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RELATIONS COMMISSION

Interest Arbitration of MARATHON COUNTY and MARATHON COUNTY PROFESSIONAL COURTHOUSE EMPLOYEES UNION, LOCAL 2492D, AFSCME COUNCIL 40, AFL-CIO re WERC Case 150, No. 42016 INT/ARB 5221	ARBITRATION AWARD **Decision No. 26035-A**

INTRODUCTION

Negotiations between Marathon County, hereinafter called the County, and Marathon County Courthouse Professional Employees Union, Local 2492D, AFSCME Council 40, AFL-CIO, hereinafter called the Union, commenced on October 12, 1988. Failing to reach agreement, the Union filed a petition for arbitration on April 7, 1989 pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. An investigation was conducted by a WERC staff member on May 17, 1989 who found that an impasse existed and received final offers on that date. The WERC issued an order for arbitration dated June 1, 1989 along with a panel of arbitrators. The parties notified the WERC of their selection and in an order dated July 10, 1989, the WERC appointed the undersigned as the arbitrator in this dispute.

The arbitration hearing was held on November 3, 1989. Appearing for the County was Dean R. Dietrich, Attorney of Mulcahy & Wherry; appearing for the Union was Phil Salamone, Staff Representative of AFSCME Council 40. Exhibits and testimony were presented at the hearing. Post hearing briefs were exchanged through the arbitrator on December 18, 1989. Rebuttal briefs were received by the arbitrator by February 6, 1990.

ISSUES

Final Offer of the County:

Increase salaries by 3% for 1989 and provide a 2% increase for 1/1/90 and a 2% increase on 7/1/90.

Final Offer of the Union:

Effective 1/1/89 -Increase all wages by 5.4%. Effective 1/1/90, increase all wages by 5%.

Effective 3/28/89 increase travel reimbursement mileage to 24 cents per mile.

Upgrades: Effective 1/1/89 provide a one time increase in salary of one thousand dollars for all represented positions in the zoning office. (On Site Waste Specialist, Reclamation Specialist & Land Use Specialist)

Article 5A,3e - Allow for payout of compensatory time for accumulations accrued above 24 and 40 hours for the week day and weekend staffs respectively.

Article 5C - Amend to provide for 15 minutes compensatory time for phone calls related to placement of juveniles.

<u>NOTE:</u> By stipulation dated November 22, 1989, the County and the Union agreed that the last two issues stated above (additional accrual and compensatory time for telephone contacts) would be handled separately from the final offers. The parties further stipulated that the arbitrator should treat each of the above issues as separate final offer disputes subject to the normal procedures and the criteria in Section 111.70(4)(cm)(7) of Wisconsin Statutes.

DISCUSSION

<u>Comparables:</u>

The County relied on the comparables which it had proposed and which had been selected by an arbitrator in an 1981 arbitration case. The Union relied on comparables used by the County in 1988 to readjust the salaries of department heads. In this dispute, the County comparables were all of the counties contiguous to Marathon County (Wood, Portage, Waupaca, Shawano, Langlade, Lincoln, Taylor and Clark) plus the neighboring counties of Price, Chippewa and Eau Claire. The Union comparables, based primarily on population and equalized value, were Eau Claire, La Crosse, Outagamie, Racine, Rock, Washington, Kenosha, Sheboygan, Fond Du Lac and Winnebago.

The County argues that this arbitrator should not upset the pattern of comparables set by Arbitrator Kirkman in the 1981 dispute between the County and the Professional Social Service Employees Union (WERC Case L, No. 27464, MED/ARB-1027, Decision No. 18615-A). In that instance, the arbitrator had to choose between the Counties noted above on which the County still relies and the twenty largest counties in the State on which the Union relied primarily. This arbitrator believes that significance differences exist in this dispute which warrant a review of the comparables historically relied upon.

First of all, the County, in its 1988 determination of fair salaries for its department heads, used population size and equalized valuation as the basis for selecting comparables (See Er. Ex. 55 & Un. Ex. 9A). Second, in this dispute the Union does not rely upon the largest twenty counties as it did in 1981 but instead accepts the criteria and counties used by the County in 1988. This arbitrator believes that these changes are sufficiently important to warrant the adoption of different criteria than those used in the 1981 dispute.

