BEFORE THE ARBITRATOR

In the Matter of the Petition of

CITY OF WAPUN (PUBLIC UTILITY)

To Initiate Arbitration Between Said Petitioner and	Case 54 No. 55922 INT/ARB-8369
WAPUN CITY EMPLOYEES, AFSCME LOCAL 1112, AFL-CIO	[Dec. No. 29465]

Appearances:

James Miller, Staff Representative, appearing on behalf of the Union.

von Briesen, Purtell & Roper, S.C., Attorneys at Law, by James Korom, appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

Wapun City Employees, AFSCME, Local 1112, AFL-CIO, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.70(4)(cm), Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and City of Wapun (Public Utility), (herein "Employer"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated October 19, 1998; and the Undersigned having held a hearing, in Wapun, Wisconsin, on January 8, 1999; and each party having filed post hearing briefs, the last of which was received March 29, 1999.

ISSUES

1. Health Insurance: The parties have both proposed to amend Article XIII, to adopt the Employer's proposed changes to the current health insurance plan and prescription drug plan, effective the first month after the issuance of this award. These changes are discussed in more detail below.

2. Quid Pro Quo: The Employer proposes to increase all wages by

$.17 per hour upon the issuance of the award. The Union proposes $.30 per hour. The Employer also proposes an additional holiday which is specified in 4. below and tentatively agreed to by the parties. Further, the Employer proposes $25 to each level of longevity effective in 1999 and again in 2000; a shift premium $.30 per hour for all employees called to work outside their normally scheduled shift; and an additional $.50 per hour for the meter reader. (all of these benefits except the second floating holiday and wage increase were tentatively agreed to by the Union and are in the stipulation of tentative agreements. The Union proposes an additional floating holiday specified in 4 below and $.30 per hour across-the-board increase.

3. Floating Holidays: The parties both agreed to the addition of one floating holiday in the 1999 year. The Union proposes that employees may take one additional floating holiday in 1999 or 2000 which benefit is limited to the term of this agreement only.

Wages are not in dispute. The parties agreed upon wage increases as follows:

1/1/98	1/1/99	1/1/00
3%	3%	3.5%

POSITIONS OF THE PARTIES

The Employer takes the position that its offer is the more appropriate. It views the central issue as the adequate *quid pro quo* for the agreed-upon changes in health insurance. It notes that the parties have agreed upon the wage increase for each of the three years of the agreement. In its view the previous fee-for-service health insurance plan is expensive and inefficient. Under the current plan health care providers were shifting costs to the city. The city was also experiencing inordinately large claims. This resulted in a 50% increase in premium equivalents in 1997 requiring the addition of funds from the general fund. It believes its proposal is more appropriate in that; 1. the agreed upon health plan is still among the best among the comparables; 2. its proposed *quid pro quo* more than adequately compensates the bargaining unit on the whole for the potentially increased costs a few employees may choose to pay by selecting non-PPO options. Specifically, it notes that the new plan is virtually identical to the old plan for most employees. The cost savings essentially come from savings generated by deeper discounts in the preferred provider plan rather than by cost shifting to employees. Employees receive benefits such as fully paid physicals, mamograms and other well care. Further, those selecting the PPO plan are not subject to the usual and customary review which may result in charges to the employee. Seventy per cent of the claims now filed are through preferred providers. Those employees who select non-PPO options do face a higher deductible and a co-pay, but overall their benefits remain better than health insurance plans from comparable employers. It presents a "worst case scenario" for the effects on these employees. In its view, its proposed quid pro quo adequately compensates these employees and most assuredly compensates the unit as a whole for this rare possibility.

In its view, the bargaining history should be considered by the arbitrator. The Union has twice rejected ratification of a reasonable offer and this should be considered a demonstration of the fact that is offer is more reasonable and that the bargaining team that was at the bargaining table recognized that it was a reasonable offer. Further, the Employer met with unit employees to ascertain their concerns and addressed those by modifications of its proposal and enrolling local doctors in the PPO plan. It notes its offer is supported by an internal comparison in that the police unit accepted the offer with virtually no quid pro quo in return for a one year agreement (1998).

