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AUG 25 1993

IN ARBITRATION

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the
Arbitration between

COLUMBIA COUNTY HIGHWAY
DEPARTMENT EMPLOYEES
UNION, LOCAL 995
AFSCME, AFL-CIO

and

COLUMBIA COUNTY

Case 116
No. 46732
INT/ARB-6284
Decision No. 27453-C

ARBITRATION AWARD

Introduction

The Columbia County Highway Department Employees' Union, Local 995, AFSCME, AFL-CIO, (hereafter sometimes referred to as the Union) represents all employees of the Columbia County Highway Department (hereafter sometimes referred to as the County or the Employer). On December 26, 1991 the Union filed a Petition for Arbitration with the Wisconsin Employment Relations Commission pursuant to Section 111.70(4)(cm) 6, Wis. Stats. After an investigation and certification of an impasse, the parties submitted final offers and the investigation was closed. Arlen Christenson of Madison, Wisconsin was appointed to arbitrate pursuant to Section 111.70 Wis. Stats. An arbitration hearing was scheduled for January 29, 1993 but before the hearing was commenced the representatives of the parties reached a settlement agreement. That agreement, however, was rejected by the Columbia County Board. The matter was rescheduled for hearing on April 30, 1993 at which time a hearing was held in Wyocena, Wisconsin and the parties had full opportunity to present evidence and argument. Post hearing briefs and reply briefs were filed with the arbitrator. The final brief was received by July 15, 1993.

Appearances

The County appeared by Godfrey & Kahn, S.C., Mr. Jon E. Anderson and Mr. Dana E. Roberts, Madison, Wisconsin Attorneys at Law.

The Union appeared by Mr. David S. White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Madison, Wisconsin.

Final Offers

The County's Final Offer is as follows:

The county accepts all tentative agreements as initialed on October 15, 1992. All other provisions of the 1990-1991 collective bargaining agreement including side letters, and memoranda of understanding, shall remain unchanged for the successor agreement commencing January 1, 1992, except for the following relating to APPENDIX A, JOB TITLES, WAGE RATES

Revise the wage scale as follows:

- a. Increase all wages 3.5% effective January 1, 1992
- b. Increase all wages 2% effective July 1, 1992
- c. Increase all wages 4.5% effective January 1, 1993

The Union's Final Offer is as follows:

All provisions of the 1990-1991 Collective Bargaining Agreement, including all side letters and memoranda of understanding, shall remain unchanged for the successor agreement commencing January 1, 1992, except for the attached tentative agreements and the following changes:

1. **Article 11, Sick Leave**

Replace existing Section 1105 with the following:

Employees or their heirs who terminate their employment by death or retirement and are eligible for Wisconsin Retirement Annuity and/or Social Security shall be paid 50% (50%) of the accumulated sick leave at their daily hourly rate.

2. **Appendix A, Job Titles, Wage Rates**

- a. Increase all wages by .35 per hour on January 1, 1992 (3.5% on unit average);
- b. Increase all wages by .21 per hour on July 1, 1992 (2% on unit average);
- c. Increase all wages by .37 per hour on January 1, 1993 (3.5% on unit average);
- d. Increase all wages by .22 per hour on July 1, 1993 ((2% on unit average).

Due to these final offers there are two issues involved in

this proceeding. The parties are at odds on the wages to be paid during the two year period of the agreement and on the matter of the conversion of accumulated sick leave at the time of retirement, death or other termination of employment.

Discussion

Comparability Dispute

Section 111.70(4)(cm)7, Wis. Stats. lists ten factors to which arbitrators are to give weight in resolving impasses in municipal employment. Among those factors both parties emphasize what have come to be known as "internal and external comparables." That is, in the words of the governing statute, "comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings" with those of "other employees generally in public employment in the same community and in comparable communities." "Internal comparables" are the other Columbia County bargaining units. "External comparables" are similar bargaining units in comparable counties. The parties, of course, disagree on which counties are comparable.

The County's list of comparable counties includes all that are contiguous to Columbia county with the exception of Dane county. The Union's comparables include Dane and exclude Marquette, Adams and Juneau, all of them contiguous counties smaller than Columbia. Instead of these small, contiguous counties the Union proposes Jefferson and Rock counties as comparables. The County also contends that neighboring Sauk county should be considered especially comparable because of its proximity and similar size and because arbitrators in prior arbitrations involving bargaining units in the two counties have treated them in that way.

