wages of Lincoln County's officers are compared with similar, comparable counties. As Union Exhibit 17 indicates, acceptance of the Union's proposal would place Lincoln County's non-sworn officers in second place among comparable counties, trailing only those employed by Marathon County, a larger, more wealthy county. The Union's offer would even exceed the rate paid to sworn deputies in Price County.

The County argues that its Final Offer, which provides for a 3.99% increase in 1988 to be followed by a 3% increase in 1989 is fair and reasonable, especially in light of the fact that the County's sworn Deputy Sheriffs have accepted a 3% wage increase for 1988 and for 1989.

As for the Building Maintenance Workers, the County views its offer as a one-time action to correct a long-standing disparity in wage rates paid to two persons who perform identical tasks with identical responsibilities.

For these reasons, Lincoln County urges the arbitrator to find that its Final Offer as it relates to wages is more reasonable than that submitted on behalf of the Union.

WAGE DISCUSSION

The wage schedule is in dispute for only seven of the forty-eight bargaining unit members. That means that wages for approximately 85% of the workers have been settled. Of the seven, one is a Solid Waste Equipment Operator, two are Building Maintenance Workers, and the remaining four are employed as Correctional Guards.

It appears that most of the considerations required by the statutes governing public sector interest arbitration are not in dispute. Therefore, it will not be necessary to deal specifically with them, except for comparables as they apply to the Correctional Officers.

At no place in the hearing, exhibits or brief was the question of limiting the pay increase offered to the Solid Waste Equipment Operator defended. In the absence of such

information, it would appear reasonable to grant that individual the same wage increase as that proposed for other unit employees.

The Building Maintenance Workers present a different picture. The County's final offer would grant one worker a larger increase than that offered to most bargaining unit members while the other worker would be given an increase substantially below that granted to others.

The Union has charged that the specially benefited worker has, in effect, bargained separately with the County for his wages and has been granted this increase as a result of that activity and to reward him for his "vehemently anti-Union" activities. It argues that the "red circled" worker is being penalized for her support of the Union and active participation in its affairs.

Lincoln County denies this charge and justifies its final offer as being an attempt to equalize wages paid to employees doing the same kind of work, which entails eliminating the present differences between wages.

This award will not deal specifically with the Union's rationale because the County's proposal must fail for two reasons. The first is that none of the other 16 "red-circled" positions were accorded treatment similar to that of the Building Maintenance Worker. No showing was made that this was part of a program to equalize wages throughout the work force. It would appear unreasonable on its face to single out one of seventeen workers for such special treatment.

The second reason is the lack of justification presented to give a higher increase in base salary here than that offered to most unit members to one of the Building Maintenance Workers. The Union asks for the same increase for those workers as was given to the majority. Without more information, the Union's position must be preferred.

The largest disputed group of employees is the Correctional Officers. As was set forth above, the Union's position is based upon increased training requirements which makes comparison with sworn deputies increasingly proper, and the disparity in wages between Lincoln and Marathon Counties. The Employer rejects both positions and submits that its Final Offer is appropriate.

Here the County's position is more reasonable. It appears that the sole things the two Counties have in common is a County Line and the fact that both groups of officers are non-sworn. The two Counties are totally dissimilar in population and tax base. No showing has been made here that Lincoln County is having difficulty recruiting or retaining Correctional Officers owing to the higher wages available in Marathon County.

Although the training requirements for Correctional Officers are increasing, the fact that sworn deputies must undergo substantially higher requirements remains and comparison between the two functions and wages paid to them is not appropriate.

Of the two remaining adjoining Counties, either Final Offer in Lincoln County would appear to exceed wages to be paid in Taylor County, and the Union's Final Offer for 1989 substantially exceeds the wage to be paid officers in Langlade County that year. The comparable sampling here is too small to form the basis of an award, standing alone.

Without the need to compete with Marathon County and without comparison with sworn deputies, another useful comparable group remains; the other members of this bargaining group. In every other employment category, the Union is willing to accept the general 3% wage increase granted to the other bargaining unit members. Even though Correctional Officers in Lincoln County would not receive an increase until July, 1988, under the County's

after mediation. When the tentative agreement was submitted to the County Board of Supervisors for ratification, the Board amended the report of its Legislative and Personnel Committee by striking the Fair Share language. As a result of this action, the tentative agreement fell through and this proceeding began. Because of the importance attributed to this issue by both parties, it will be addressed herein.

The present contract language was contained in the original labor agreement between the parties. It contains a "grandfather" clause which allows all unit members hired before January 1, 1986, to join the Union. Fair Share payments are voluntary for these workers. All persons hired after that date may elect to join the Union or not, but they shall be required to pay the Fair Share fee regardless of Union membership. The Union asks the arbitrator to accept language eliminating the grandfather clause from this contract. The County would leave the present language in tact.

Arbitrators have historically been reluctant to alter contract language, preferring that the parties resolve such issues voluntarily. Where language is an issue in arbitration proceedings, the burden of justifying the change is placed upon the party which desires the change. In this case, the burden is upon the Union to show:

1. That the present contract language has given rise to conditions that require amendment;
2. That the proposed language may reasonably be expected to remedy the situation; and
3. That alteration will not impose an unreasonable burden upon the other party.