Therefore, this arbitrator concludes that, under criteria "e" in Section 111.70(4)(cm)(7) of the statute, comparables reflecting size as well as proximity should be used in this dispute. The arbitrator shares the reservation voiced by the County Personnel Director to the effect

that Racine and Kenosha Counties should be excluded from the list of comparables because of their different economic environments and their location in south eastern Wisconsin. Also, this arbitrator believes that counties close to Milwaukee or Madison should be excluded because of the influence of those large metropolitan areas and therefore excluded Washington County. On the same grounds (economic environment and location) it can be argued that Rock and Sheboygan could also be deleted.

Likewise, on grounds of size, the arbitrator has deleted the seven smallest counties in the 1981 list of comparables. Their average population is about 28,000 and they range in size from approximately 16,000 to 45,000, that is, from about one seventh to less than one half of the 112,800 population of Marathon County. Counties that much smaller than Marathon are likely to have a far smaller total number of public employees with the resulting differences that one usually finds between small and large employers.

For the purpose of determining the relative ranking of Professional Courthouse Employees the arbitrator constructed a panel of comparables consisting of the four larger nearby counties used in the 1981 dispute (Chippewa, Eau Claire, Portage and Wood) and four of the closer counties that are comparable to Marathon County on the basis of population and equalized value (Winnebago, Outagamie, Fond Du Lac and La Crosse). The arbitrator does not regard this list of comparables as "untouchable," to be honored by the parties in all future disputes. The arbitrator finds only that the original list of comparables needs to be revised in order to meet the needs of the parties and suggests that they develop such a list jointly rather than have them determined by an arbitrator.

In the companion dispute involving the professional social workers, this arbitrator determined that the appropriate comparables are the eight counties listed in the preceding paragraph, four drawn from the comparables cited by the County and four drawn from the comparables cited by the Union. The arbitrator therefore will rely again upon the same comparables.

External Comparables:

For two reasons, this arbitrator finds that it is not possible to make meaningful external comparisons. First of all, there is only one classification in the Professional Courthouse Unit that is sufficiently populated to warrant a classification comparison. And, second, neither the County nor the Union provided data to make a meaningful comparison.

County Exhibit 5 shows that there 30 employees in the Unit in 19 different classifications. There is one employee in each of nine of the classifications, there are two employees in four classifications, there are four employees in one classification (Assistant District Attorney I) and nine employees in one classification (Shelter Home Youth Worker). Since the Assistant District Attorney position has now become a State position, it does not seem logical to consider it a bench mark job for determining the proper salary increase for the Unit.

The one classification that has a large enough population to warrant a meaningful comparison is the Shelter Home Youth Worker classification involving nine employees. Unfortunately, there is little comparative salary information on this classification. The Union mentions Brown County which is not normally considered an appropriate comparable and therefore is given no weight by the arbitrator in this matter. The Union also mentions Eau Claire County but states that it pays less than Marathon County (Union Brief, p. 17). County Exhibit 22 shows only one comparable in this classification. It is also Eau Claire which is substantially below the Marathon salary and which, if the arbitrator correctly interprets the footnote in County Exhibit 22, may not require that the individual be a professional.

Therefore, as this arbitrator stated at the outset of this section of his opinion, the absence of meaningful external comparisons means that the decision in this matter will depend upon other considerations.

COMPARABLE SETTLEMENTS

The information about salary increases of professionals in comparable units is limited. The only data about the increases of professionals in the comparable counties selected by the arbitrator are found in County Exhibit 48A. The increases in 1989 in Chippewa, Eau Claire, Portage and Wood Counties were 3%, 3.9%, 4% (staggered 2%/2%), and 3% percent. So far as increases are concerned, there is greater support for the County offer of 3% than for the Union offer of 5.4%.

