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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

****

In the Matter of the Petition of

WINNEBAGO COUNTY
BRIDGETENDERS' UNION

Case No. 180
No. 43559 INT/ARB 5587
Decision No. 26494-A

To Initiate Arbitration
Between Said Petitioner

And

WINNEBAGO COUNTY

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APPEARANCES:

On Behalf of the County: John Bodnar, Corporation Counsel

On Behalf of the Union: Gregory N. Spring, Staff Representative

I. BACKGROUND

On November 16, 1989, the Parties exchanged their proposals on matters to be included in an initial collective bargaining agreement. The collective bargaining agreement was to cover Bridgetenders who are employed on a seasonal basis. Thereafter the Parties met on three occasions in efforts to reach an accord. On January 29, 1990, the Union filed the instant petition requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On March 21, 1990, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by May 9, 1990, the Parties submitted to the 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 May 22, 1990, the Parties were ordered by the Commission to select an Arbitrator. The undersigned was so selected. His appointment was issued by the Commission on August 21, 1990. An Arbitration hearing was held January 9, 1991. The Parties submitted post-hearing briefs and reply briefs which were exchanged April 23, 1991.

II. ISSUES AND FINAL OFFERS

The Parties resolved many issues in their attempts to agree on an initial contract prior to submitting final offers. In the course of submitting final offers, they had essentially identical offers on the issue of probationary employees. However, several issues remained unresolved, including provisions for vacations, holidays, sick leave payout, and health insurance contribution.

A. Holidays

The Union proposes that employees who work certain specified holidays receive time and one half. The holidays identified by the Union are: Memorial Day, Independence Day, and Labor Day

The Employer makes no holiday pay premium pay proposal.

B. Vacations

The Union proposes the following:

"As hereinafter provided, all employees shall be entitled to vacation pay as follows:

Twenty (20) hours of pay after the first season.
Forty (40) hours of pay after the second season.
Sixty (60) hours of pay after seven (7) seasons.

Employees who are in pay status for less than the full work season shall receive the above vacation pay on a pro rata basis.

Employees shall receive vacation pay at the end of each work season.

Employees who have given a ten (10) working day notice of termination and have completed at least one (1) season of continuous service shall have prorated vacation

pay upon termination of employment. Such advance notice shall not be required in cases where such notice is not reasonably possible."

The Employer proposes the Parties enter into a side letter of agreement that would grandfather vacation entitlements for individuals who previously enjoyed vacation benefits and that those benefits be frozen at the 1989 level.

C. Sick Leave

The Parties' proposals for sick leave are identical with respect to the rate of accrual and other qualifying criteria. The Union, however, proposes the following sick leave payout provision:

"Employees who retire and are eligible for an annuity under the Wisconsin Retirement System shall receive a payout of fifty per cent (sic) (50%) of their first ninety (90) days of sick leave accumulation. In case of the death of an employee, the Employer shall pay said amount to the employee's beneficiary. Such payment will be based n the employee's normal rate of pay at the time of retirement or death.

D. Health Insurance

The main difference in the Parties' proposals for health insurance relates to the fact that the Employer proposes to pay up to 105 percent of the single or family premium of the lowest price plan offered by the Employer for six months of the year, while the Union proposes that the Employer pay the premium 12 months of the year.

The other difference relates to changes that might be made in the plan. The Employer proposes that the benefit levels parallel those in the AFSCME Local 1280 Contract. The Union proposes that the benefits cannot be changed without the Union's consent.

III. POSITION OF THE PARTIES (SUMMARY)

A. The Union

The Union believes that its stipulation on wage rate is relevant to the health insurance issue. This is because, in their opinion, they have agreed to a significant disparity between their wages and other Bridgetenders in Northeast Wisconsin. By accepting this disparity they have "paid for" the added cost of year-round health insurance. This wage restraint is also demonstrated by the

dramatic rate that the cost of living has exceeded Bridgetender wage increases since 1985.

They also believe that year-round insurance is in the public interest. This is both for the obvious humanitarian reasons as well as the fact that without such coverage the employees or their families may end up receiving other forms of public financial assistance in cases of medical emergencies. The Union suggests that the fact that only seven (7) out of the seventeen (17) employees participate in the County's health insurance, in spite of the fact that virtually all of such employees desire coverage, shows that the current coverage is cost prohibitive and, therefore, insufficient. Moreover, there is no evidence or argument that the Union's final offer is beyond the financial ability of the County. In fact, the County is fully reimbursed for the costs of operating the bridges by the State.

