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STATE OF WISCONSIN

ARBITRATION AWARD

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration between

CITY OF MERRILL DEPARTMENT OF PUBLIC WORKS
EMPLOYEES, LOCAL 332, AFSCME, AFL-CIO

and

CITY OF MERRILL (DEPARTMENT OF PUBLIC WORKS)

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Re: Case 41, No. 41114, INT/ARB-5035

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Decision No. 26194-A

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APPEARANCES: For the City of Merrill: James C. Koppelman, Esq., Attorney for the City of Merrill, of the law firm of Schmitt, Hartley, Arndorfer & Koppelman, S.C., P.O. Box 176, Merrill, Wisconsin 54452.

For the Union, Local 332, American Federation of State, County and Municipal Employees, AFL-CIO: Mr. Phil Salamone, Staff Representative, AFSCME, Council 40, AFL-CIO, N-419 Birch Lane, Hatley, Wisconsin 54440.

The arbitrator was notified of his selection by the parties in a letter dated October 26, 1989, from Mr. A. Henry Hempe, Chairman, Wisconsin Employment Relations Commission. A hearing was held in Merrill on November 29, 1989. The parties presented evidence from witnesses and in documentary form. They were given opportunities to cross-examine each other's witness and to inquire into the accuracy and merits of the documents presented. No record was kept of the proceedings other than the arbitrator's handwritten notes. At the conclusion of the hearing the parties agreed to exchange written briefs. The Union representative wanted four weeks from the date of the hearing for presentation of his brief. The arbitrator explained that he would be out of the country from December 26 to January 24 and would be unable to exchange the briefs until his return. The parties then agreed to exchange their briefs directly. Subsequently the Union's brief was directed to the arbitrator postmarked December 29, 1989 and the City's brief was directed to the arbitrator postmarked January 13, 1990. The arbitrator considers the formal record closed as of the latter date.

This is an arbitration proceeding pursuant to the requirements of Section 111.70(4) (cm) 6 of the Municipal Employment Relations Act of the State of Wisconsin. A member of the staff of the Wisconsin Employment Relations Commission conducted mediation sessions between the parties and reported to the Commission on October 18, 1989 that the parties were deadlocked in their negotiations. The final offers submitted to the WERC mediator, in conformance with the requirements of the statute are attached to this report as Appendix "A" (the City of Merrill's final offer, dated September 26, 1989), and Appendix "B" (the Union's final offer, dated June 24, 1989).

As indicated by those documents, the parties have agreed on all issues regarding the renewal of their agreement for the years 1989 and 1990 (including an increase in accrued sick leave credit from 1200 to 1300 hours) except for the amount of the wage increase for 1990 and the issue of an additional holiday proposed by the Union.

I am obligated under the terms of the statute to choose the entire final proposal of one party or the other. The factors that I am required by the statute to utilize in coming to my decision are itemized in the statute and are quoted verbatim in the document that I have attached to this award as Appendix "C".

The employees involved in this proceeding compose a collective bargaining unit represented by the Union which is described in the labor agreement as "all employees of the Street Department, Water Department, Sanitation Department, Sewage Treatment Plant, and Park and Recreation Department, except supervisory personnel and except those employees employed to operate the ski tow and warming houses. . ." There are 28 employees in the unit.

THE POSITIONS OF THE PARTIES

On the issue of wages the Union would increase hourly rates by forty cents per hour across the board while the City would increase rates by thirty-five cents per hour across the board.

The Union supports its proposal on wages principally with comparisons pursuant to Paragraph (d) of the factors to be considered, as listed in the statute. This comparison is between the rates of increase of wages of employees in this unit with the rates of increase for departments of public works employees in similar collective bargaining units in the cities of Marshfield, Stevens Point, Wisconsin Rapids, Antigo, Wausau, and Shawano. Neither the Union nor the Employer attempted to make any direct rate comparisons. Rather, they showed in exhibits and labor agreements the increases in rates that have been negotiated for the years 1989 and 1990. The Union submitted the following table to support its position. (Although the Union did not document the figures with copies of the labor agreements, since AFSCME represents all of the units, the figures are presumed to be accurate except for those questioned by the City.)