There is nothing talismanic about selecting a particular list of comparable counties. All Wisconsin counties have similar governmental authority, organization and obligations and are "comparable" in many respects. Due to location, population, tax resources and other factors some are more alike than others. On the other hand various state and federal programs tend to even out some of these differences. In the end comparability is a matter of degree. Some counties are more alike than others and thus more "comparable" as that term is used in the governing statute. Information about wages, hours and conditions of employment in those counties is appropriately given more weight than similar information from other counties.

In this case information from all of the counties cited by both parties is relevant and is given weight in making this award. Dane county is not, as the County contends, too large even to be considered. There is a long shared boundary between Dane and Columbia counties. The two counties are in the same labor market for blue collar as well as white collar and professional employees.

Dane county's size and resources are taken into account in weighing its comparability but these factors do not exclude it from consideration. Jefferson and Rock counties are relatively more remote than the other counties. Likewise Juneau and Adams counties because of their size and the fact that they are only technically contiguous to Columbia county are less like Columbia than the other counties on the list. Nevertheless they are comparable enough to be relevant.

The Wage Issue

There is not a lot of difference between the final offers in terms of the cost of the proposed wage increases in 1992-1993. The County's offer calls for a 5% increase in 1992 and an 4.5% increase in 1993. The Union's offer totals 5.5% in 1992 and 5.5% in 1993. Because the Union's 1993 offer is for a split increase, however, its 1993 cost is not much different than the Employer's offer. The major difference between the two offers is that at the end of the two year contract period the County's offer results in a little better than 9.5% increase while the Union's exceeds 11%. The Union contends that the larger increase is appropriate because of the need to catch up with comparable bargaining units. The County points out that its offer is more in line with Consumer Price Index (CPI) increases and argues that the Union's proposed "lift" would have a major impact on 1994 negotiations for a new contract.

The Union's offer exceeds the increase in cost of living and exceeds the 1992 wage increases in the majority of comparable bargaining units whether the comparables are the Employer's, the Union's or a combination of the two. The question is whether, as the Union contends, its proposed increase is justified as a necessary catch up.

There is no doubt some catch up is appropriate. Even using the County's comparables the 1991 wages paid in the bargaining unit rank at the bottom in two of the five classifications and next to last in a third. These three classifications include the vast majority of the employees in the department. Overall wages in the Columbia county Highway Department are well below average. Using the Union's comparables the Columbia county bargaining unit is at the bottom in the same classifications and, again, well below the average. The County points out that its offer would move the Patrolman and Laborer classifications up to 5th among the 7 comparables in 1992, the Truck Driver and Parts Man classifications up to 4th and maintain the Mechanic at 2d. Using the Union's comparables the County's offer leaves the three most numerous classifications at either last or next to the last among the comparable counties.

The County contends that total compensation and not just wages must be considered in making comparisons. This, of course, is a perfectly logical view. Whether compensation is in the form of

wages or "fringes" it costs the employer and benefits the employees. The problem comes in devising ways of costing and comparing benefits between comparable bargaining units. The differences in benefits and in bargaining units make such comparisons extremely difficult. In any event, as the Union points out in its reply brief, when proper adjustments are made, the total cost comparison does not seem to come out much differently from the wage comparison.

The County also argues that an arbitrator should not depart from wage patterns negotiated between the parties over a number of years. It argues that the relative wage position of the bargaining unit did not come about by accident but rather through collective bargaining. This argument simply proves too much. Of course the pattern of settlements and other facts about the history of the bargaining relationship are important. The question here, however, is whether that history has resulted in a wage structure that departs from the comparables to the extent that a catch up of the magnitude proposed by the Union is appropriate. Or, more precisely, is it a better proposal than that contained in the County's offer.

The evidence supports the conclusion that a catch up is necessary. If the County's offer is adopted, however, the majority of the bargaining unit will continue to receive wages near the bottom of list of comparables. The starting wage in all classifications except the recently created Mechanic classification will continue to be the lowest among the comparables. The top of the scale in all classifications but the Mechanic will be in the bottom half of the County's comparables and next to last among the Union's. The Union's offer and the County's will, in most cases place the Columbia County highway employees in the same relative position among the comparables. The Union's offer will, however, move the unit average closer to the next higher comparable.

The County recognizes that its offer calls for a wage increase that is less than that received by some of the comparable bargaining units. It contends, however, that "[s]ome of the reasons the comparables are settling at higher levels is to buy out language and benefit concessions and "catch-up" to other counties." This may be true in some instances but there is little or no evidence in the record to support this assertion.