It also argues that its total package offer is supported by comparison to other similarly situated employees in other municipalities. The parties have agreed upon the general wage increase and under either party's offer in either comparability group, this unit of employees is comparatively well paid, particularly when longevity is considered. It is dramatically more so, when the hourly cost of insurance is factored in. It, along with the Union have used Baraboo, Beaver Dam, Fort Atkinson, Hartford, North Fund du Lac, Oconomowoc, Portage and Plymouth. The Employer also proposes to use Jefferson, Reedsburg, Rice Lake, River Falls and Sun Prairie which it asserts are more rationally selected. They are all unionized, the vast majority are within 50 miles, and have similar populations, Reedsburg, Rice Lake and River Falls also have three utilities and similar population.

It also argues that its offer with respect to floating holidays is adequately supported by the comparables. There is no comparative data supporting the Union's holiday proposal. It notes that the Union's proposal is not likely to result in a one-time-only holiday. Accordingly, it believes there is no justification for the Union's position on holidays.

The Union denies that the Employer has correctly stated the bargaining history. Nonetheless it argues that a failure to ratify a tentative agreement should not be relied upon by an arbitrator to decide the merits of a interest dispute.

The Union takes the position that the appropriate set of external comparables are Baraboo, Beaver Dan, Columbus, Delafield-Hartland Water Pollution Control Commission, Fond du Lac, Fort Atkinson, Hartford, Hartland, Horicon, Jefferson, Kewaskum, Mayville, North Fond du Lac, Oconomowoc, Omro, Plymouth, Portage, Ripon, Shawano, Sheboygan Falls, Slinger. It concedes that all of the comparables proposed by both of the parties have some degree of comparability to Wapun. Only Fond du Lac is significantly larger, but it is in the same county as Wapun.

As to the *quid pro quo* issue, the Union takes the view that its offer of $.30 per hour as a *quid pro quo* is more appropriate than the Employer's offer of $.17. It points out that there are substantial penalties for not using PPO providers in the form of increased deductibles of $50 (single) and $100 (family) and increased co-insurance of $200 (single) and $400 (family). Further, under the previous plan, once the above deductible was met prescriptions were covered. Under the new plan, there is a $5 deductible per non generic prescription ($2.00 generic). The Employer's offer comes to $353.60 per year additional, whereas the Union's is $624. The Employer's "worst case scenario" would cost an employee $720 per year. Accordingly, the Union's position is closer to appropriate. Further, give specific examples in the unit, the Employer has underestimated the impact of the prescription co-pay. For one family, the co-pay will result in a $335.00 per year additional expense. There are four families in a nineteen member bargaining unit with regularly high prescription costs. The result in this unit, is that the Employer's position is a cost-shifting proposal.

Finally, it argues that its proposed *quid pro quo* of $.30 per hours is more appropriate because the wage settlement agreed upon by the parties here for each of the three contract years is low when compared to wage settlement among its external comparables for these years. The average settlement of 21 comparables for 1998 is 3.72% whereas the agreed upon wage increase for 1998 is 3.0%. Similarly, the average settlement of the 14 settled comparables for 1999 is 3.41% whereas the agreed-upon wage increase here is 3.0%. There are 3 settlements for 2000 averaging 3.42% whereas the parties have agreed upon a 3.5% increase. Accordingly, it believes that this supports the higher *quid pro quo*.

While the Union recognizes its proposed floating holiday is unusual, and not supported by the comparables, it argues that the issue is minor and should not be determinative in this proceeding. It is a one-time issue.

The Employer replies to the Union position by noting that while the out-of-pocket costs under the new plan for the worst case scenario would be $720, that fails to offset the existing $100 out-of-pocket costs under the existing plan. Also it notes that if employees take advantage of the generic prescription alternative, the cost of prescriptions for the family having the highest number of prescriptions would be only $134 per year, not the $335 quoted by the Union. While the Union argues that the extra costs would be paid by after tax dollars, the Employer has a Section 125 Cafeteria Plan which would allow the employee to fund out-of-pocket health insurance costs with pre-tax dollars. It believes it is unreasonable to expect it to reimburse each employee for the possibility that he or she might have high unreimbursed expenses. Further, the Union's position that the floating holiday sunsets is unrealistic in view of the fact that the Employer would have to maintain the status quo during bargaining for the next agreement and the Union's position that the floating holiday is a minor cost item is untrue. Finally, the Employer reiterates its disagreement with a number of the Union's positions.

