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MAY 27 1997

STATE OF WISCONSIN
Before the Interest Arbitrator

In the Matter of the Petition)	
)	
of)	Case 297
)	
AFSCME Council 40, Local)	No. 53733 INT/ARB-7905
1749 Sheboygan County Highway)	Decision No. 28888-A
Department Employees)	
)	
For Final and Binding)	
Arbitration Involving)	
Personnel in the)	
Employ of)	
Sheboygan County)	
)	

APPEARANCES

For the Union:

Helen Isferding, District Representative

For the County:

Louella Conway, Personnel Director

PROCEEDINGS

On January 17, 1997 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm)6. & 7. of the Municipal Employment Relations Act, to resolve an impasse existing between Sheboygan County Highway Department Employees, Local 1749, hereinafter

referred to as the Union, and Sheboygan County, hereinafter referred to as the Employer.

The hearing was held on January 29, 1997, in Sheboygan 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 April 7, 1997 subsequent to receiving the final reply briefs.

ISSUE

The following represents the issue at dispute in this matter:

EMPLOYER

UNION

1. Grandfather longevity for employees hired before 1/1/96

1. Status quo

2. Longevity program for employees

2. Status quo

hired after 1/1/96--\$10 per/mo.
after 5 yrs. of service; \$20
per/mo. after 10 yrs. of
service; \$30 per/mo. after 15
yrs. of service

- | | | | |
|----|---|----|----------------------|
| 3. | \$100 signing incentive for all employees on payroll as of 1/1/96 | 3. | No signing incentive |
| 4. | Eliminate 1st step pay schedule | 4. | Status quo |

The Parties have reached tentative agreement on all other issues in this matter including wages and term of the Agreement.

EMPLOYER POSITION

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

The Employer utilized 10 counties as comparables: Brown, Calumet, Dodge, Fond du Lac, Kenosha, Manitowoc, Outagamie, Ozaukee, Washington and Winnebago. These comparables were utilized in an award of Arbitrator Malamud which also references

Arbitrator Zeidler in concluding the proper comparability group. The attempt by the Union to shop around to select comparables defeats the reasoning to utilize established comparables. The use of consistent comparables is established by statute.

When comparing the ten counties with respect to tax valuation, Sheboygan County's tax rate is the third highest. Sheboygan County is in excess of 14% above the average of the comparable counties.

With respect to the statutory criteria, Sheboygan County has the lawful authority to implement either of the final offers proposed. The tentative agreements are not a determining factor in selecting the final offer.

The County has taken the ten labor contracts involving highway department employees for each of the comparable counties. The information shows that Sheboygan County is above most comparables in the hourly pay rates. In rate Class III the County ranks third and \$.03 above the average overall. When adding the present longevity program, the difference increases to \$1.27 per hour after 20 years. With respect to rate Class II, the rates without longevity are the third highest and \$.15 above the average overall. With the longevity the rates increase to \$1.40 above average. The longevity increases required by the current contract distort the rates and lead to large and

excessive variances. The hourly rates with longevity are so much higher than the comparables, therefore, a need for change has been shown by the Employer.

The County has been consistent in its negotiations since 1995. While some arbitration awards favored the change, others did not. Each unit has its own issues and each must be considered on its own merits. The across-the-board increases merely compound the effect of the longevity increases. The Employer notes that 17% more employees will receive longevity in 1997 as in 1995 and nearly 42% more will be at the top longevity rate of 12.5%. The cost to the County is excessive and a change must be made.

Internal comparables must also be given weight. In 1981 the Board of Supervisors went on record supporting the need to address the longevity program. On October 25, 1994 the Board discontinued longevity benefits for new hires in non-bargaining unit positions. All negotiations for open contracts in 1995 proposed to discontinue longevity benefits for new employees hired after January 1, 1995. None of the other comparables offer longevity programs similar to Sheboygan County. Five of the ten comparables offer no longevity package. Of the other five, two offer a flat dollar amount. Two of the others offer a cents per hour program and Outagamie County provides steps at 5 and 8 years of employment and, even with these steps, their rates are below

the Sheboygan County rates without longevity. The County is not attempting to deprive new employees of a longevity program, but only develop a comparative program.

