STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of	
BUFFALO COUNTY (HUMAN SERVICES DEPARTMENT)	
To Initiate Arbitration	Case No. 38 No. 40023 INT/ARB-4749 Decision No. 25624-A
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO	

APPEARANCES

On Behalf of the Employer: Richard J. Ricci, Attorney - Mulcahy & Wherry, S.C.

On Behalf of the Union: Daniel R. Pfeifer, Staff Representative - Council 40

I. BACKGROUND

On November 3, 1987, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on December 31, 1987. Thereafter the Parties met on two occasions in efforts to reach an accord on a new collective bargaining agreement. On January 19, 1988, the County filed a petition requesting that the Wisconsin Employment Relations Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On March 23, 1988, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by July 18, 1988, the Parties submitted to said Investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the commission, as well as a stipulation on matters agreed upon. Thereafter, the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remain at impasse.

On August 12, 1988, the Commission directed the Parties to select an Arbitrator. The undersigned was selected and notified of his appointment on August 24, 1988. A hearing was scheduled and held October 31, 1988. Post hearing briefs were submitted and exchanged January 9, 1989.

II. FINAL OFFERS AND ISSUES

The Parties are at odds in a number of different areas. The first is the amount of a wage increase. The Union proposes a 3% across-the-board increase effective January 1, 1988 and a 3% across-the-board increase January 1, 1989. The Employer proposes a 2% increase January 1, 1988, and a 1% increase July 1, 1989.

There is also a dispute concerning "on call" pay. The Union is proposing to increase the "on call" from $.70 to $.80 January 1, 1988 and to $.90 January 1, 1989. The Employer also proposes $.80 per hour for 1988 but only $.85 for 1989.

There are also insurance issues. The first relates to "Compare". The final offers are as follows:

> "County Final Offer: The employee shall follow the notice provisions required by Compare. If the notice provisions are followed by the employee, the County agrees to pay for any benefit reductions (20% with a $300.00 maximum) resulting from implementation of the preadmission review provision within thirty (30) days.
>
> Union Final Offer: Appendix A - Insurance. Section 1. Add "The County agrees to pay for any benefit reductions (20% with a $300.00 maximum) resulting from the Compare Program within thirty (30) days."

The remaining issue relates to benefits for part-time workers. Currently, part-time employees receive no fringe benefits. The Union proposes the following language be added to the contract:

> "Add Section ____ Part-time employees, who work an average of twenty (20) or more hours per week, shall receive vacation, holidays, longevity, sick leave, emergency leave and health insurance on a prorata basis. Proration for health insurance shall be in relation to the County's contribution for full-time employees."

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. Wages

1. The Employer

First, the Employer sets forth the counties it believes to be comparable. They include seven counties which are included on the Union's list [Clark, Dunn, Jackson, Monroe, Pepin, Pierce, and Trempealeau], plus Barron County. Their brief details why they believe Barron County ought to be considered comparable. They also attack, in detail, the Union's inclusion of Chippewa, Eau Claire, La Crosse and St. Croix counties as comparable employers. To summarize, the Employer believes that they are too dissimilar in terms of size, financial characteristics, and wages.

Regarding their wage proposal, the Employer notes it is consistent with other internal units. Moreover, their offer maintains the historical rank of Buffalo County among the comparables for Human Services employees.

The Employer also argues that comparisons of minimum and maximum rates should not be given all the weight that they might ordinarily. First, as of the base year 1987, only one Human Services employee was at the minimum wage rate. Second, the 1987 wage schedule shows that employees Eikamp, Moham and Yelle are outside -- and above -- the wage schedule.

The cost of living criteria also favors the Employer's offer, it is argued. They note that the CPI for January 1988 was 3.0% and 3.5% in September 1988 which compares to the County's 1988 3.9% total package offer and the Union's 5.5% total package offer. Thus, they conclude that their offer is more reasonable in light of this criteria since it exceeds the cost of living.

