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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

ASHLAND CITY AND COUNTY EMPLOYEES
LOCAL UNION #216-D, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Petitioner and

CITY OF ASHLAND (WATER UTILITIES)

Case 50
No. 41902
INT/ARB-5206
Decision No. 26076-A

APPEARANCES:

Victor Musial, Staff Representative, on behalf of the Union
Scott W. Clark, City Attorney, on behalf of the City

On July 31, 1989 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. Pursuant to statutory responsibilities the undersigned conducted an arbitration hearing on October 26, 1989 in Ashland, Wisconsin during the course of which the parties presented evidence and arguments in support of their respective positions. Post hearing exhibits and briefs were filed by the parties by December 1, 1989. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats., the undersigned renders the following arbitration award.

Issue:

The only issue in dispute is over health insurance premium payments under the parties' 1989-90 collective bargaining agreement. The Union wishes to maintain the status quo, with the City paying 100% of the premiums, while the City proposes that employees pay 10% of the premiums.

Union Position:

The City's position is not supportable under arbitral authority in that the City has proposed no quid pro quo for the concession it is suggesting. (Green County, Dec. No. 20280-A, 7/20/83 and Greendale School District, Dec. No. 25499-A, 1/19/89. Ther mere fact that the employees have received the

benefit for the past seven years when other City employees have not does not constitute a quid pro quo.

Furthermore, the Union's position is supported by another arbitration award wherein an arbitrator found that internal comparisons are not persuasive where in the past such comparisons have not been determinative. (Dane County, Dec. No. 20135-A, 7/25/83)

Here, there has been a long history of 100% Employer paid health insurance in spite of the fact that other City bargaining units agreed many years ago to partial payment of such premiums by employees.

Furthermore, at best, other City units should be deemed external rather than internal comparables since the Employer, in the past, has conceded that the "Water Utility is not in control of the Common Council of the City of Ashland but under control of the Ashland Water and Sewage Utility Commission"

Relatedly, when other comparables in the area are examined, the Employer's cost for health insurance is not exorbitant.

Also supporting the Union's position is the fact that after adjustments for health insurance premium payments which employees would have to make under the Employer's offer, their actual wage increase would be in the 1 6% range. If indeed the employees were to receive a wage increase comparable to that received by other City employees, they would have to receive at least a 4.5% increase rather than the 3% increase which has been agreed to in this, as well as other City bargaining units.

Although the Employer has asserted that the City has the highest CDBG Distress score in the State, the evidence submitted by the Employer fails to support that claim.

Although the Employer attempts to show that rates paid by Ashland residents are higher than most rates paid by other residents statewide in the same size class, the Union has demonstrated that area wide rates are comparable, and some are even higher than those in Ashland

Lastly, although the Employer concededly confronts substantial new expenses because of its need to build a new sewage treatment plant, there is no evidence that it intends to finance the new plant out of operating expenses. In fact, the operating budgets of both the Water and Sewer Utilites are in good financial condition.

City Position:

The City has five bargaining units. Four, the Fire Department, Police Department, Department of Public Works, and City Hall, are under the direct control of the Common Council of the City. The fifth, the Water and Sewer Utility, is under the direct control of the Water and Sewer Utility Commission, which consists of members elected by the Coimmon Council

All units are covered by the same group health insurance program, the H.M.P. program provided by W.P.S. The coverage has no deductibles, covers all medical treatment in hospitals or doctors' offices, and covers all prescription drug costs over $2.00/prescription.

Since 1982 the employees in the four units under the control of the Common Council have paid 10% of the premiums for said insurance coverage. However, the employees in this unit pay nothing toward the cost of their health insurance.

Arbitral precedent supports the proposition that where a pattern exists among internal bargaining units, such pattern is often given controlling weight.(City of Madison, Decision No. 21345-A, 11/8/84)

The employees in this unit gave up nothing to avoid the 10% co pay arrangement applied to all other City employees in 1982. In fact, at the time that other City employees agreed to the co pay arrangement, this unit received a 1% greater increase than did other City employees

The 1982 negotiations were conducted by the Utility Manager at that time, who was not under the control of the Common Council, and who maintained a practice of including all benefits he negotiated with the unit in his own compensation package.

The Common Council has taken action to bring the Utility in line with the rest of the City's employment force. The Utility Manager has been terminated and the membership of the Utility Commission has been almost completely changed.