Internal Comparables:

County Exhibit 50 lists eleven groups of County employees, four of which had not settled, including two professional groups currently in arbitration before this arbitrator. County Exhibit 51 shows that six of the seven that had settled, did so for 3% in 1989 and 2% on 1/1/90 and 2% on 7/1/90. A revised pay structure was instituted for the seventh unit, covering the deputy sheriffs. According to County Exhibit 50 and 51, the total population of the six units which settled for the three, two/two pattern was 549 with 110 not settled and one unit of 50 employees with a new pay system. In addition, the County gave eleven of the twenty two department heads substantial increases over the 1989 3% pattern.

The Union claims that the Deputy Sheriff settlement and the Park Department settlement broke the 3 and 2 plus 2 pattern and that the professional employees also should be freed from an unfair pattern. According to Union Exhibits 6A,B,C and E, 39 of the 47 employees in the Deputy Sheriff Unit received increases over and above the 3 and 2 plus 2 increases received by other employees---11 Detectives received an additional 8% increase effective July 1, 1989, and 28 Deputies received an extra 5% increase also effective July 1, 1989. Under the contract in effect prior to 1989, the only two classifications in the unit were Detective and Deputy Sheriff; under the new contract there are four classifications --- Detective, and Deputy Sheriffs I, II and III. The

Union calculates that the effect of these restructuring pay increases the average salary of members of that unit by 5.4% in 1989 and 5.3% in 1990 (See Union Exhibit 6F).

Similarly, the Union contends that the majority of the employees in the Park Department received increases over and above the 3% and the 2% plus 2% increases. From Union Exhibits 6A, 6B and 6C the arbitrator determined that, of the 32 employees listed in Union Exhibit 6C, four employees received an additional increase of 52 cents per hour effective July 1, 1990, and fifteen employees received an additional increase of 26 cents per hour effective July 1, 1990. In both cases, the timing of the extra pay means that the increase is effective for only one-fourth of the '89 and '90 contract.

The arbitrator does not find that the classification adjustments in the Deputy Sheriff and Park Departments provide sufficient grounds for a general increase for the Professional Courthouse Employees. Nor does the magnitude of the adjustments made for eleven department heads persuade the arbitrator that the Professional Courthouse Employees deserve an across the board increase of 5.4%. The arbitrator is not saying that all classifications in that unit are properly paid. There may be grounds for special increases for some other employees, in addition to the Assistant District Attorneys for whom a case was well documented and which is resolved by the transfer of these employees to the State. However, the arbitrator does not believe that the special one-time extra increases for 58 of the 599 employees who have settled, warrants an across-the-board increase for the Professional Courthouse Department in excess of the 3% and 2% plus 2% pattern. It is clear that there is such a pattern and that with the exceptions noted above, all unit settlements reflected this pattern.

Given the limit on this arbitrator of having to choose one of the final offers, this arbitrator finds that internal comparisons lend greater support for the County offer than for the Union offer.

Other Criteria:

The arbitrator considered the other criteria listed in the statute and the arguments of the County and the Union as they applied to the other criteria. None of these provide reasons for the arbitrator to disregard the findings based on internal comparisons. The arbitrator notes also that the County claim that its fringes are equal or superior to those of its comparables is not challenged by the Union.

Mileage:

The arbitrator makes no findings on the mileage issue because it is relatively unimportant compared to the wage issue which is determinative in this dispute regardless of the merit of the Union or County position on the mileage issue.

Upgrades:

The testimony of Jim Burgener, the Zoning Administrator, and County Exhibit 8E suggest that it is difficult to obtain qualified candidates for the On-Site Waste Specialist. Burgener stated that there was a state wide competition for individuals for this position and that the fact that the County did not supply a vehicle also was a problem because of the high mileage driven by the On-Site Waste Specialist (County Exhibit 8E). County Exhibit 8E also contains salary figures for the eight comparables chosen by the arbitrator. Under the County proposal, the 7/1/89 Marathon maximum would rank in the middle, below Winnebago, Eau Claire, Outagamie and La Crosse counties but above Fond du Lac, Portage, Wood and Sheboygan counties. Under the Union proposal, the Marathon classification would rank above La Crosse, thereby placing five below it and three above it.