The County also maintains that the "interest and welfare of the public" does not support the Union's offer. There are two significant economic factors to be reckoned with in their opinion. They are, a declining farm economy and above average unemployment. Other economic factors which operate to favor their more modest offer include a declining population, lower than average state aids, disproportionately declining property values, disproportionately increasing property tax levys and a rise in delinquent taxes.

2. The Union

The Union notes that the salary offers are very close since they are only .5% apart each year and since the same wage rate is the same after July 1 under either offer. However, they present hourly rate data from their comparable

group that shows Buffalo County wages are behind the averages in all of the comparisons even when including Dunn County's 1987 rates into the averages. They also believe that the cost of living factor favors their offer.

Regarding internal comparables, the Union notes that the only other settlement is with the law enforcement group. They discount the importance of this settlement since the County Sheriff's Department is not affiliated with AFSCME and, since it is the smallest unit.

Next, the Union addresses the Employer's evidence and arguments on the farm economy. First, the Union takes the position that many of the comparables have farm economies and still grant wages and benefits that exceed those of Buffalo County. Next, they note drought assistance programs, decreases in the agricultural net property levy and increases in milk prices.

B. On Call Pay

1. The Employer

It is the position of the Employer that the Union's on-call pay proposal is not supported by external comparables and is financially unwarranted. In this regard they note that the Union's proposal amounts to a 14% increase in rates the first year and 13% the second year. They believe this to be excessive. Moreover, they do not believe that the Union on-call pay proposal is supported by the external comparables. This is partly because of the wide diversity in on-call pay plans. For instance, only Pierce County offers the same on-call rate ($.80) as the County and the Union proposals for 1988. In addition, it is their position that there is no evidence to suggest that Buffalo County on-call responsibilities are greater than the on-call responsibilities of the comparables or that the employees on-call duties have necessarily been increased. They also ask that the Arbitrator keep in mind that on-call compensation in Buffalo County involves compensatory time in addition to an hourly wage. Under both the County's and the Union's on-call rate offers, employees continue to receive compensatory time if required to participate in face-to-face interviews while on call.

2. The Union

The Union compares their on-call pay to that provided for in their comparable group. Generally, the rate is $1.00/hour. This favors their offer. In addition, testimony was given that the on-call duties were increased during the term of the agreement because of the addition of Mental Health to the existing on-call duties.

C. Compare

1. The Employer

The Employer notes that under the Union's final offer, the County would pay the same amount (20% with a $300 maximum) for any benefit reductions whether or not the employee has followed the notice provisions. In their opinion it is reasonable and realistic to require an employee to follow the notice provisions. Without it there is no incentive to follow the requirements that serve a basis for lowering insurance costs, which in the end accrue to the mutual benefit of the Parties. Moreover, their offer is consistent with the internal comparables, including the highway department.

B. The Union

The Union believes that the County is trying to achieve something with this proposal that they couldn't achieve in voluntary bargaining. For example, they note that the Employer unilaterally implemented the cost containment procedures at issue and the Union filed a grievance contending that the County had violated the agreement between the Parties. In the settlement of the grievance the Parties agree to the containment procedures, but also that the County would be liable for any penalties. The Union argues that the Employer is now seeking to change that agreement. In addition, they don't think it is relevant that the highway employees agreed to this cost containment procedure since they did so in the course of seeking a higher employer health insurance contribution.

D. Fringe Benefits for Part-time Workers

1. The Union

In support of their proposal the Union notes that Arbitrator Joseph Kerkman, in the City of Oshkosh (Public Library), Case 100 No. 38521 ARB-4346, addressed the issue of pro-rata fringe benefits for part-time employees as an issue of inherent reasonableness. The Union takes the position that its provision in relation to pro-rata benefits is also one of inherent reasonableness. It is also particularily reasonable because of the limitation that an employee must work at least 20 hours in order to be eligible for fringe benefits. In addition, they draw attention to the fact that all the external comparables have some form of benefits for part-time workers and most have a straight pro-rata arrangement.