<u>City</u>	<u>1989 Wage Increase</u>	<u>1990 Wage Increase</u>
Marshfield	3.5%	4.5%
Stevens Point	5.1%	5.1%
Wisconsin Rapids	5.0%	(Not settled)
Antigo	4.0%	4.0%
Wausau	3.0%	4.0%
Shawano	3.0%	3.0%
Simple Average	3.93%	4.12%

Since the average wage of employees in the unit is \$9.83, the Union's forty cent per hour proposal for 1990 is slightly more than 4%. According to the Union's figures this is somewhat below the average of increases in the five units that have settled in the comparable communities and in the comparable units for 1990.

In the opinion of the Union, none of the other criteria listed in the statute are very useful in arriving at a decision on wage rates in this dispute. Neither

party has raised any issue with respect to the factors in Paragraphs (a), (b), and (c). Paragraph (e) relates to internal comparisons, for the most part. Since the fire fighter and police units had not arrived at wage settlements for 1990 at the time of the hearing, no argument can be made concerning Paragraph (e), as far as the Union is concerned (although the City points out that 3.5% is being granted to the unorganized City employees for 1990). In the opinion of the Union, comparisons of employment conditions of these employees with "other employees in private employment in the same community and comparable communities" (Paragraph (f)) is not useful for the reason that most these other employees are performing very different kinds of work, mostly unskilled and semiskilled production functions. The employees in this unit perform a variety of work, much of which is highly skilled, and which has no parallel in the private sector.

On the issue of cost of living (Paragraph (g)), the Union notes that its proposal for a wage increase is less than the increase in consumer prices for goods and services in 1989 and lower than most projections that are being made for the year 1990. There would be no basis for denying this proposed increase on grounds that it exceeds cost of living increase guidelines. The Union does not believe that there are any notable circumstances involved in this dispute that would invoke consideration of the factors in Paragraphs (h), (i), and (j).

On its part the City depends heavily on the factors in Paragraph (d) and (e), but it would also invoke comparisons in the private sector in the Merrill community in accordance with the wording in Paragraph (f). That factor is: "Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities."

In making comparisons under Paragraph (d) and (e), the City would include wage increase comparisons of similar collective bargaining units in Rhinelander (AFSCME), Schofield (AFSCME), and Rothschild (Teamsters), as well as Highway Department units in the counties of Lincoln and Marathon (AFSCME). According to the City, these comparisons show that in 1989 only three of its comparable units (Wisconsin Rapids, Stevens Point, and Marshfield) had percentage wage increases greater than the 4% agreed upon in this proceeding, while six of the comparable units had smaller increases. The City's comparisons of these units for 1990 are incomplete, but in its brief the City questions some of the 1990 percentage increases used by the Union. The City would calculate the 1990 Stevens Point increase as 4.0%, the Antigo increase as 3.5%, and since the Wausau increase is 2.0% in January and 2.0% in July, it is argued that the figure for the year should be considered as 3%. Using these figures, the City's average of the 1990 wage increases in the Union's table, shown above, would be 3.6%, a figure close to what the City is proposing.

The City calculates its own proposal for the two years as 7.5%, while the Union's wage proposal and its holiday proposal would total 8.45%, a figure that exceeds the increases in the comparable units.

The City appears to agree with the Union that the factors in Paragraphs (a), (b), and (c) are not very useful in this proceeding. On the factor of cost of

living in Paragraph (g), the City forecasts no change in the rate of increase for 1990. Since the increase for 1989 was 4.1%, the City appears to be arguing that the Union's total proposal unnecessarily exceeds the forecast of 8.2% for the two years.

In connection with Paragraph (h), (i), and (j), the City points out that the unorganized employees of the City are receiving a 3.5% increase for 1990 and that the overall compensation, including fringes, for the employees in the DPW unit are in no way inadequate in terms of these factors.

The City points out that the statute was changed in 1985 to require that arbitrators consider the factor described in Paragraph (f), comparisons "with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities." Pursuant to that factor of comparability the City produced two witnesses at the hearing who provided a considerable amount of data concerning employment conditions in the private sector in the City of Merrill. The first witness provided a document called the Weinbrenner Shoe Company Wage and Benefit Survey for the City of Merrill. Although the survey was confidential in the sense that the 11 respondents could not be identified with the specific data each had provided, the witness did provide a list of the 11 employers who had provided data. Nine were manufacturing concerns and the other two were the City of Merrill and Lincoln County. The survey results included figures that indicated that the simple average increase in wage rates in 1989 for the 11 respondents was 3.4%.

On the issue of adding a holiday effective January 1, 1989, the Union introduced labor agreements for the police and firefighter units for the City of Merrill. Basically the Union argument is that the City has negotiated an additional Kelly Day for each of those units and that the DPW bargaining unit involved in this proceeding should be provided with one additional personal holiday as a matter of equity.