On the whole, the evidence does not make a strong case for the upgrade except for the question of supplying a vehicle. As County Exhibit 8E indicates, many of the comparables supply a vehicle. This would be important to at least two of the employees in the Zoning department who drove more than ten thousand miles in 1988. The arbitrator concludes, however, that the salary issue is the basic issue and the relatively equal positions on the upgrade mean that this issue will not affect the decision determined by the findings on the salary issue.

COMPENSATORY TIME ACCUMULATION (Separate Issue)

Under Article 5,A.3.e. comp time accumulation is limited to 24 hours for the week day staff and 40 hours for the weekend staff. Jim Schweter explained that the Shelter Home Workers would prefer to take time over the maximum in the form of cash rather than comp time. The Agreement recommends that comp time for weekend shift coverage be taken during the week prior to or following weekend coverage. It also states that comp time will be taken at the mutual convenience of the worker and the Unit Supervisor (Art. 5,A.3.e).

No testimony was presented to show employees were not taking comp time promptly and why they were accumulating the maximum time allowed and then being forced to take time off to bring them under the maximum. Nor was any testimony presented about the practice in external comparables. In the absence of testimony showing that the present system causes a hardship for employees or is administered unfairly, the arbitrator will reject this proposal. In doing so, however, the arbitrator wishes to make clear that he does so without endorsing the arguments advanced by the County that the employees must tender a quid pro quo or that the Union has the burden of proof.

In interest arbitration, in determining whether an economic benefit should be changed, as in a wage or benefit dispute, there is no burden of proof on the petitioning party. The parties share the burden equally. Nor is a quid pro quo necessary in situations where the Union is seeking catch up or a pattern increase. Where a Union seeks a greater than usual benefit in one category it may accept a lesser benefit in another. This

could be considered a trade off or quid pro quo. In the dispute seeking payment in cash of comp time in excess of an agreed upon maximum, no evidence was introduced to show the need for a quid pro quo.

NON COMPENSATED PHONE CALLS (Separate Issue)

Lee Sprengelmeyer, who has been a Dispositional Intake Worker for five years testified that the number of uncompensated phone calls in the first ten months of 1989 had increased to 94 from 40 and 53 in 1987 and 1988 respectively (Union Exhibit 12A). He explained that calls which result in placements or detentions were compensated at the rate of fifteen minutes of compensatory time for each call but that calls which did not result in placement or detention were not compensated. If the Union position is accepted, Sprengelmeyer would be entitled to approximately 28 more compensatory hours for the calls (94 x 12/10 divided by 4).

The County argues that no evidence was presented about the practices in comparable counties and that the Union bears the burden of proof. Also, the County cites other arbitrators who have required that a quid pro quo be provided when one party wishes to move from the existing contract language. The County argues also that the Union proposal is ambiguous because it does not define calls which do not result in a placement.

As the arbitrator stated in connection with the maximum compensatory time accumulation issue, the argument claiming that the Union bore the burden of proof or must offer a quid pro quo is also rejected by this arbitrator in so far as this issue is concerned.

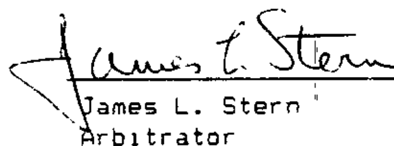
The arbitrator believes that Dispositional Intake Workers should be paid for business calls, whether or not they result in placement or detention. The arbitrator will not select the Union offer on this issue, however, for two reasons. First of all, there is no information supplied about the practice in comparable counties. Second, the arbitrator does not know whether 15 minutes is a fair estimate of the time taken to handle calls that do not result in placement or detention. However, the County is hereby put on notice that the practice of requiring employees to respond to calls from police about juveniles without compensation cannot continue if it has gone beyond the de minimis point.

AWARD

With full consideration of the testimony, exhibits and arguments of the County and the Union, the arbitrator finds for the reasons explained above that the County final offer is preferable under the statutory criteria to the Union offer in each of the three disputes discussed above.

Therefore, the arbitrator selects the County offer on salaries and orders that the predecessor agreement be amended by inclusion in it of the County final offer on the salary issue and the stipulations agreed to by the County and the Union.

2/26/90
February 26, 1990



James L. Stern
Arbitrator