They also argue that without the pro-rata fringe benefits, the County has an incentive not to hire full-time employees, but rather to hire part-time employees and have

them work near 40 hours per week as they did when they hired an employee at 38 hours per week. The Union acknowledged that other part-time employees in the County don't receive part-time benefits. However, they draw attention to the fact that the courthouse employees are not organized, the fact that the Highway Department has no part-time employees and the fact that the Sheriff's Department has only 1 part-time employee who works more than 20 hours per week. Thus, based on the external comparables and the inherent reasonableness of the Union's position herein, the Union believes its final offer, in relation to pro-rata benefits, is the more reasonable.

2. The Employer

The Employer gives a number of reasons why the Union's proposal ought to be rejected. First of all, they note no other part-time employees of the County received pro-rata benefits. Thus, the impact of granting such a proposal goes far beyond this particular bargaining unit.

The Employer also stresses the cost of the Union's proposal, noting first that the Union failed to calculate any of these costs. The Union's exhibits state that four employees would qualify for the new benefits and they also noted at the hearing that one employee who is presently working full-time (L. Adler) would also qualify for retroactive benefits. Thus, based on the health cost alone, without regard to the other fringe benefits, the Union's proposal will cost an additional $20,000 for the next two years. This assumes that five part-time employees continue to qualify and that the family premium does not increase again in 1988 and increases by only 20% in 1989.

The Employer also has a problem with the ambiguity of the Union's proposal in the respect that it doesn't set forth the procedure for determining if an employee averages 20 hours per week, i.e., is it pay period average, monthly average, bi-monthly average, quarterly average, etc. This is on top of the fact that Arbitrators have expressed such a strong preference for widesweeping changes to be inserted into contracts through voluntary bargaining. Last, the Employer stresses that the Union failed to offer a quid pro quo for the proposed change.

IV. OPINION AND DISCUSSION

The major issue in this case is the Union's proposal to provide pro-rata fringe benefits to part-time workers who work over 20 hours per week. This is the major issue because of its greater impact relative to the other issues. For instance, the wage proposals are very close. They are only .5% apart per year in terms of cost impact and identical in terms of ending rates. The total dollar difference in the

past year under the wage proposal is $1869 and $56 in the second year. The on-call proposals are only a nickle an hour apart in the second year. The total impact of this difference is a whopping $663.00, the proverbial "drop in the bucket" compared to the estimate cost of the fringe benefit issue. Similarily, the differences in the 'compare' proposal are not significant or earth shattering.

Regarding the cost of the Union's fringe benefit proposal, it is noted that the Union failed to estimate the impact of this proposal. The Employer calculated the impact of extending health insurance to employees currently working beyond 20 hours per week. Assuming there are three employees who would be affected by this proposal, the cost of providing health insurance would be $5615 in 1988 and $6457 in 1989, without any premium increase.1 This results in a 5.5% total package increase for the Union's 1988 proposal compared to 3.9% for the Employer. Without the cost of extending health insurance to part-time employees the Union's total package cost would be 4.3%. Thus, just the addition of health insurance only adds 1.2% additional cost impact to the Union's final offer.

The cost impact of vacations, holidays and sick leave (assuming it is utilized) can be roughly calculated. Tracking the same three employees noted above it is noted that averaged together they work 75% of the time. The average hourly rate in the bargaining unit in 1987 was $8.30/hour or $66.40/day. Assuming that each person would qualify for ten vacation days, if full-time, the cost of extending vacation benefits to these three employees would be $1494 (10 vacation days X $66.40/day X 75% X 3). The same cost ($1494) would result for extending the ten holidays to the part-time employees. Using a similar method of estimating, sick leave benefits could cost up to $1792 per year based on 1987 wages.

This isn't meant to be a definite costing or costing method of the Union's proposal. It simply gives the Arbitrator a rough guideline on the cost of the Union's proposal. Without longevity the Union's proposal could add up to nearly $4800 in 1988 for vacations, holidays and sick leave in addition to health insurance cost. This totals over $10,000 and would result in a 6.5% total package increase. In sum, it is conceivable that the Union's fringe benefit proposal would add between 2.0 and 2.5% to the cost of their wage offer in 1988.