Over the years the County has attempted to change the longevity program to no avail. The Arbitrator should consider the roll-up factor that is involved with the annual longevity cost. While this unit represents only 7.6% of County employment, the longevity cost is increasing by more than 14% per year. The various bargaining units have stated they will not give up the present longevity benefit in any form. They have refused to entertain any sort of change regarding this benefit, therefore, the only way to initiate change is through arbitration.

The County's proposal for new employees is better than that offered by most other counties, and this change will not affect employees hired before January 1, 1996. In addition, the new employees will receive the higher starting rate of \$11.43 per hour, which is \$1.19 more than offered in the present contract.

The Union has noted that local municipal employers offer various longevity packages. Union exhibits 31 to 50 outline these packages. None of them are as generous as that of Sheboygan County. Members of some of these units cannot be used as comparables in that they are not comparing like workers, therefore, are not sufficiently relevant to this case. A number

of citations were provided in support of the City's position. Even some of the Union's local municipal comparables are well below the current County longevity program. The County cannot continue to pay this very expensive benefit. The proposal by the Employer addresses this need for a change with a fair and equitable program which does not affect any employee for five years. This approach to change must be considered most reasonable by the Arbitrator.

The final offer of the Employer proposes a \$100 signing incentive for employees and an adjustment in the wage grid which grants higher starting rates and the ability to move to the top step in 12 months rather than 18 months. The change will not affect any current employees. This offer by the Employer must be considered a sufficient quid pro quo. The County has met the criteria noted in other arbitration decisions for deciding when a change in the status quo is justified.

The Employer also had an opportunity to reply to the Union's brief in this matter:

The Union references the PPO arrangement that was implemented in cooperation with the Union and the Employer. This change occurred during the fall of 1994. There were no proposals regarding insurance brought forth by the unit, therefore, this argument has no relevance in this proceeding. While the PPO

resulted in savings for both the employee and the Employer, the Union members benefited by receiving a greater payment towards major medical costs when utilizing the preferred provider. The employees gain when using the preferred provider and maintain previous benefit levels even if they chose not to select the preferred provider. Therefore, the Union gave up nothing. The Employer notes that health insurance costs would have been much greater if the PPO option had not been implemented. In any event, the Employer argues that this argument is irrelevant.

The Union further argues that longevity is necessary to attract and keep employees in this time of a tightened labor market, and that it is necessary for an individual to make employment with the County a career. If Sheboygan needs longevity as an incentive, why then are similar programs not offered by the other comparable county highway departments. These employees perform the same work, yet many receive no longevity program at all or a flat dollar amount which, in most cases, is less than that proposed by Sheboygan County. The lack of a continuing need for the current longevity program was noted in a decision by Arbitrator Malamud. Sheboygan County no longer needs longevity to offset wage disparity.

While many employers offer longevity programs, there are none as generous as that of Sheboygan County. The employer does not propose to eliminate longevity, only change the program to

more closely resemble that of comparable counties. The new program still maintains the rank order, offers a longevity program above most other comparables, and provides a pay rate which is above the average of the comparables.

The Union contends the comparison of longevity rates must be made with the various units in the City of Sheboygan. These cannot be given weight since the employees are not performing like duties. Only those with comparable duties and responsibilities can be given weight in these proceedings. The Union claims that the County is competing with jobs that may not require some of the difficult duties performed by the highway department. The Employer counters that the contract addresses these concerns including overtime and holiday payments. Employees are well compensated for the duties they chose to perform when taking a position in the highway department. The Union compares the highway department with foundry workers at the Kohler Company. The Employer would note that its employees are working outside and then if it rains, they are assigned to other duties. In addition, the summer schedule has been established granting long weekends in which the employee has the opportunity to refresh and relax.