The paid holidays in the three units can be shown as follows:

<u>DPW Unit</u>	<u>Police Unit</u>	<u>Firefighter Unit</u>
New Year's Day	New Year's Day	New Year's Day
Good Friday	Good Friday	Good Friday
Memorial Day	Memorial Day	Memorial Day
Fourth of July	Fourth of July	Fourth of July
Labor Day	Labor Day	Labor Day
Thanksgiving Day	Thanksgiving Day	Thanksgiving Day
Friday after Thanksgiving	Friday after Thanksgiving	Friday after Thanksgiving
Christmas	Christmas	Christmas
Christmas Eve Day	Christmas Eve, $\frac{1}{2}$ day	Christmas Eve Day
Floater	New Year's Eve, $\frac{1}{2}$ day	New Year's Eve, $\frac{1}{2}$ day
	Easter	Easter
	County Fair, $\frac{1}{2}$ day	
<u>Totals:</u> 10	10 $\frac{1}{2}$	10 $\frac{1}{2}$
In addition, one floater after 25 years service	In addition, one floater after 18 years service	In addition, one floater after 18 years service

The Union argues that in addition to the above, the police unit has 14 Kelly Days per year and that the firefighter unit has one Kelly Day per year. It is not entirely clear from the record when the floating holiday after 25 years of service was added to the holidays of the DPW unit, although it appears to have been in the mid- to late-1980s. It is clear that the additional floating holiday after 18 years for both the police and firefighter units was added effective January 1, 1989. The Union argument appears to be that the one floater holiday after 25 years was added so as to make holiday conditions equitable among the three units but that the addition of the floating holidays after 18 years of service in the police and firefighter units recreated the inequity.

Although not using these words, the Union in effect is accusing the City and the police and firefighter unions of disguising these additional holidays after 18 years of service as Kelly Days. That term is actually used in the firefighter agreement. In the police agreement the extra holiday is included in the hours clause as an addition to the 14 days per year provided the policemen so as to adjust their hours to the equivalent of a 40 hour week for 52 weeks. By calling it a Kelly Day in the firefighter agreement and part of an adjustment of annual hours worked in the police agreement, the City and those unions have tried to conceal by this mislabeling what is essentially an inequitable condition.

The City argues that the extra day in the police and firefighter agreements are properly termed Kelly Days, that they were added after the Union in this proceeding negotiated a floating holiday after 25 years of service. The reason for granting the extra holiday after only 18 years of service is that required earlier retirement for the protective forces necessitated a reduction of that amount in the length of service requirement to qualify for the holiday.

The City points out that the Weinbrenner Wage and Benefit Survey indicates that the average number of holidays in the private sector in Merrill is 9.8.

DISCUSSION

In its brief the City raised some questions about the accuracy of the wage rate increase figures presented by the Union, reproduced in the table above. It points out that the actual increase for 1989 at Antigo was 3.5% and not 4.0%. In examining the Antigo agreement for 1989, I find that I agree with the City. The City argues that the increases shown in the Stevens Point labor agreement are 4.0% for each year. My own calculations indicate that the Union's figure is accurate for 1989 but that the figure for 1990 should be 4.9% instead of 5.1%. The City points out that the Wausau rate increase is actually 2% in January, 1990, and 2% in July, 1990. The City would count this as a 3% increase. I disagree. Although the employer in that case saves some money in the first six months of the year, the increase is effectively 4.0% as a basis for future calculations. The City argues that on the basis of the 1989 agreement, the increase for Antigo for 1990 is 3.5% instead of 4.0%, as the Union states. Since neither party introduced the 1990 labor agreement, I am inclined to drop the 1990 Antigo rate increase out of the calculations of that table. The City did not question any of the other figures. I now suggest that the previously presented table be revised as follows:

<u>City</u>	<u>1989 Wage Increase</u>	<u>1990 Wage Increase</u>
Marshfield	3.5%	4.5%
Stevens Point	5.1%	4.9%
Wisconsin Rapids	5.0%	(Not settled)
Antigo	3.5%	(Uncertain)
Wausau	3.0%	4.0%
Shawano	3.0%	3.0%
Average	3.85%	4.1%

The City did not include Shawano in its comparisons but would add several others. The problem with adding the highway units of Lincoln and Marathon Counties is that they are dissimilar units. I do not consider them appropriate comparables in this proceeding. The DPW unit in the Village of Rothschild had a 3% increase in rates in 1989 and 4% in 1990. This supports the City position in the sense that the total rate increase for the two years is 7%. But since the parties in the present dispute have already agreed upon the 1989 rate increase, the 1990 comparison for Rothschild lends greater support to the Union position in this case. There were no 1990 agreements submitted by the City for the cities of Rhinelander and Schofield, so I cannot find the comparisons with those cities useful in this proceeding.