---

1. This is taken from p. 38 of the Employer brief.

The Union totally ignored the potential cost impact of their fringe benefit package, relying instead on the "inherent reasonableness" of fringe benefits for part-time workers. The Arbitrator firmly agrees that there are very strong equity arguments favoring pro-rata fringe benefits for part-time workers. Such employees provide just as much service for the Employer on a proportionate basis and are just as valuable as full-time workers. In fact, in some respects they may be more valuable to the Employer since their part-time status gives more flexibility to the Employer in addressing peak work load demands, etc. without having to commit to a full-time salary.

However, as reasonable of a concept as pro-rata fringe benefits is for part-time workers, it is not absolutely compelling in and of itself. The concept can't be viewed in isolation and without regard to other criteria.

Certainly there is the matter of external comparables. There is some significant form of fringe benefits or payment in lieu thereof for part-time workers in all of the seven counties the Arbitrator believes to be comparable (Clark, Dunn, Jackson, Monroe, Pepin, Pierce and Trempealeau).2 This strongly supports the Union's proposal. The internal comparables are not a real detractor from the Union's proposal since, according to the Union, there is only one part-time employee in the other two organized units.

Another factor, however, is the proverbial "quid pro quo". This often is an important consideration which springs from criteria (J), which states:

> "j. 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 or in private employment."

One of the factors often taken into consideration in collective bargaining is the time honored principles of 'give and take' - 'you've got to give something to get something' - 'there ain't no free lunch'. Arbitrators recognize this and it is well established that, except in the most unusual of circumstances, a "quid pro quo" of some kind should accompany a major change in the collective bargaining agreement. The

---

2. Chippewa, Eau Claire, La Crosse and St. Croix are rejected as too large. Barron is too distant.

quid pro quo might be found in the final offers, the stipulations or sometimes in the existing agreement. For instance, hypothetically a Union seeking dental insurance might justify their proposal on the basis that presently the Employer's contribution for health insurance is only 75% whereas all the comparables are at 100%.

Certainly the inherent reasonableness of the proposal and its support in the comparables in some cases is so overwhelming that a quid pro quo is not necessary or not much of one is necessary. Of course, other factors come into play as well such as the interest and welfare of the public, where relevant. Thus, how much of a quid pro quo is necessary is determined based on the facts and circumstances of each case and is a judgement call on the part of the Arbitrator. Basically, the Arbitrator needs to be satisfied that in a real collective bargaining situation -- one without the artificial safety net of interest arbitration -- that most reasonable parties if in the same circumstances would have settled on the basis of the final offer of the party seeking the major change in the agreement.

Obviously, the more significant the change the more of a quid pro quo would be necessary in real collective bargaining. Moreover, the Arbitrator's judgement and sense is that changes that have a significant economic impact probably call for more of a quid pro quo than other types of non-economic changes.

After reviewing this record and considering all the relevant factors it is the conclusion of the Arbitrator that it is a fatal flaw in this case that the Union didn't offer, nor could they point to, some kind of quid pro quo for the broad impact of their fringe benefit proposal. The impact is significant enough that in spite of the reasonableness of the proposal and its support in the comparables, some meaningful quid pro quo is necessary. It may have been in the form of a lower than average wage increase, give backs in other areas (temporary or permanent) or other types of concessions or compromises. None of this exists in this record. Nor does the Union argue that the proposal is justified on the basis of total compensation.

The most obvious and natural compromise would have been to have agreed to accept less than the going rate increase. Yet, instead the Union asked for more (.5%) than the other internal comparable. In addition, there is no argument or evidence put forth by the Union that their 3% and 3% proposal is less than the rate of wage increases in the external comparables.

Thus, since the Union has failed to justify the major component to their offer and since there is nothing unreasonable based on the evidence and arguments of this record concerning the Employer's offer, the Union's final offer is rejected and the final offer of the Employer is accepted.

AWARD

The final offer of the Employer is accepted.

Gil Vernon, Arbitrator

Dated this 24th day of February, 1989 in Eau Claire, Wisconsin.