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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL 40, AFSCME,
AFL-CIO

To Initiate Arbitration
Between Said Petitioner and

Case 29
No. 49024 INT/ARB-6850
Decision No. 27701-A

CITY OF WISCONSIN DELLS

APPEARANCES:

David White on behalf of the Union
James Gerlach on behalf of the City

On July 20, 1993 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. A hearing in the matter was conducted on November 11, 1993 in Wisconsin Dells, WI. Briefs were exchanged by the parties and the record was closed by January 25, 1994. 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 Union proposes that employees receive a 4% increase, based upon the unit average, on January 1, 1993 and a 4% increase, similarly based, on January 1, 1994.

The City proposes that all wages be increased by 2% on January 1, 1993, 3% on July 1, 1993, and 4% on January 1, 1994. It also proposes that there be a cap placed on longevity payments, so that longevity payments would not exceed \$1.25 per hour. Employees who are currently receiving more would be frozen at their higher longevity rates.

UNION POSITION:

The effect of the City's offer would be to freeze the longevity of three of 22 unit employees. In the first year of the proposed agreement, the City's offer would result in three more being capped at \$1.25 or red-circled. Thus, the City's proposal represents a substantial modification of the status quo.

Arbitrators generally adopt final offers which preserve that which has been previously agreed to by the parties, absent special and compelling circumstances. (Citations omitted)

In this case there is no demonstrated need for the change sought by the City.

If uniformity of benefits is what the City seeks, in this instance the Public Works unit (the unit whose benefits are at issue herein) is twice the size of the Police Unit, and thus, the majority of represented City employees currently enjoy the benefit in dispute.

In response to the City's contention that the fringe benefit packages for all City employees are essentially the same, the record demonstrates that not to be the case. Indeed, the fringe benefits provided the police are uniformly superior to those provided the public works unit employees. The sole exception is longevity, which the City wants to reduce to the level of the police unit. Clearly the City cannot find support for its offer with an internal equity argument.

Furthermore, internal comparisons should not be made with internal, unrepresented managerial and administrative personnel, whose terms and conditions of employment are determined unilaterally by the City.

Relatedly, if such comparisons are to be made, it is noteworthy that the City, by rolling longevity into the unrepresented personnel's salary, did not cap longevity as it is attempting to do in this unit.

Even if one assumes that there is a need for the benefit change in dispute, the City has failed to provide an adequate quid pro quo for the change it proposes, since the City is clearly seeking a significant concession from unit employees. Where arbitrators have not required quid pro quos under similar circumstances, such cases have been decided narrowly on the facts, i.e., an economic quid pro quo was found to be inappropriate for a non economic change, or where all eight of an employer's other bargaining units agreed to the change without a quid pro quo (Citations omitted). Moreover, in each of these cases, the arbitrator required the employer to establish a compelling need-- a factor which the City in this case has been unable to establish.

The record indicates that the pattern of increases among the comparables is 4%, or increases in the 45 to 50 cents per hour range for each of the two years of the proposed agreement. If there is a quid pro quo, it is the degree to which the City's wage offer exceeds this pattern of increases. Though the City's first year proposal includes a lift about 1% higher than the pattern, this slight variation hardly constitutes a legitimate quid pro quo. What little advantage the employees would enjoy from this lift is lost in the substantially reduced actual pay they would receive during the first year.

With respect to the issue of external comparability, Lake Delton has not been considered a significant comparable for the public works unit since it only has two classifications of employees: public works employees and secretaries. It does not have a water and waste water utility, an electric utility, a library, a cemetery, meter maids, crossing guards, machine operators, or mechanics.

Moreover, the quid pro quo offered by the City is far short of that it gave to the police unit at the time it negotiated a cap on the longevity benefits provided employees in that unit. In that bargain the parties negotiated a lift of over 16% over two years, whereas in the instant unit, an approximate 8% lift was agreed to for the same period of time.