The County also contends that its offer is more consistent with wage increases paid other Columbia county bargaining units. The other units are the court house employees, the sheriffs department, the nurses unit and the social workers. The Union contends that, although its offer is structured differently than some of the other units, it results in a total increase or "lift" that, at the end of the two year contract period is equal to the lowest received by the other units. The Union rejects comparisons with the court house employees because, it contends, the

restructuring of the scale in that unit makes meaningful comparisons impossible. Accordingly the Union limits its internal comparisons to the Sheriff's Department, the Nurses and the Social Workers.

There is no dispute that the Union's offer is essentially the same as that received by the Sheriff's Department and the Social Workers. The County contends, however, that the Social Workers settlement should be given less weight because it resulted from arbitration rather than voluntary agreement. For some purposes this argument is valid. However, the Social Workers contract is still a part of the internal comparisons and is not to be completely ignored.

The County also disputes the Union's contention that the Nurses received increases totaling 6% in each of the two years of their contract. Instead, the County contends, the increase was 4.5% in each year. The language of the accepted offer in the Nurses unit, however, calls for "4.5% + 1 Step". This is consistent with the Union's position that the increase, in fact, amounts to 6% in each year of the contract.

The "internal comparables" support the Union's wage offer. If the County's offer were adopted the Highway unit would receive the lowest wage increase among the county units. The Union's offer is on par with the other units with which direct comparisons are possible and somewhat lower than the Nurses. The restructuring of the wage scale in the court house makes direct comparison difficult but, as nearly as can be calculated, the Union's offer is not out of line.

The wages paid Columbia county highway employees are below the level paid in comparable bargaining units. There is no contention that the county is less able than comparable counties to pay the going wage level. Nor is there any other evidence to support the differential. The only explanation advanced is that the parties have reached voluntary agreements over the years that have led to this result. The county's assertion that the overall compensation paid its highway employees improves its relative position among the comparables is not supported by the facts of record. To the extent that the variables among counties make such comparisons possible the conclusion has to be that the overall compensation approach does not significantly change the rankings. The Union's offer is also more consistent with the settlements with other county bargaining units or the "internal comparables." The inescapable conclusion is that the Union's wage offer, providing for a modest catch up, is preferable.

Sick Leave Provision

The current collective bargaining agreement provides that bargaining unit employees, upon retirement, or their heirs upon their death are to be paid for 40% of their accumulated sick leave at their hourly rate of pay. The Union's offer provides that the percentage is increased to 50%. The County contends that this is an expensive provision that is in excess of that received by other bargaining units and is, in itself, reason to reject the Union's final offer. The County devotes the major portion of its argument to its attack on this aspect of the Union's final offer.

The County points out that all of the other County bargaining units, except the County Home, have contract provisions providing for a cash pay out of from \$15 to \$25 per day for each day of accumulated sick leave. The County Home contract language is the same as the current provision in the Highway Department contract. If the Union's offer is adopted, the County points out, the cash pay out upon termination of a Highway Department employee could reach as high as \$6,203 while in the units other than the County Home the maximum would be \$1,200. In the County Home unit the maximum would be \$3,525.


The Union points out that, although the disparity portrayed by the County looks impressive at first glance, a further analysis reduces the impact of the argument. The difference highlighted by the County exists only in the case of a Highway Department employee who retires and chooses to take a cash payment rather than apply his accumulated sick leave to pay for health insurance. Employees in other units are entitled to 50% of their accumulated sick leave at their hourly rate if it is used to purchase health insurance. In addition the contracts covering the other units provide for payment of 100% of accumulated sick leave at death rather than the 40% under the current Highway Department language or the 50% provided for in the Union's offer.

The Union's characterization of the sick leave issue as a minor issue is appropriate. The amount of money at stake is relatively small. The variation from one County bargaining unit to another is such that adoption of the Union's offer cannot be said to break a pattern. It is likely, as the Union argues, that most employees upon retirement will choose to use their accumulated sick leave to pay for health insurance. In such cases the Union's proposal equalizes the benefit. The Union's proposal is probably not the best way to handle the accumulated sick leave issue. It makes an already haphazard pattern of provisions in the various collective bargaining units a little worse. The County's argument that its offer should be chosen on the basis of this issue alone, however, is unpersuasive. There is little to choose between the offers on this issue.

Award

The final offer of the Columbia County Highway Department Employees Union, Local 995, AFSCME, AFL-CIO is selected and shall be made a part of the 1992-1993 collective bargaining agreement between the parties.

Dated at Madison, Wisconsin this 28th day of August, 1993.



Arlen Christenson, Arbitrator