The proposed language here is not precisely the same as that contained in the tentative agreement. The Final Offer of the Union would make payment of Union dues, or Fair Share, effective January 1, 1988. The tentative agreement would have postponed the effective date of Fair Share until July 1, 1988. However, the thrust of either proposal would be to achieve the same result. That is, elimination of the grandfather clause presently contained in the contract. The County Board's bargaining committee presented the tentative agreement to the full Board knowing full well that this would be the effect of the agreement and approximately seventeen unit employees surely agreed, as indicated by their appeal to the County Board after mediation and prior to the February 16, 1988 Board meeting.

So, the grandfather clause was clearly at issue during bargaining, during mediation, and during the County Board's deliberations of its committee's report. It appears from the minutes of the County Board's February 16, 1988 meeting that the grandfather clause was the sole tentative agreement proposal discussed and the Board rejected the entire agreement by rejecting the Fair Share language.

Although the tentative agreement called for a one-year contract with Fair Share to be instituted only in the latter half of the year, both parties here have agreed to make a two-year contract the subject of this arbitration. Therefore, they have agreed that a decision on this matter is reasonable in these proceedings.

We turn next to the question of whether or not the language offered in the Union's Final Offer will reasonably remedy the situation and whether the proposed language imposes an unreasonable burden upon Lincoln County. (See numbers 2 and 3, above.)

There is sound arbitration precedent for finding that agreement during bargaining is conclusive in these two areas. As arbitrator Kirkman stated in City of Oshkosh (Public Library) Decision No. 24800-A, 1988, when considering the reasonableness of language reached in a tentative agreement which was rejected by one of the parties, "Because . . . the committee has found the proposal to be reasonable, it would seem to follow that the arbitrator should find the proposal is reasonable as well." Respect for the bargaining process requires a finding that the Union has met its burden in areas 2 and 3 of the criteria set forth above.

We now turn to the root issue; does the present contract language give rise to conditions that require amendment?

The parties have presented exhibits and arguments on the issue of Fair Share and on the existence of grandfather clauses in other bargaining units and comparable counties. Comparisons have been made between Lincoln County bargaining units, bargaining units in comparable counties, and labor agreements in the private sector. No clear picture arises from these comparables. What appears to be clear is that these clauses, in and of themselves, have not been the cause of unsettled conditions in other counties or bargaining units. What exists here is a condition peculiar to this bargaining unit and the issue must be addressed within the context of this single unit and its labor agreement.

It is not necessary to review the situation prior to this round of bargaining to find that this Union has had a "turbulent existence". The history of this bargaining offers sufficient proof of that. The Union's early identification of the issue as Number One, was followed by a communication to the Board committee from dissident members of the bargaining unit asking it to hold fast on the issue. When agreement on the issue was reached after mediation and a tentative agreement reached, the dissident employees renewed their request, this time to the full County Board. The County Board surely accepted the issue as its Number One concern when it voted to eliminate the Fair Share language on February 16, 1988, in spite of the warning from its personnel coordinator that the action would negate the entire tentative agreement.

The Legislative and Personnel Committee of the Lincoln County Board consists of six members, five of whom attended the crucial Board meeting. A majority of those present, one-half of the entire committee, voted against their own proposal. It is idle to speculate on whether the support of these three Supervisors would have swayed the Board. However, it is surely true that the activities of the dissident members had an effect upon the committee members and that they failed to vote in support of their own report. This is turbulence indeed, extending beyond the question of Union representation to the bargaining process itself.

Adoption of the Union's Final Offer would not guarantee harmony within the bargaining unit. But, harmony within the bargaining unit is not the objective of the collective bargaining process. It is of no concern to an outsider whether or not a union has hard-fought elections, whether or not members agree or disagree with the composition of a bargaining committee, whether or not a wage settlement is supported by the rank and file of members, or whether or not the membership is satisfied with its union representation. All such matters are membership business to be dealt with within the structure of the unit, whether by election or certification. What is the concern of an outsider, whether an employer, arbitrator, or member of the public, is that the union speak with a single voice during the bargaining process.

It will be argued that this infringes on the rights of the unit members to freely express their feelings. The argument is as old as the history of collective bargaining, and it is well settled that the right of free expression is not impinged upon when it exists within the union and the unit members exchange freedom of expression outside the unit for the benefits flowing from a collective bargaining agreement. Here the dissident unit members would receive all the benefits of a labor agreement while retaining the right to express dissent individually or in groups to the employer. Such conduct is sufficient to support a finding that a condition exists among the Lincoln County Courthouse employees which requires amendment of the collective bargaining agreement.

As was stated before, the existence of a fair-share provision or a grandfather clause does not appear to be the cause of dis-harmony in comparable bargaining units. However, it is clear that the present contract language is the cause of the present condition and the Union's suggested language is reasonably sure of correcting the condition without unduly burdening the County.

DECISION

This is a Final Offer arbitration and the arbitrator here must select one Final Offer and reject the other in its entirety. Although the discussion above indicates that the County's wage offer is, on balance, more reasonable, the award here must depend upon the resolution of the Fair Share issue owing to its importance to both parties. As the discussion of this issue shows, the present condition requires an amendment to the contract language and the language offered by the Union is reasonably sure of correcting the condition without unduly burdening the employer.

AWARD

The terms of the Union's Final Offer shall be incorporated in the Labor Agreement between the parties, together with the stipulations agreed to by the parties.

Dated this 7th day of November, 1988.



ROBERT L. REYNOLDS, JR., Arbitrator