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EMPLOYEE RELATIONS COMMITTEE MEETING

Tuesday, February 27, 2007
Council Chambers

PRESENT: Alds. Krill, Maher, Meaux, Purins – 4

EXCUSED: Ald. Stepaniak

ALSO PRESENT: J. Archambo, City Admin.; B. Aldana, Asst. City Atty./Personnel Admin.

Ald. Purins as chair called the meeting to order at 6:50 p.m.

Presentation by Marshall Gratz of the Wisconsin Employee Relations Commission

Mr. Archambo introduced Mr. Marshall Gratz noting that he is a mediator, arbitrator and hearing examiner with the Wisconsin Employment Relations Commission. Mr. Archambo said that since all 5 union contracts are up for negotiation this year and there are a number of new Council members it seemed like a good time to give some background information on negotiation and arbitration as they relate to the Municipal Employment Relations Act.

Mr. Gratz outlined a typical mediation or mediation/investigation hearing under Municipal Sector Dispute Resolution Procedures. He is very often called upon and designated as a mediator/investigator because a request for mediation was filed with the Wisconsin Employee Relations Commission (WERC) either by the employees or the employer. The mediator/investigator is responsible for 2 basic jobs:

1) They meet with the parties' representatives in the same room or separate rooms in an attempt, through mediation, to find a set of terms that both teams can recommend to those they represent as the basis for a voluntary agreement.
2) If they are unsuccessful in reaching a voluntary agreement, (either party can file a petition to initiate interest arbitration under the statutes. If a petition is filed, Mr. Gratz would normally be designated as the mediator/investigator.) The mediator/investigator would then have the additional responsibility to administer the mechanics of the interest arbitration law.

Mr. Gratz went on to explain that administering interest arbitration law usually involves calling for an exchange of package final offers, usually by mail, until each side says they have no further modifications to make in response to the other party's offer. At that point the mediator/investigator would notify the parties that the investigation is closed to any further changes in the parties' offers unless both sides agree. The case would then be out of the mediator/investigator's hands. The WERC would issue an order initiating interest arbitration and supply the parties with a list of 5 to 7 arbitrators (not employed by the WERC, but on the roster of ad hoc arbitrators, all from Wisconsin) unless the parties agree otherwise. The parties would then alternately scratch names from that list until one is left, and that person is then appointed by the commission as the interest arbitrator.

Mr. Gratz noted that the interest arbitrator, whose fees and expenses are split by the parties, would then be responsible for scheduling and conducting a hearing, receiving evidence and arguments, and selecting all of one side's final offer or all of the other side's final offer, no mixing or compromise is allowed unless the parties agree otherwise, and they seldom do. The parties are then required by law to enter into an

agreement consisting of the items not in dispute going into the arbitration plus the items in the selected offer.

Mr. Gratz said the arbitrator's offer selection is to be based on statutory criteria or standards consisting of comparability with arrangements in effect for other internal groups of the employer's employees or for external groups in comparable employment settings, the cost of living, interest and welfare of the public, the employer's ability to pay and a variety of other factors. The greatest weight is put on state mandated limits on employer spending or revenue and greater weight is put on local economic conditions. The interest arbitrator takes it all into consideration and ultimately selects all of one side's final offer or the other side's final offer. The law is intended to encourage the parties to resolve all or most of their issues by voluntary agreement, in order to avoid or limit the scope of the dispute that is subject to the costs, risks, delays and headaches associated with going through the often lengthy arbitration process. The parties should voice their questions or concerns about the process or where the process is going at any time.

Mr. Gratz said that Wisconsin interest arbitrators have tended to give weight or consideration to the following factors:

1) They seldom give controlling weight to inability to pay. Inability to pay, if proven, will control the outcome of the case, but it is difficult to prove and seldom found to have been proven.
2) They give little weight to the cost of living factor, viewing comparable settlements as a guide to the appropriate economic response to the cost of living.
3) They maintain historic relationships, patterns and negotiated outcomes. The party proposing a change is usually required to prove that a change is needed, that the change proposed addresses the need without creating other problems in the process, and that an appropriate trade-off or quid pro quo is being offered in exchange for the change.
4) They will not deviate from previously established external comparability groups absent a very strong showing that conditions have changed so that the established comparables group is no longer appropriate.
5) They give substantial weight to internal comparables regarding fringe benefits.
6) They prefer to maintain historical ranking among external comparables. A top ranking, alone, will not justify a lesser economic settlement than comparable groups are receiving; a bottom ranking alone will not justify a greater economic settlement than comparable groups are receiving.
7) They seldom give controlling weight to private sector comparisons, primarily because private sector economic date is not as available as public sector wage and benefit data.
8) They give substantial weight to overall compensation comparisons, but many parties find it difficult to gather and appropriately compare all pertinent aspects of total compensation.
9) They view their role as selecting the offer that is more likely to have been reached had the parties been able to reach a voluntary agreement.
10) They are precluded from allowing a party to change its final offer unless the other party agrees to allow such a change to be made.
11) They are required to select one of the final offers entirely, rather than compromising.
12) They are precluded from requiring the parties to discuss the settlement if either party prefers not to engage in such discussions.
13) They will issue a consent award where bargaining teams agree on terms for the arbitrator to award, avoiding the need for union ratification in some circumstances.

Mr. Gratz concluded that once a tentative agreement is reached, the agreement would come to the Employee Relations Committee and to the union membership. Only by ratification of the union membership and the Common Council would the tentative agreement become a binding contract.

Mr. Gratz noted that strikes are prohibited for the public sector except in very limited circumstances and there are penalties for strikes in violation of injunctions. He noted that final offers for public sector employees have to be for a 2 year contract term. The parties can agree on other than 2 years, but the usual contract term is 2 years and can go up to 3 years. There are differences between the general employees' process and the police and fire unions. The police and fire unions can have 1 year contracts and there is no limit to their right to strike.

Members of the committee had questions regarding the weight given to revenue, spending and local economic conditions. Mr. Gratz responded that there are three criteria that go directly to the question: 1) what is the impact on taxpayers, 2) the interest of the public, and 3) the employer's inability to pay. In the case of the employer's inability to pay criterion, it is very difficult for the employer to prove that they literally can't pay the award. If there is a true inability to pay proven, it is a very compelling argument and difficult to overcome. He said the WERC has experienced a lot of these arguments since 1971 and 1978. He added that levy limits are a relevant factor. It may be that there are available dollars, but what should the municipality be spending them on. He further added that it is challenging to try to link these restrictions to some kind of negotiated position.

The committee thanked Mr. Gratz for his presentation.

Consulting contract for the Assessor's office

The committee reviewed a proposal to enter into a contracting relationship with an independent contractor to perform certain parts of the Assessor's Office responsibilities.

Members of the committee suggested that this item be delayed so that staff and the committee could do some homework in terms of discussing what types of agreements would pertain to employment of post retired employees. They were concerned with general policy issues such as has the city hired retired employees in the past and what would be the duration of the contract.

Mr. Archambo explained that this request was brought to staff by the individual employee who is contemplating a retirement agreement that would provide specific services which are currently part of what the employees in that department are doing now. He noted that there may be some advantages to entering into that relationship. It would necessitate a restructuring of the remaining responsibilities for the rest of the department. He advised that this may have to be discussed in closed session because the item deals with an employee and the negotiation of a contract.

Some of the questions posed by committee members were: 1) how would the retiring employee be replaced? 2) would a percentage of the new employee's job be held aside for the retired employee? 3) what would the retired employee be doing? and 4) why would the city enter into this type of arrangement? Mr. Archambo responded that some of the possibilities the proposal would present would be to enable the city to hire help on a temporary basis as needed and hire at a lower ranking which would end up saving money. There would also be more flexible staff utilization. He agreed that this issue will need more research and discussion.

Members of the committee said they would like to see what potential scenarios would look like especially with regard to restructuring the department. They were concerned with the contract length and not having something that will be long term.

> Moved by Ald. Krill, seconded by Ald. Meaux to hold this item for two weeks --

Another concern expressed by members of the committee was the impact of delegating full time responsibilities to a contractor. If the employee/contractor decides to leave there would be no one to pick up the contract. They recognized that the reason for having a discussion about continuing a relationship with this employee is because the person has the important job of being able to assess complicated properties. They would like to see that skill set maintained.

Vote on the motion was Ayes: 4

The meeting adjourned at 8:03 p.m.

Carla A. Ledesma, City Clerk
City of Wauwatosa

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