

STATE OF WISCONSIN
Before the Interest Arbitrator

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In the Matter of the Petition)
of)
Wisconsin Council 40)
AFSCME Council 40 AFL-CIO)

For Final and Binding)
Arbitration Involving)
Personnel in the)
Employ of)
Douglas County)

Case 204
No. 50514 INT/ARB-7198
Decision No. 28123-A

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

APPEARANCES

For the Union:

James E. Mattson, Staff Representative

For the County:

John Mulder, Personnel Director

PROCEEDINGS

On August 17, 1994 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm)6. of the Municipal Employment Relations Act, to resolve an impasse existing between Wisconsin Council 40,

AFSCME Council 40, AFL-CIO, hereinafter referred to as the Union, and Douglas County, hereinafter referred to as the Employer.

The hearing was held on November 28, 1994, Superior, Wisconsin. The Parties did not request mediation services. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on January 26, 1995 subsequent to receiving the final briefs.

ISSUES

Except for the tentative agreements of the Parties and all other provisions of the contract as currently constituted, the following issues are in dispute in this matter:

County offer:

Effective January 1, 1994, a 3.0% increase across the board.

Effective January 1, 1995, a 2.5% increase across the board.

The County's final offer also includes the implementation of a Flexible Benefit Plan upon the date of the Arbitrator's award.

Union offer:

Effective January 1, 1994, a 3.5% increase across the board.

Effective January 1, 1995, a 3.5% increase across the board.

COUNTY POSITION

The following represents the arguments and contentions made on behalf of the County:

Had the Parties reached a voluntary settlement, it is the County's final offer that should be considered the most reasonable and acceptable of the two final offers. Of the criteria contained in the applicable statutes, the following are the most germane to this dispute:

C. The interest and welfare of the public and the financial ability of the unit of government to meet the cost of any proposed settlement.

E. Comparison of wages and other benefits to other employees generally in public employment in the same community and in its comparable communities.

G. The average consumer prices for goods and services commonly known as the cost of living.

The County has reached voluntary settlements with its paramedics unit and its courthouse clerical unit for 3% in 1994 and 2.5% in 1995. These two units make up 46% of the unionized work force in Douglas County. The courthouse clerical unit represents employees in 17 different departments and works alongside the custodians represented by this bargaining unit. A number of arbitrators have recognized the importance of internal patterns and the County provided appropriate citation.

An award which would include the Union's final offer would send the wrong message to the rest of Douglas County's unionized work force. This would make reaching voluntary settlements more difficult. County Exhibit 3 shows a long history of maintaining consistent increases among its 7 bargaining units. This pattern demonstrates what is considered reasonable as the settlements have been accepted

by the County and a wide range and number of employees. This fact should be given the utmost consideration. Again, appropriate authorities were cited.

The County recognizes that the internal pattern cannot stand alone but must be viewed in the context of external comparables. The County uses Ashland, Bayfield, Burnett, Sawyer and Washburn Counties as external comparables. These comparables have been consistently used in the past during bargaining and established by past arbitrators. A review of County Exhibit 12 shows that, while the settlement pattern increase in wage rates is slightly higher than the proposal by Douglas County, the settlements have also included changes in health insurance. The external settlement pattern should also be viewed in relationship to the wage rates paid by the external comparables. County Exhibit 11 shows that the wages proposed by the County are above the average of the 5 County proposed comparables for each custodian position. The County's proposal is near the average for the highest paid custodian. An award of the County's final offer would certainly be within reason for the custodian position. The custodians are a larger part of this unit and should appropriately be given slightly more weight than the forestry positions.

Comparisons between forestry positions are more difficult. While the Tech IIs are slightly below, the Tech IIIs are considerably above average. Cruiser positions in Bayfield and Iron Counties should not be used for comparison based on hourly rates as these are different types of positions than forestry technicians. The County and the Union are apart in only .06 per hour for the Conversation Tech IIIs. When compared to a Forestry Tech II in Washburn County, Sawyer County and a parks and forestry worker in Burnett County, Douglas County's final offer exceeds the wage rate for each of these positions.

The County and the Union are .08 per hour apart for the Tech II position. The County's final offer exceeds that of a Forestry Tech I in Washburn, and the parks and forestry worker in Burnett County. Depending on which positions are compared, the County's final offer is lower than the comparables in some cases but higher in others. The County also wants to point out that Union Exhibit 5 must be looked at with extra discernment. The negative increase in the minimum wage rate is due to a step increase which was voluntarily agreed to. Further, the Exhibit shows that, while the Union says it is proposing a 3.5% increase, it is showing a 3.75% increase for the Tech II.