In my opinion the Union's proposal on the issue of the wage rate increase is closer to the pattern of comparable cities that can be used to make a judgment than is the proposal of the City. I have some reservation about selecting the Union's proposal on wages for the reason that the statute directs me to consider comparisons in the private sector, in accordance with Paragraph (f) of the factors to be considered. The survey made by the Weinbrenner Company indicates that the average percentage increase of the participants in its survey was 3.4%. I have several problems with giving this figure any substantial weight in this proceeding. In the first place, the 3.4% is a simple, unweighted average. Testimony indicated that the participating firms varied from 85 to 400 employees. That is a large variation, large enough to cast doubt upon the usefulness of an unweighted average. Second, it has become a common practice in the private sector to grant lump sums so that wage rates and roll-up are unaffected. We do not know whether such sums were given by any of the participating corporations or whether, if they were, they were included in the percentage increases. Third, we have no information about the composition of the labor forces of the participating respondents, or indeed what kind of wage administrations are involved or how the \$.35 and \$.40 per hour increases in this proceeding relate to the percentage increases in the survey of private companies. And finally, the timing of the survey is not completely unimportant. The results were sent out in July, 1989. The increases listed are all dated in 1988 and 1989. We are principally concerned with 1990 rate increases in this proceeding.

The City also introduced testimony of a University of Wisconsin Extension specialist who produced a profile of the community, including some ranges of wage rates for various occupations. Although the document contained some very interesting demographical and economic information about the City of Merrill, it had not been produced for the purposes of making the kind of comparisons required by

the arbitration statute, and I have been unable to use any of that information in arriving at an award in this proceeding.

Therefore, while I have taken account of the comparisons of wages, hours, and conditions of employment of employees in private employment in the community of Merrill, I conclude that the information presented to me concerning this factor of the statute cannot be given sufficient weight in my consideration so as to change my conclusion that the Union proposal on wages is preferable to the City's proposal in this proceeding.

The issue of granting the Union an additional holiday is also difficult to decide. On this issue, however, it is clear that the most important consideration is the internal comparison with the police and firefighter units. Except for the data in the Weinbrenner survey concerning the number of holidays of private employers in Merrill and the holidays for the Union's comparable cities, which averaged slightly over 10, the parties devoted most of their attention to the internal comparisons. In other words, the parties appear to be in agreement that the important factor to be considered in this issue is Paragraph (e), comparisons of the number of holidays of other employees in public employment in the Merrill community.

There is a current inequity between the DPW unit and the police-firefighter units of only one-half day in the totals of paid holidays. The DPW unit has ten regular holidays and each of the other units has ten and one-half. The additional floater after 25 years of service, added to the holidays for the DPW unit in the mid-1980s, applies only to four employees, two of whom will retire this year, according to the City brief. It will be seven years before the next long service employee is eligible for this holiday. There was no testimony at the hearing concerning how many police and firefighters are eligible for the floater after 18 years of service that was given to them as a quid pro quo for the DPW floater after 25 years. There is a perception, however, among the members of the DPW unit that the manner in which the extra holiday was granted to the other two bargaining units was deceptive. Two knowledgeable witnesses for the City testified that Kelly Days had existed in the police and firefighter agreements for many years (one said 20 years) and were based on the need to adjust working hours to a 40 hour week on an annual basis in the case of the police and a 56 hour week on an annual basis in the case of the firefighters. Nevertheless, when an additional holiday was added in the firefighter agreement in 1989, it was called a Kelly Day. And when an additional floating holiday was added in 1989 in the police agreement, it was placed in the Hours article rather than in the Paid Holiday article, implying that it was another Kelly Day. The City argues that the police agreement qualifies the taking of Kelly Days by the words: ". . . when circumstances permit as determined by the Chief of Police," and that similar limitations appear in the firefighter agreement. But there is no significant difference between that limitation and the words in the DPW labor agreement qualifying the floating holiday with these words: ". . . may be taken on any day, but prior Department Head approval must be obtained to ensure proper personnel levels."