The City's contention that its actual cost in the relevant police bargain was only approximately 4% is not supported by record evidence, which indeed indicates that the actual cost of said settlement was substantially more than 4%.

It is also noteworthy in this regard that the concession proposed by the City has a far greater, and more immediate impact on the employees in the instant unit than was the case in the police unit since all employees in this unit are eligible for the benefit--in contrast to the police unit where five of 16 employees were part time and were thus not eligible for the benefit. In addition, the average seniority in this unit is much greater than is the case in the police unit. Lastly, in this unit six employees would have their longevity payments red circled immediately, whereas in the police unit, the bargain had no such immediate impact.

Also, since the pattern of increases, both internally and externally, plainly support the Union's final offer, it should be concluded that the City's offer fails to include an adequate quid pro quo for the imposition of a longevity cap.

CITY POSITION:

Except for a difference relating to the treatment of accumulated sick leave, the fringe benefit packages that apply to Police Department employees, management employees, and general City employees is identical.

This uniformity of benefits changed in 1991 when the Police Department agreed to a cap on longevity at \$1.25 per hour. Though said agreement resulted in a significant lift in police wages, which was based upon catch up considerations, the actual cost to the City was approximately only 4% per year. Thus, there was no quid pro quo of any significance in said bargain.

Contrary to the contention by the Union, the 1991-92 police wage bargain was not a quid pro quo for the longevity cap. Instead, it was a catch up agreement which was responsive to a compelling comparability argument.

Similarly, management also received a 4% increase for 1993 at the same time their longevity was rolled into their salary.

When one looks at both internal and external comparables, the longevity formula at issue herein has no comparable support whatsoever.

The local school district's longevity formula for employees represented by the same Union is worth only a small fraction of the benefit available to the unit employees whose benefit is at issue herein.

Analysis of other external comparable benefits leads to the same conclusion.

Lake Delton, which is the City's most important comparable, has no such benefit. Lake Delton has the same labor pool, a substantial mutual border, and like Wisconsin Dells, is a leading tourist center with a similar population and assessed values.

Other external comparables, proposed by both parties, have either no longevity provisions, or have longevity benefits which are significantly less than the City's. In addition, all which provide longevity benefits pay the benefit as a one-time a year payment. The benefit is not automatically increased because of wage progressions which take place annually, as is the case in the City's benefit.

Moreover, except for three employees, the proposal to cap longevity does not actually result in any loss to unit employees during the life of the agreement. When the reduction of benefits is spread over the entire unit, the actual cost

of capping longevity is infinitesimal. Thus, the proposed change in longevity is not a significant or substantial change in the status quo.

In fact, the City's wage proposal of a straight across the board percentage increase would result in higher wages for the six employees arguably adversely affected by the City's longevity proposal than would be the case if the Union's offer is selected.

The City does not believe that any quid pro quo is necessary in this case since its cost is no longer reasonable, nor is it in any way related to its original purpose. Most importantly, the City's benefit is completely out of the comparable mainstream.

As public sector costs have escalated in recent years, a number of arbitrators have relied on comparability rather than the quid pro quo to support the reasonableness of a change in the status quo. (Citations omitted)

Relatedly, in this context, cost savings, in and of themselves, especially when supported by comparability, demonstrate a need recognized by arbitrators. (Citations omitted)

It is not disputed that the City pays a fair wage. The problem with the City's compensation package is the cost of its fringe benefit package, which tags along with wages. Such benefits amount to approximately 40% of wages.

The City is simply attempting to hold such costs through its efforts to cap longevity. Reduction of such costs is not the purpose of this proposal. It is, instead, simply responsible fiscal management in the context of today's tax levy limits and dwindling general funds.

Even if a quid pro quo is deemed necessary, the City has offered a higher wage increase than was given to either the Police Department or management for 1993.

External comparables also support the reasonableness of the City's wage proposal. In fact, the City's wage proposal exceeds all settlements in area communities.