The record also demonstrates that the wages paid to the Utility employees are substantially higher than those paid for comparable positions in the City Department of Public Works. The Utility employees also enjoy an additional

holiday and additional longevity pay which are not provided to other City employees.

The Common Council has now implemented stronger controls over the Utility, but there remains the task of erasing inequities like that at issue herein.

Further support for the City's position relates to the interests and welfare of the public, and the financial ability of the Employer to meet the costs of the proposed settlement

In this regard, the record indicates that the City has one of the highest CDBG Distress scores in the State of Wisconsin. The City is significantly more troubled economically than almost all of its Wisconsin counterparts. The City has the highest mil rate, the lowest per capita full value, the highest percentage of households in need of assistance, the lowest per capita income, the highest percentage of persons in poverty, the the highest unemployment rate.

In addition, the water rates in the City are in the top 10% when compared to the water rates of all other Class B utilties in the State, and the Utility faces major capital expenditures in the coming years which will drive the rates even higher.

Relatedly, the sewer rates in the City are presently higher than most utilities of the same size in the State, and the City is facing court ordered capital improvements to its sewer and wastewater treatment system which will force the City to raise its sewer rates even more. The total projected cost of compliance with a consent judgment is over eleven and a quarter million dollars.

As a result, the City is forced to eliminate every bit of overspending to mitigate rate increases.

Lastly, the City's position is supported by the fact that there have been enormous increases in the cost of health insurance. In order for an employer to effectively manage such costs, the cooperation of all parties, including the patient/employee, must be achieved

Discussion:

While the Employer makes a persuasive argument that based upon comparability and the interest and welfare of the public, the employees in

this unit should be required to pay at least a small portion of the cost of their health insurance premiums, the undersigned is not persuaded that the terms which the Employer has proposed in this instance are reasonable and supportable, based upon the parties' long term negotiations history, the circumstances of their current relationship, and well established arbitral precedent.

In this regard the record indicates that the parties have not historically utilized other City bargaining units as the comparables which have set the pattern for the bargains they have struck. In fact, the record indicates, quite to the contrary, that at no time in the past had the parties applied the pattern established by agreements reached with other City bargaining units in formulating the terms of their bargain. Thus, even though a persuasive argument might be made supporting the comparability of all five units, it is clear that the Employer is attempting to change a long established bargaining history with this unit in which bargains were made based upon other considerations. This change reflects not only a change in determinant comparables, but a requested change in a very important benefit which has been the product of many years of bargaining involving presumably many concessions and exchanges by both sets of parties. In such circumstances, the party proposing such a dramatic change, no matter how legitimate its justification, cannot expect the other party to reasonably acquiesce without expecting, at the minimum, recognition that its interests are being adversely affected, and that accordingly its interests must also be addressed if such a change is to occur. While such a quid pro quo may not be necessary in every instance, generally speaking, absent, for example, a manifest inability to pay, the interests of both sets of parties are traditionally addressed in such cases.

Here, under the Employer's proposal, such is not the case Though, as indicated above, the Employer presents strong and persuasive arguments supporting the merits of its position, its' proposal fails to address any of the Union's legitimate concerns. Most importantly, in this regard, the Employer's proposal gives no recognition to the fact that the unit employees' effective wage increase would be substantially below the level of increases granted to other City bargaining units which the City wishes to use as comparables in this proceeding. At the minimum, if the comparisons the City wishes the undersigned to make are legitimate, at least on a one time basis--in recognition of the concession the City is requesting the Union to make--some arrangement could have been proposed which would have resulted in comparable monetary increases, taking into consideration the cost to employees of the concession the Employer is proposing. There are a number of approaches that might have been utilized to effectuate such an objective

which would at least provided transitional relief to the affected employees and which would have met the Employer's long term objectives. The absence of such an approach seriously undermines the reasonableness of the Employer's position herein.

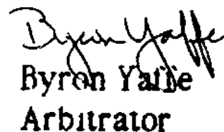
Based upon the foregoing considerations, the undersigned concludes that although the Employer's proposal is reasonable and legitimate based upon comparability and public interest considerations, the Employer's failure to address legitimate employee concerns in effectuating such a change requires the undersigned to conclude that the changes proffered by the Employer will need to be deferred to another bargain.

Accordingly, the undersigned hereby renders the following:

ARBITRATION AWARD

The Union's final offer shall be incorporated into the parties' 1989-90 collective bargaining agreement.

Dated this 8th day of December, 1989 at Madison, Wisconsin



Byron Yaffe
Arbitrator