Based on the testimony of the City's own witnesses at the hearing, it is clear to this arbitrator that the floating holidays after eighteen years of service in the police and firefighter agreements are not Kelly Days, regardless of where

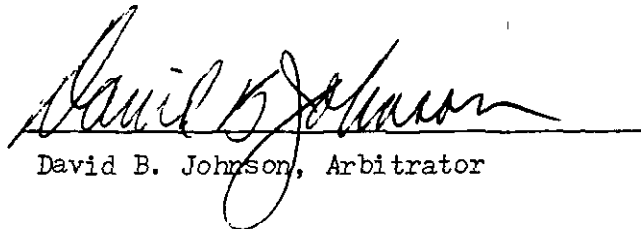
the parties have put them in the labor agreements. Consequently the police and firefighters have one-half day more of paid holidays than employees in the DPW unit. Although it is only half a day, and the Union is proposing that a full day of paid holiday be added, I believe that the members of the DPW unit have an accurate perception that the results of the bargaining on the 1989 agreement between the City and the other two unions created an inequity. I would have preferred that the Union in this case had proposed an additional half day holiday, but perhaps the parties who created the inequity, and appeared to conceal it by calling the extra holiday a Kelly Day, should deal with the resulting inequity of a half day in favor of the DPW unit.

To sum up my consideration of the factors that I am required to consider in making this award: The parties have no disagreement concerning the pertinence of factors (a), (b), and (c). There are no questions requiring me to comment on them. I have carefully considered the applicability of factors (d), (e), (f), and (g) in arriving at my award and have commented upon them in the body of the report. Although both parties referred in their arguments to factors (h), (i), and (j), they did not produce any evidence or arguments in this proceeding concerning those three factors that would influence the outcome.

AWARD

The proposal of the Union is adopted in this proceeding.

Dated: February 5, 1990


David B. Johnson, Arbitrator

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Schmitt, Hartley, Arndorfer & Koppelman, S.C.
Attorneys at Law

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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L.F. Schmitt (of Counsel)
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1029 East Main Street
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September 26, 1989

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SEP 27 1989

Mr. Chris Honeyman, Investigator
Wisconsin Employment Relations Comm.
Post Office Box 7870
Madison, WI 53707-7870

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Mr. Phil Salamone
AFSCME, AFL-CIO
N419 Birch Lane
Hatley, WI 54440

RE: 1989/1990 Contract Negotiations

Gentlemen:

Enclosed is the City's final offer regarding the 1989-1990 contract. The City would propose a 4% increase in pay across the board for all pay grades in 1989. They would also stipulate to increasing the accrued sick leave credit by 100 hours from 1200 hours to 1300 hours.

In 1990, the City would propose an across the board wage increase of approximately 3-1/2% in a fixed sum of \$.35 per hour for all classifications in 1990.

If either of you gentlemen would have any further questions on this matter, please feel free to call. This would be the City's final offer and I would ask that the commission certify this for arbitration if the Union were to reject this last offer. If you have any questions on the matter, feel free to call.

Yours truly,

SCHMITT, HARTLEY, ARNDORFER
& KOPPELMAN, S. C.

By: *Jim Koppelman*
James C. Koppelman

JCK/hh
cc: Judy Stockowitz
Bryan Stimers
Roger English
Dennis L. Grefe



Wisconsin Council of County and Municipal Employees

AFSCME, AFL-CIO

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION
PHILIP SALAMONE
STAFF REPRESENTATIVE
N 419 BIRCH LANE
HATLEY, WI 54440
(715) 446-3855

June 24, 1989

Mr. Chris Honeyman, Investigator
Wisconsin Employment Relations Commission
P. O. Box 7870
Madison, WI 53707-7870

RE: City of Merrill,
Case 41, No. 41114, INT?ARB-5035

Dear Mr. Honeyman:

Please allow the following to serve as the Union's revised final offer in the above indicated dispute.

WAGES: Effective 1-1-89, Increase by 4% across the board
Effective 1-1-90, Increase by 40¢ across the board

ARTICLE 7 - HOLIDAYS: Add one additional personal holiday effective 1-1-89

ARTICLE 9 - SICK LEAVE: Increase sick leave payout by one hundred (100) hours to thirteen hundred (1300) hours.

All other agreed upon tentative agreements.

Sincerely,

Phil Salamone
Staff Representative

PS:pe

cc: Jim Koppelman-Certified #P056-756-009
Dick Lumpton

- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in the comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- 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.