The Union suggests the Employer would disturb the rank order in the top wage with the Employer's new longevity program. This

statement is untrue. If Kenosha County were not included, Sheboygan would rank #3 overall.

The Union argued that the Employer has not offered a meaningful quid pro quo. The Employer states that the \$100 signing bonus is a meaningful amount. Each case must be evaluated on its own merits, and the Arbitrator must take the specifics of each case into consideration when making a decision. The Union also mentioned 4% increases given to certain non-bargaining employees. These individuals have a position evaluation every 5 years, and if there are changes in position duties, an adjustment may be granted. This is totally different than receiving step increases or across-the-board increases without any review or evaluation. Therefore, this is not a proper comparison.

After reviewing all the evidence, the Arbitrator must consider the facts presented by the Employer in its brief and conclude that the final offer of the Employer is the most reasonable option to implement change without consent through the bargaining process and include the offer of the Employer as the successor agreement for the highway department employees.

UNION POSITION

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

In addition to the ten counties agreed upon by the Parties in this matter, the Union would add Racine County just as it did last time in arbitration for this unit because of its contiguousness to Kenosha County. Union exhibit 12 shows the commuting patterns of residents of Sheboygan County. A labor market is a recognized factor to take into consideration when disputes exist about comparables.

The reasons for longevity are still valid today, and the comparisons in the immediate labor region of the City of Sheboygan support percentage longevity. Longevity was adopted in order to have an inducement for making employment with Sheboygan County a career since the wage levels in the County were modest in comparison to the area. These reasons are still viable today especially in these times of worker shortages. The purpose of longevity is to provide incentive and jobs. Five years from now the Union argued that employees will leave when they find that they are making less than other employees in the bargaining unit. There is no chance for advancement in the highway department as is stated in the contract of Local 2039 Department of Public Works.

The City of Sheboygan and many other cities in this County have labor contracts which contain longevity in a percent or cents per hour amount greater than what the Employer is offering here for new employees. Cited are the public works, Sheboygan Board of Education, and other AFSCME city locals. In addition, also cited are labor contracts with Plymouth and Sheboygan Falls. These contracts should be taken into account since they are large communities within the County. The Union notes that while you will not see much longevity above 9% in the cited local comparables, Union exhibit 23 shows that there are only 12 individuals listed at the top longevity step.

Longevity is an attraction to recruit and keep employees. The public interest is not served by grandfathering longevity in this time of employee shortages. The Union cited a number of sources showing that the labor market is very tight, particularly for experienced workers. The County is competing with jobs that may not require the difficult tasks performed by the highway department particularly in inclement weather.

The Parties have negotiated on a voluntary basis the rank order with and without longevity. The Arbitrator should respect the results of this history of negotiations. The County is not the forerunner with or without longevity. Out of 106 employees, only 11% reached the top longevity in 1995 and all but two of

those employees have a special skill. Once rankings have been established by voluntary agreement, they should not be disturbed. The Employer's offer would not disturb this unit's rankings.

The Employer is proposing a two-tiered wage system. The Union notes that in the private sector, Kohler is doing the opposite and doing away with its two-tiered system. Equal pay for equal work is basic to the Union principle of equity. Arbitrator in other decisions have noted that two-tiered systems create friction and problems among the employees. Kohler is the largest private sector employer in Sheboygan County. The County is going backward from what is happening in the private sector.

Internal comparisons are valid comparisons for the Arbitrator to look at in making his decision. In previous interest arbitrations, whether won or lost by the Union, the decisions contained information favorable to the highway department. In one case the Arbitrator noted that the quid pro quo was not enough. In this case the \$100 signing bonus equates to \$.05 per hour for present employees. This is not a quid pro quo. In another case the Arbitrator noted that evidence was not presented that this longevity was a burden. The Employer has not made any argument that it cannot pay. Union exhibit 92 shows an unusual amount of extra money in the general fund. The Employer has not pleaded an inability to pay, just an unwillingness. In

the social workers' interest arbitration, that unit wanted an additional 1% increase, but was not willing to give up longevity for new hires. In addition, in the Support Service case the unit was looking for unusual non-status quo provisions, and the Employer prevailed. The Arbitrator noted that just because the longevity benefits are greater than the benefits of the comparables, that is not enough to show a need for change. The highway department employees have not proposed anything that would taint its final offer and agreed to a modest 3% increase that is on the bottom of all increases.