Comparison of the total compensation is outlined in Union Exhibit 7. It shows there are no major discrepancies in the various fringe benefit levels using the Union's comparables. Ashland, Burnett, Washburn and Sawyer Counties all require employees with single health insurance coverage to pay a portion of the premium while that is not true in Douglas County. Comparison of strictly wage rates to comparables shows that, while the County is not necessarily the leader in wages for forestry positions, its wages are not at an unreasonable level. A prior interest arbitration decision noted that the Conservation Tech III wage proposal was somewhat excessive. Based on the record, the Union has not provided a compelling reason to deviate from the internal settlement pattern.

The County's position regarding the cost of living criteria is based on principles used by arbitrators that internal settlement patterns are the best reflection of the cost of living. The cost of living factor should not be controlling in the face of a strong and clear cut wage settlement pattern. Again, the County provided a number of authorities to bolster its arguments in this area. The implementation of the flexible benefit plan gives the employees some options to save money and reduce the effect of the increase of the cost of living. The County maintained that this criteria should favor the County's position or

should be given little weight due to the internal settlement pattern. Finally, the interest and welfare of the public would be best served by the County's position. It is the County's goal and a principle of arbitration to provide equitable wage increases among bargaining units. The County maintains that its wage rates, as compared to externals, are not out of line. The County has the ability to retain employees within the Forestry Department and the Building and Grounds Department as evidenced by the seniority levels. The County does not argue an inability to pay but feels that Union has the burden of proof to deviate from the internal settlement pattern for wage increases. The County argues that the public is better served when the internal pattern is maintained. When the wage increase is looked at in the larger context of the internal pattern and the labor market in northwest Wisconsin, the County's final offer is fair to the employees in this unit as well as to the rest of the employees in Douglas County.

In conclusion, it is the position of the County that arbitration is an extension of the bargaining process and that the award should be the selection of the final offer in its entirety. That would be the closest to what a voluntary agreement would have been if a voluntary agreement could have been achieved. Based on this position, the criteria set forth in the statute, the arbitral principles relevant to

this case and the arguments of the County, the County believes that its final offer is the more reasonable, and it is its offer that should be selected by the Arbitrator over the Union's.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

The primary dispute in this interest arbitration is the appropriate wage increase for employees working in the Building and Grounds and Forestry Departments of Douglas County. The Union believes that the wage increases it proposed are supported by the established comparables for Douglas County. The Union anticipates that the County will argue that its proposed wage increase reflects internal settlement patterns reached between the County and other units. The County's offer of 3% effective January 1, 1994 and 2.5% effective January 1, 1995 is an insufficient based on both the external and internal comparables. The County's argument that its wage proposal is consistent with its own internal settlement pattern is false. In fact, its internal settlements are quite different. Only three out of seven units have settled and one unit has settled for a substantial

higher amount than what the County has offered. However, the Union noted that the external settlement pattern best establishes the proper guide as to what the wage rates should be for the represented employees in this case. Likewise, the County has made some very significant oversights and omissions when it supplied evidence as to its comparable data.

The long established comparability group will support the Union's argument that its offer is the more reasonable of the two presented. The Union believes that the County has made a serious oversight in omitting Iron County as a comparable.

The Union represents two distinctive groups of employees of the Building and Grounds Department employees and employees of the Forestry Department. The Union has provided a significant amount of data regarding the wage rate proposals. A review of this data shows the compelling argument that the external comparables support the Union's position.

The Union anticipates the County will argue that the settlement pattern set by the comparable counties should be discounted due to the fact that most of the settlements are the back end of multi-year contracts. Other arbitrators have

dealt with these same arguments and have found the merit of using multi-year contracts.

The County proposes a limitation on the comparability group by excluding Iron County. Such a limitation runs contrary to the well-defined comparability group. The obvious intention of the County is to limit the scope of a fair analysis of comparable data. Iron County is one of these comparable counties. The County is engaging in an act of cherry picking through comparable counties. In fact, Iron County was proposed as one of the comparables by Douglas County itself in a case involving its nursing unit. The Union asks, upon comparing the close similarities between Douglas County and its established comparables, why should Douglas County comparables be ignored when it comes to the issue of determining the appropriate wage increase.

With respect to the internal pattern, the County's contention that a consistent pattern exists is in fact completely erroneous. In 1994 the wage settlement for the nursing unit was not 3% as was claimed, but a lift increase in excess of 6%. Only two units have settled for 1994 and 1995 at the level of the County's proposals for these years. Four other units have not settled for 1994 and 1995. Without the majority having settled and only a small minority of two out of the seven having reached a settlement, there is no

internal settlement pattern. In addition, the Union is not privy to the other reasons why these two units that settled with Douglas County did so. Quite conceivably, other objectives may have played an important role in each bargaining unit's goals.

Besides the strong support for the Union's offer found from the external comparables, support can be readily found from a review of the economic data as it relates to the cost of living. The most recent data shows that the North Central Metro Area's index was, as of September, 1994, either 4.1 or 4.0%. Obviously, either measure supports the Union's proposal of 3.5% increase for 1995. One must note that an insufficient 1995 external settlement pattern exists.