The Union also believes its offer is supported by internal comparables. For instance, each of six (6) internal comparables receive some sort of additional compensation for holidays. They detail these entitlements in their brief. Even so, the Union isn't asking for holiday pay, but only premium pay for the three holidays that Bridgetenders work.

The internal comparables also support their vacation proposal, the Union argues. In every unit, every employee is eligible for vacation. In this regard, the Union is asking only for a benefit that is currently received by all other represented employees in the County. In contrast, the County proposes to provide vacation benefits only to the three (3) employees hired prior to 1985 and even then at an unspecified level. They argue there is no justification for the Employer's proposal. Thus, they contend, on the basis of internal comparables, the Union's vacation proposal is much more reasonable. Similarly, while the language on Sick Leave Payout varies from contract to contract, each of the internals provides for a payout of up to 45 days of pay upon retirement.

Regarding health insurance, the Union relies on external comparables. This is because there are no other unionized seasonal employees in the County. However, they do note that with regards to part-time employees, the County has negotiated for greater than a straight proration of health insurance with one of its bargaining units. For instance, in the Courthouse unit, the County pays 75 percent of the full-time premium on behalf of part-time employees who work as little as 50 percent of a regular full-time employee's hours. Additionally, all of the three (3) AFSCME contracts, covering the Highway Department, Park

View and Social Services employees, provide that the benefit levels may not be reduced without the Union's consent.

In terms of external comparables, the Union relies on four (4) municipalities which employ Bridgetenders: Door County, City of Green Bay, City of Manitowoc, and City of Menasha. In three (3) of these municipalities, Door County, Manitowoc, and Menasha, the Bridgetenders are in bargaining units with other municipal employees. The Union argues that a review of these external comparables shows overwhelming support for all of the issues in the Union's final offer. The evidence with respect to health insurance shows that each of the employers in the external comparables pays health insurance on a year-round basis. With regard to holidays, all of the external comparables receive at least time and one-half. Similarly, Bridgetenders in all of the external comparables receive vacation benefits. Additionally, there is some support in the external comparables on sick leave payout. This all adds up to a greater degree of overall compensation for employees in the external comparables. This, too, supports the Union offer.

B. The Employer

At the outset, the Employer highlights certain facts about the bargaining unit and the function of Bridgetenders. Winnebago County operates five draw bridges within Winnebago County on the Fox River during months when sailing is made possible due to warmer weather. The major duties of the Bridgetenders are to open and close the bridges, when necessary, to accommodate passing boat traffic and to perform minor maintenance work upon the bridge on a weekly basis (oiling gears). Fifteen (15) people are employed as seasonal Bridgetenders on a regular basis by Winnebago County. There are two substitutes.

The Employer contends that the internal comparables support their offer concerning granting vacation and holiday fringe benefits to seasonal employees. In fact, many of the Collective Bargaining Agreements presently in force and effect with regard to other County employees specifically define seasonal employees and exempt them from receipt of any fringe benefits. For example, Article 4 of the Winnebago County Courthouse Employees Association's Collective Bargaining Agreement specifically states that seasonal employees do not accrue or receive any fringe benefits. They cite other contracts and contract provisions.

The Employer also looks to external employers for support for its holiday, vacation, and sick leave payout proposals. These include the Village of Winneconne whose seasonal employees within the AFSCME are not eligible for vacation benefits or sick leave benefits. The same is true for the seasonal crossing guards in the City of Appleton and the City of Oshkosh.

Additionally, the County contends that the economic cost of the Union's vacation, holiday, and sick leave proposals is excessive. They calculate that these benefits alone would be equivalent to a 3.75% increase in the Bridgetenders average hourly gross compensation over 1989. Moreover, they submit there is no intrinsic reason for vacation for employees who only work five to six months per year. Few other County employees, if any, have such extended periods of time away from their jobs. They also ask the Arbitrator to consider that during these periods of nonemployment, many of the Bridgetenders, if not most, are compensated by Winnebago County in the form of unemployment compensation benefits.

The County next turns to the health insurance issue. Again they look to internal comparables first. They note that in the other collective bargaining units within Winnebago County, the seasonal employees may not be eligible for health insurance benefits and part-time employees may be eligible for such benefits on a pro-rata basis. In terms of external comparables, in Winneconne, the City of Appleton, and the City of Oshkosh, the seasonal employees' health insurance premiums are not paid.

The County also questions the needs for paid health insurance for Bridgetenders based on the availability of alternative health insurance sources for these particular employees. The ages of all but one of the Bridgetenders varies from 53 years to 78 years of age and the average is 63. Six of the employees are presently Medicare eligible. Five of the employees testified that they were covered under health insurance plans of former employers whom they had retired from employment with and one other is covered under a spouse's plan. Thus, at least 12 of the 17 Bridgetenders are eligible for health insurance coverage from sources other than the County's health insurance plan. The Company argues that the Union's final proposal would therefore require the County to pay a substantial cost for providing a benefit which is largely redundant. They suggest that this is an unnecessary burden in the times of financial restraint and high insurance costs.