The Union also notes that the County has a group of supervisory personnel over which it has exclusive control. It was testified that non-represented employees are up for evaluation for every 5 years, the same time frame as the longevity adjustments. They are able to receive a 4% as a pay grade adjustment or a 4% equity increase. This smells like ungrandfathered longevity to the Union.

The Union is not out of line with its 3% wage increase when looking at the comparables. County highway departments and other local settlements are within that same general range. The 3% increase, therefore, is not a quid pro quo or even an out-of-the-ordinary high settlement. Likewise, the \$100 signing bonus incentive is not a quid pro quo. The Union can just see the future friction between older and new employees who got sold out

for their \$100 pieces. Quid pro quo is defined as something for something. A \$100 signing bonus is nowhere near an appropriate quid pro quo. A number of citations were given in support of the Union's position.

The Union also had the opportunity to reply to the Employer's brief.

The Union denies the tax rate is unduly high. It is about the middle of the statewide County's 41st out of 72. There is nothing in the record to support the premise that the rate is due to the highway department and its employees. The County has more money socked away than it needs. It could reduce the tax rate by freeing up the surplus money. It could run 246 days without collecting any new tax money.

Sheboygan County has taken the ten labor contracts utilized as comparables and compared the wages and longevity pay, particularly in Class III and Class II employees. The Employer is overall distorting the comparables by lumping unlike jobs into the same class. The Union has given a number of examples with respect to mechanics, grader operator and other positions. It is the County that is comparing apples to oranges.

The Union agrees that the Employer has been consistent in its efforts to take away longevity, but the Arbitrator is

reminded that its offers have not been consistent in other cases. The signing bonus has fluctuated, the step rates have fluctuated, and when the Union has been consistent in not messing up its final offers, longevity has consistently won and been preserved. In addition, the Union notes that the Class III comparison does not result in an increase of \$.54 in longevity alone over two years, but merely \$.10 per hour. While it is true that 17% more employees will receive longevity in 1997 as in 1995, and 42% more will be at the top rate, that translates to only 5 more individuals and 14 more employees will receive their 5 year step.

The Employer has argued that each case must be evaluated on its merits. The Employer has won previous longevity cases, because the Arbitrator found the Employer's longevity less objectionable than Union proposed language changes. The Union notes the highway department has only 4 steps in its contract. There is no opportunity to recognize on the job training as in the social worker contract. The Employer's final offer even drops one of the four steps.

The Employer argued the increase in longevity with the 3% across-the-board adds \$25,000 to the cost of longevity, an increase of 14.74%. The Employer cannot verify those figures. Using the Employer's own exhibit, a 5% increase is shown. Therefore, 14.74% does not compute.

The Employer contends that Sheboygan County is offering a new longevity program for new employees which is better than that offered by other counties. Three of the six comparable counties have longevity which offers more money per hour than Sheboygan County is offering in its new proposal. While the County is offering a new program, it is not better than that offered by most counties and definitely not a quid pro quo.

The Union further notes that Sheboygan Board of Education has two groups, not just one, that have a 12% longevity. The group the County missed is the clerical unit. The Employer further seems to argue that blue collar workers should be compared only to blue collar workers. But the Union would point out that the custodial maintenance unit, the water utility and the department of public works, for example, are blue collar units. The Union provided a number of citations in which the Arbitrator has determined that the appropriate comparison is among employees in the public sector in the comparable area.