The County in its final offer also contained a proposal for a Flexible Benefit Plan. The Union noted that, while this plan may have some limited value to the bargaining unit employees, its value for the bargaining unit as a whole is greatly overstated in the data supplied in County Exhibits 12, 13 and 14. In no way does this Flexible Benefit Plan offset the smaller County wage proposal.

In conclusion, a careful review of the circumstances involved in this case illustrates the numerous reasons why the Union's final offer should be selected over the County's

offer. No internal pattern can be inferred by a mere two bargaining units settling for the County's wage offer. Furthermore, one unit settled substantially higher and four other units remain at odds with the County over wages. Thirdly, the cost of living data underscores the Union's offer as most closely meeting the economic realities of current times. Finally, the Flexible Benefit Plan thrown in as a small sweetener in no way offsets the unreasonably low wage offer of the County. Therefore, the Union respectfully requests that the Arbitrator uphold the Union's offer in this case.

DISCUSSION AND OPINION

The Union and the County have not been able to reach an agreement on the wage increases for the two year period under consideration. Of the factors that are normally considered in interest arbitration, only three have been cited by the Parties for consideration by the interest Arbitrator. The Arbitrator has reviewed all the statutory factors and has concluded, as have the Parties, that none of the other factors are appropriate to this hearing. The factors that

will be considered are the internal comparables, cost of living and the external comparables.

The Union argued that the Arbitrator's consideration of the internal comparables should be tempered by the fact that only two of the seven County bargaining units have settled for wage increases that were the same on a percentage basis as offered in this case. In addition, it is noted that the nursing unit received significant adjustments in addition to the percentage increases. The other four bargaining units including this one are in disputes that are at various stages of the process.

The bargaining units that have settled perform different types of work than is performed by the employees in this bargaining unit. In addition, we do have the significant additional adjustments given to the nursing unit due to the inability of the County to recruit appropriate personnel. The other two units, the paramedics unit and the clerical unit, have settled on the basis proposed by the County in this interest arbitration. It is unfortunate that there are only two such settlements to serve as a guide, yet that is all we have available to us at this time. Therefore, the Arbitrator will find that the nursing unit's extraordinary wage increases, based on the evidence presented, seem to be fully justified by the inability of the County to hire

appropriately licensed personnel. The Arbitrator notes we have no such claim in this case. This leaves us with the paramedic and clerical units whose settlements favor the County's position in this matter. Since there are no other internal settlements which favor the Union's position, it is the Arbitrator's ruling that the County will prevail with respect to internal comparables.

Cost of living, as measured by the CPI, has been a volatile and variable measure over the years. During the last few years, the CPI has been relatively stable; even so, this criteria is difficult to apply and weigh. The cost of living data provided shows that, due to the anticipated cost of living increases, neither offer would be totally inconsistent with the cost of living factor. In addition, as noted in the County's brief, many arbitrators have taken the position that other settlements are the best yardstick for cost of living determinations. In any event, the Arbitrator finds that neither offer would be totally inconsistent with this cost of living factor.

We are then left with the external comparables. In reviewing all of the comparables, the Arbitrator finds that, while there are some areas that favor the County's position, the overall view of the external comparables somewhat favors the Union's proposal. The County makes the point that, when

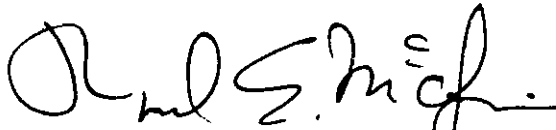
reviewing the total compensation issue which would include health insurance deductibles and contributions, the total compensation would be more favorable to the County's position. In addition, the County has proposed a Flexible Benefit Spending Plan, which the Arbitrator has reviewed, and finds would be favorable to the employee group, not quite as favorable as the County would claim, but favorable nonetheless. In any event, and even including the health insurance and Flexible Spending Plan proposal, the external comparables still somewhat favor the Union's position.

In summary, the internal comparables favor the County's position. The cost of living factor is not determinative, and the external comparables somewhat favor the Union's position. All of this results in an extremely close call. As is usual in these cases, neither side has made an offer that is 100% appropriate. The Arbitrator has determined, after reviewing all of the facts and evidence presented, that it is the County's proposal that is more reasonable, the determinative factors being the internal comparables that this Arbitrator has available to him at this time and the offsetting factors of health and welfare contributions and the proposed flexible spending account that affect the external comparables. Therefore, a ruling in favor of the County will issue.

AWARD

On the basis of the foregoing and the record as a whole and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the County is the more reasonable proposal before the Arbitrator, and directs that it, along with the predecessor agreement, as modified by the stipulations reached in bargaining, constitutes the 1994-1995 agreement between the Parties.

Dated at Oconomowoc, Wisconsin this 15th day of March, 1995.



Raymond E. McAlpin, Arbitrator