The County also looks to the stipulation on wages for support. The Parties have stipulated to an average wage increase of $.32 per hour in

1990 and $.34 per hour in 1994 for Bridgetenders under the Collective Bargaining Agreement. These increases in wages equal approximately 4 percent over the previous years' base wage and is comparable to other internal units. These increases approximately equal the increase in the CPI. Additionally, employees enjoy fringe benefits equaling 37% of the average base wage. This is in line with other internal units. The Union's offer, however, computed as a percentage of base wages, would equal 44% in 1990 and 64% in 1991.

The Employer also questions whether the Union has offered a sufficient "quid pro quo" for the demands it has made. They suggest that a review of those parts of the Labor Agreement stipulated to by the Bridgetenders reveals that the stipulated provisions are quite ordinary in comparison to other labor agreements. Accordingly, in their opinion, there is no indication of the Bridgetenders having compromised substantially in any area of the Agreement so as to justify the substantial increase in fringe benefits which the Bridgetenders are proposing. Just the health insurance proposal would add $1.91 per hour to the cost. This, the County argues, is inconsistent with the interest and welfare of the public, particularly since there has been little job turnover within this occupational group within Winnebago County.

IV. DISCUSSION AND OPINION

There are four issues before the Arbitrator. They are holiday premium pay, vacations, sick leave pay out and health insurance contribution. With respect to the last of these three, there is a single underlying question which is common to all three issues and this question defines the fundamental dispute between the Parties. The basic question is what are the appropriate fringe benefits and benefit levels for a non-typical employee.

At the outset, the Arbitrator should state that he believes it is appropriate to lump regular part time and seasonal employees into one group--to be referred to as non-typical--for comparison purposes as they are essentially similar. They are less than full time but perform regular ongoing functions in the normal course of the Employer's business. Limited term or temporary employees (full or part time) would be distinguished as their place in the enterprise is usually transient and limited to unusual employment demands. In contrast, the Bridgetenders position performs a regularly recurring business function. Moreover, the employees are retained from season to season without a formal break in their employment status, unlike a temporary or limited term employee.

The Arbitrator also views the three benefit issues (vacations, sick leave and health insurance) to be more substantive than the holiday pay issue which, in essence, is a wage issue. As such, little, if any, weight will be given to the holiday premium pay issue. This isn't to suggest that it isn't important in its own right but it is to suggest that the other issues are so much more important than the influence of the premium pay issue on the ultimate outcome of the case is negligible.

It is the Arbitrator's view that the issue of fringe benefits for non-typical employees raises a basic fairness/equity issue which is appropriate to consider under criteria 'j'. For instance, some employers pay absolutely no fringe benefits for people who are less than full-time (40 hours/week). Yet they schedule employees routinely for 36 hours. Is this fair? Some labor agreements provide that non-typical employees receive vacations as if they were full-time and 100% paid health insurance. Is it fair that an employer should have to pay two 50% employees twice the benefits--very expensive benefits--as they would if they hired one employee?

These rhetorical questions are meant to make the point that there are some intrinsic equity considerations that must be weighed along with other criteria. Indeed, how external employers/unions treat their non-typical employees' benefits is a helpful guideline as to what is fair and appropriate. Additionally, the labor agreements internal to the municipal employer at bar is also important in gauging whether and at what level a non-typical employee should enjoy fringe benefits.

It is apparent that there is a great deal of divergence among the internal and external comparables as to fringe benefits for non-typical employees. For instance, generally speaking, the external comparables favor the Union on the health insurance issue and the internal comparables favor the Employer. This mixed bag suggests to the Arbitrator that it is necessary in this case to pay particular attention to the intrinsic reasonableness of the fringe benefit proposals. In general terms, there is nothing intrinsically reasonable about a proposal which fails to extend the seasonal employee any proportion of fringe benefits enjoyed by full-time employees. It is equally true that any proposal which requires the Employer to provide a fringe benefit in excess of the employees effort and contribution is not fully reasonable. While some parties agree to full fringes for non-typical employees and others agree to none, absent mutual agreement, the most reasonable arrangement is pro rata. An employee is no less valuable to an employer because they might be part time or seasonal. If a full-time employee is worthy of certain fringe benefits then a non-typical

employee is worthy of the same benefit in proportion of their contribution to the enterprise. By the same token, an employee is not necessarily entitled to a greater level of benefits than the effort they contributed. It is just as unfair to require an employer to pay a non-typical employee a disproportionate level of benefits as it is to require a non-typical employee to accept no benefits.