Finally, the Employer states that the adjustment of the wage grid amounts to a quid pro quo. The Union counters that if it is a quid pro quo at all, it is not a reasonable one. All it does is pay unknown employees a higher rate rather than reward loyalty and experience and compensate for a lack of job promotion

opportunities. It is not a reasonable quid pro quo nor will it ever replace lost percentage longevity in the future.

The County has not fulfilled the statutory criteria to support a change in the present longevity system. Therefore, it submits that its final offer is the most reasonable and, thus, should be selected by the Arbitrator.

DISCUSSION AND OPINION

The Parties are in general agreement as to the comparables in this matter which had been identified by a number of previous interest arbitrations, including a case involving the same Parties for the current Collective Bargaining Agreement. The Union has asked the Arbitrator to include Racine County in the list of comparables for this unit simply because Kenosha County has already been included and Racine County is contiguous to Kenosha County. Without going into the pros and cons of whether or not Kenosha County should be included, it is part of the agreed upon comparables. An important element in interest arbitration is consistency among the comparables. This is done in order to encourage the Parties to reach a voluntary agreement. If arbitrators were to allow a moving set of comparables without extraordinary reasons, this does not favor voluntary settlement. Therefore, the Arbitrator will find that the ten agreed upon

comparable counties are those which will make up the comparables for this interest arbitration and there is no showing of extraordinary reasons to include Racine County. Therefore, it will not be included in the list of comparable counties.

This case involves exactly the same issues and similar arguments as were made in Interest Arbitration 7951 involving the nurses and health professionals Local 5011 and Sheboygan County decided during March, 1997. However, as noted extensively in the County's brief, each interest arbitration must stand on its own based on the information contained within the exhibits and the arguments made by the respective Parties. This Arbitrator has made it clear in other decisions that when one side or the other wishes to deviate from the status quo of the previous Collective Bargaining Agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the Collective Bargaining relationship. In the absence of such showing the Party desiring the change must show that there is a quid pro quo or that other comparable groups were able to achieve this provision without the quid pro quo. It is the County that wishes to alter the status of the Collective Bargaining relationship in this case. The only major issue in dispute in this matter is the continuation of the present longevity provisions in the Collective Bargaining Agreement.

The County entered into contracts calling for significant amounts of longevity increases - 2.5% of base pay each 5 year period up to 25 years of employment, which would then peak at 12.5% of base. Ostensibly, the reasoning behind this was to be able to attract and keep employees during a time when wages in the public sector were significantly lower than those in the private sector. That concern is not as true today as it once was in the past due to a number of factors, not the least of which is the efficiency of public sector unions in representing their membership. The Employer has proposed a radical change in the longevity program dropping from the aforementioned percentage system to a \$10 per month after 5 years, \$20 per month after 10 years, and \$30 per month after 15 years longevity bonus. While this is a significant change, the full impact of this change on the bargaining unit will not be felt for many years down the road.

Of the statutory criteria, the most important appears to be the external and internal and local labor market comparables. Regarding the external comparables, none of them have a percentage longevity system as does the Employer. Four of the ten have no longevity program at all for their highway department. Two have longevity programs roughly similar, and two have programs that are slightly better than that proposed by Sheboygan County. In addition, because the impact of this proposal will not be felt for many years, there is no immediate

effect on the standing of the County with respect to the average wage rates and ranking by the County highway employees with respect to other County highway employees in the comparable pool.

Regarding internal comparables, this is a mixed bag. The Employer has removed longevity from non-represented workers, although the Union points out that this may not be as clear cut as it appears on the surface. The County countered that any extraordinary changes in the wage rates for non-represented employees are based on a significant change in duties and responsibilities. The Arbitrator has no choice, in the absence of any evidence to the contrary, but to take the County's word in this matter. Regarding other bargaining units, it is very much a mixed bag. The County has uniformly requested in voluntary bargaining to remove and grandfather the longevity program on the same basis as proposed here. It has been unsuccessful in voluntarily negotiating this change with any of its unions and this is understandable. Within the realm of interest arbitration, the County has been successful in some cases and unsuccessful in others. The Union notes in this matter that in the instances where the County has been successful, the bargaining unit was asking for status quo changes of their own which caused the interest arbitrator to find for the Employer. The Arbitrator has determined that the record is not so clear cut. In any event, the internal comparables are a mixed bag and not determinative in this matter.