The City's wage offer will result in longevity increases across the entire unit that more than offset the tenth of a cent over the contract term that would otherwise be lost. In 1993 the City's proposal would result in a 2 cents an hour loss during the first six months of 1993, but it would also result in 2

cents an hour more in the second six months. In 1994, it is one cent per hour higher per unit employee.

In addition, the City's proposed wage differential amply justifies the proposed longevity cap since it would result in substantially increased income for unit employees. Though the City's wage offer will generate 6 cents less an hour during 1993 than the Union's offer, it will result in 10 cent more in 1994, a net positive cash flow of 4 cents an hour, or 2 cents an hour in each year of the contract. When this is added to the 1/2 cent per hour realized by longevity increases, the City's *quid pro quo* is surely adequate and fair.

The City's wage proposal also more closely approximates the tax levy limit that it is obligated to comply with than does the 4% increase proposed by the Union.

DISCUSSION:

The record evidence in this case indicates the following:

1. The City's proposed cap on longevity will not result in any significant losses among unit employees during the course of the proposed agreement, but has the potential of significant long term losses among senior unit employees.
2. The City's longevity benefit is not supported by external comparables. Indeed, the benefit appears to be exceptionally generous when so compared.
3. The City does not provide uniform fringe benefits to all of its employees, and thus, the City's internal comparability arguments are not very persuasive in this case.
4. The City has demonstrated that it has a legitimate need to gain greater control over the escalating costs of the fringe benefit packages it provides, particularly where the costs of such benefits are tied to the costs of wages.
5. Though the actual costs of the City's wage proposal are comparable with the external comparable settlement pattern, the lift generated by said proposal exceeds the settlement pattern by about one percent. The Union's wage proposal is supported by the external settlement pattern.

6. The City's longevity cap proposal will not result in significant savings to the City during the life of the proposed agreement, but could have long term cost saving consequences.

7. The City's wage proposal will result in higher wages for higher paid employees during the life of the proposed agreement than the Union's wage proposal, and the opposite would be the case for lower paid employees.

The foregoing indicates that external comparability considerations, as well as the City's legitimate desire to control the escalating costs of the City's fringe benefit package, support a finding that the City has demonstrated a legitimate need for its longevity cap proposal.

The record also indicates that though the City's longevity cap proposal would not result in short term losses among unit employees, it could have long term implications in that regard which the undersigned deems to be sufficiently significant to justify a reasonable accompanying quid pro quo.

The question then remains whether the City's proposed extra one percent lift on unit wages suffices in that regard. While the answer to that question is a close call, the undersigned believes that in the context of all of the circumstances present herein, the answer to that question should be yes.

The above conclusion is based primarily upon the following considerations:

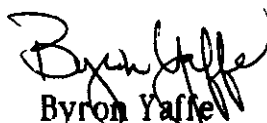
Under the City's proposal unit employees will continue to receive longevity benefits which are of significantly more value than the value of longevity benefits received by the vast majority of employees in externally comparable bargaining units. In addition, unit employees will not incur economic losses resulting from the cap during the life of the proposed agreement when one considers the value of the City's wage and longevity proposal together. Though the undersigned concedes that the cap on the longevity benefit could have a long term adverse impact on at least some senior unit employees, the City's proposal in this regard is based upon legitimate considerations, and has been crafted in such a narrow manner to minimize the economic harm that might flow therefrom on current unit employees. The combination of the one percent wage lift over the comparable norm, the red circling of employees who receive benefits above the cap, and the fact that the benefit continues to be tied to wages--again contrary to the external comparable pattern, all support the reasonableness of the City's efforts to control fringe benefit costs in this regard.

Based upon all of the foregoing considerations the undersigned hereby renders the following:

ARBITRATION AWARD

The City's final offer shall be incorporated into the parties 1993-94 collective bargaining agreement.

Dated this 28th day of January, 1994 at Madison, WI.


Byron Yaffe
Arbitrator