In this regard, the Employer's failure to offer vacation benefits on a pro rata basis--except the two grandfathered employees-- is intrinsically unreasonable. It is also out of step with the external comparables and some of the internal comparables regarding part time employees. The Union does propose pro rata vacation benefits. Moreover, their proposal is proportional to the vacation benefit enjoyed by part-time employees. Courthouse, Highway and Park View employees receive one week (40 hours) of vacation after one year, two weeks (80 hours) after two years and three weeks (120 hours) after seven years. The seasonal Bridgetenders are employed approximately 6 months or half time and under the Union's proposal will receive half the vacation benefit. This favors the Union's final offer. Much the same thing can be said concerning the Union's sick leave payout proposal. It is consistent and proportionate with some of the internal comparables and has some support in the external comparables.

The Union's health insurance proposal, unlike their vacation and sick leave proposal, is not consistent or proportionate to the internal comparables. There is not one single internal unit where a less than full-time employee gets a full health insurance contribution by the Employer. Part-time employees in one internal unit only get pro rata contributions and in another part-time employees over 18-1/2 hours per week only get 75% of their premiums paid. Accordingly, the Employer's proposal is more consistent with the internal comparables.

It is true that Bridgetenders in the Union's external comparables get a 100% health insurance contribution. However, in the village of Winneconne there is no contribution for seasonal employees.[1] More importantly, it is noted that Bridgetenders are part of larger bargaining units in 3 of the 4 counties that pay 100% of the health insurance premium. This raises the question--unanswered in this record--that these employees may have other employment opportunities that would keep them employed year round or at least longer than

[1]Only unionized (internal and external) employees are considered relevant. Equally irrelevant is the Union's deep pockets argument.

six months. Moreover, it is unknown what concessions may have been made over the years to gain such a significant benefit.

The Employer drew particular attention to the ages of the employees. The Union found this offensive. Indeed, the ages of the employees is irrelevant. However, it is difficult to ignore that many of them have some form of health insurance coverage either from other employers or medicare. This is significant since not only is the Union asking the Employer to provide a contribution grossly disproportionate to the employees' time commitment, they are asking them to provide some very expensive coverage where it isn't necessarily needed. A strong argument can be made that no employee should be without paid health insurance. However, given the extreme cost of health insurance, a very strong argument can be made that coverage should be made in the most economical way. Another fact is that the Union is asking the Employer to do something that no other unit has bargained. Thus, it would seem to make more sense for the Union to propose--if they want employees to be assured of year round coverage--that the Employer be required to provide supplementary insurance (or its monetary equivalent) or only provide it where substantially similar coverage doesn't exit for the months a seasonal employee does not work.

The remaining issue with respect to health insurance has to do with changes to the plan. This really is a minor aspect of the health insurance dispute. Moreover, neither is particularly unreasonable. The Union's proposal is rather standard. Yet as a practical matter, the Employer's proposal isn't much different. Benefits are commonly standardized across bargaining units anyway. Thus, their "me too" proposal isn't offensive, particularly for a small bargaining unit such as this.

The Arbitrator acknowledges that the external comparables tend to favor the Union. The internal comparables, however, favor the Employer. In this case, the Arbitrator must give more weight to the internal comparables. Internal comparables historically in municipal units have been given great weight when it comes to basic fringe benefits. There is great uniformity in contribution levels and in the specific benefits, particularly in health insurance. Significant equity considerations arise when one unit seeks to be treated more favorably than others. For this reason and for the reason that the Union's proposal goes against a basic notion of reasonableness, the Arbitrator is extremely reluctant to impose such a major concession--not only in principal but economic cost--on this Employer. Such major concessions are normally best left to voluntary agreements. This is especially true since this is a first time

contract where it is not apparent that the Union has made a corresponding concession. The Union argued that acceptance of a substandard wage was the necessary quid pro quo. However, it is speculative that they could have justified more of a significant increase than received by other internal units (i.e. catch up) in a first time contract. First time contracts usually in the normal course of collective bargaining do not produce optimal results in all aspects of the agreement.

The Arbitrator favors the Union proposal on sick leave payout and vacation but favors the Employer's offer on health insurance. It is also his opinion that the health insurance issue is a more substantive consideration than the combination of the other two issues. Health insurance is extremely expensive and its cost impact, particularly over the long run, dramatically outweighs the loss of holiday pay and vacation.

AWARD

The final offer of the Employer
is accepted.

Gil Vernon, Arbitrator

Dated this 25th day of June 1991.