Local comparables, that is collective bargaining agreements with local municipalities and other taxing bodies somewhat favor the Union's position, although the Arbitrator would note that among police, firefighter and teacher contracts, longevity is the norm rather than the exception. There are many reasons for this, but in any event, longevity programs among those bargaining units are quite common. With respect to the comparables as a whole, however, it is the external comparables that are determinative and favor the County's position.

The Union is concerned that the County will not be able to recruit and keep excellent employees in the future and also that the rank order could be dramatically altered as a result of the loss of the longevity program. These are excellent arguments and could prove true in the future. However, that would be in this Arbitrator's opinion, in the far distant future if at all. This longevity program is a two edged sword. The Arbitrator strongly suspects that in past negotiations it was the longevity program that was used to moderate the Union's wage requests and, thus, keep the overall wages at a level that was less than they would have been without such a lush longevity program. In any event, those issues will be addressed in future rounds of bargaining, and the Parties have an option every two to three years to review both of these issues and make a determination as to whether or not this bargaining unit is losing ground. The Arbitrator would put the County on notice that if it is successful in this

decision, this does not give it the right in and of itself to lower the County highway department's standing, vis-a-vis, other comparable bargaining units.

The Union also noted that others are backing away from a two-tiered wage system because of the impact that it has on the morale of the bargaining unit, but in fact what has existed over the years in Sheboygan County is a two-tiered system, one that was based on seniority. The County's proposal, of course, would over a period of time increase the differentials. However, this could and should be addressed in future negotiations and perhaps interest arbitration.

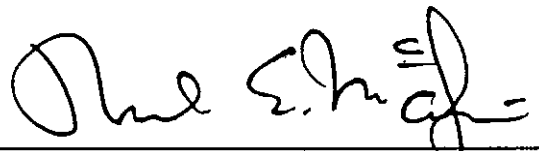
We are then left with the quid pro quo. The Union argues that the \$100 signing incentive, the modest longevity program, and the changes in the wage grid simply are not enough of a quid pro quo to remove such a lush longevity program and, as noted in the nurses' arbitration, were the Employer trying to eliminate longevity outright, there would be no question that this quid pro quo offered would not nearly be enough. The Employer, however, is not proposing the elimination of the longevity program altogether, but simply a grandfathering which would affect only new employees who will presumably have other and future opportunities at the bargaining table during the many years down the road that these impacts will be felt.

The Arbitrator would, therefore, find that, while the Employer has not made a case with respect to its ability to pay or any significant impact on the taxpayers of Sheboygan County, with respect to this unit taken in and of itself. The overall impact of the longevity program among all bargaining units is significant to the taxpayers of Sheboygan County, and the impact on the bargaining unit, at least in the short term, will be relatively minimal and, in fact, given the Employer's proposal, somewhat positive over the short term. Over the long term, it is another story, and yet as noted above, there will be numerous opportunities for the Union to bargain on behalf of its members and the Employer will no longer have the longevity program to "hide behind." As noted in the nurses' award, the Arbitrator would note for the record that it would have been a much better conclusion for these negotiations had the County attempted to buy out the longevity provisions from the current employees as has occurred in other collective bargaining situations. At least at this point, the comparables favor the Employer and the rates of pay in the current contract are appropriate with respect to all of the comparables cited. Therefore, the Arbitrator will find in an extremely close call that the County has proven its case and will prevail in this matter.

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 stipulations reached in bargaining, constitute the 1996-1997 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 21st day of May, 1997.


Raymond E. McAlpin, Arbitrator