The Union argued that other than the $.17 per hour increase, the other items which the Employer asserts were part of its quid pro quo are not appropriately considered part of a quid pro quo offer. The Union disputes the Employer's estimates of what insurance premium increases would be under the existing plan in that the recent increase was a result of under funding by the Employer rather than cost increases. The Union also argues that approximately 30% of the current insurance claims are not under the preferred provider option. The Union argues that the Employer's selection of comparables is not logical in that the Employer excluded Horicon, Mayville, and Ripon merely because they did not respond to its survey. Further, the Employer's exhibits use an "average" wage rate which is not an accurate measure of comparison.

DISCUSSION

The arbitrator is responsible to select the final offer of one party or the other without modification. The decision is to made by applying the following statutory standards to the evidence:

"7. '**Factor given greatest weight.**' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer) body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel~s decision.

7g. **'Factor** given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. '**Other factors considered.'** In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages hours, and conditions of employment employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of wages hours, and conditions of employment employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of wages hours, and conditions of employment employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in private employment in the same community and in comparable communities.

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

h. The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration, or otherwise between parties, in the public service or in private employment."

In this case, Factor 7 and 7(g) are not applicable. The weight to be accorded to any of the remaining standards is left to the arbitrator's discretion.

Rejected Tentative Agreement

Factor 7r, h. includes the authority to consider the course of bargaining leading up to the current arbitration. The question is the extent to which the rejection of a tentative agreement or the fact that it was accepted by the bargaining committee should be given weight in these proceedings.

The purpose of Section 111.70(4)(cm) is to encourage effective voluntary collective bargaining, including the exploration of proposals which are innovative or involve controversial approaches. Accordingly, it is my view that absent circumstances which represent misconduct in bargaining directed at the arbitration process itself or which warrant adjustment to a collective bargaining agreement, the fact that a party has in good faith failed to ratify an agreement should be given no weight in an arbitration decision. Specifically, the undisputed evidence in this case is that the proposed changes in health insurance have a heavy impact on a number of the people in this small bargaining unit and the unit's actions in failing to ratify essentially reflect solidarity with those affected. Accordingly, no weight is assigned to the fact that the Union failed to ratify tentative agreements.

Wage Position

It is not necessary or appropriate to specifically select external comparables in this case, as the selection does not affect the results of this case. Not all communities which are comparable have employees in similar positions. Nonetheless, some observations are appropriate. The parties agreed upon Baraboo, Beaver Dan, Fort Atkinson, Hartford, Jefferson, North Fond du Lac, Oconomowoc, Portage, and possibly Plymouth. These are within 50 miles and of similar populations. I would also include Sun Prairie. I would exclude the distant communities of Reedsburg, River Falls, and Rice Lake. I would also exclude the much larger City of Fond du Lac. I would include the Delafield-Hartland Water Pollution Control District. I leave to further consideration whether any of the other communities offered by the Union within about 50 miles might be comparable. The records is insufficient to make that determination.

It appears that the wage position of this unit is at least comparable to other similarly situated employees. Using the Union's own data, the wages here are generally better than those in its selected group of comparables.

Quid Pro Quo

The central issue in this case is which party's offer is closer to an appropriate *quid pro quo* for the agreed-upon changes in health insurance. The new plan replaces essentially a fee for service plan with a preferred provider plan (herein "PPO"), providing significant penalties for employees who choose to continue in the fee-for-service mode. The Preferred Provider Option exists under the current plan and at least 70% of unit employees were using the PPO providers. However, the discount which the Employer was able to obtain from providers was minimal and there were little savings from that feature. Specifically, the new plan doubles the current $50 (single) and $100 (family) deductible if the employee chooses non-PPO services. Similarly, it creates an 80/20 co-insurance feature for non-PPO services with a maximum out-of-pocket expense of $300 single and $600 family. It expands coverage to provide routine physicals and well baby care. Unlike the current plan, office and specialist visits are covered without a deductible. Prescriptions under the current plan are fully paid after the initial medical deductible is met. Under the new plan, an employee pays $2 co-pay for each generic prescription or non-generic where generic is not available or medically appropriate. The employee pays $5 co-pay for every other brand name medication. The new plan includes a 120 day supply of medication by mail-in with a $5 deductible. It is important to note that the Employer has a Internal Revenue Code Sec. 125 plan by which out-of-pocket expenses may be paid with pre-tax dollars. The new plan includes protection for employees who are ill while away from the network and for many situations in which they will not have a choice to use PPO providers. The Employer has incresed its savings from PPO providers from 4% of cost to 15% to 25% of cost.

Both plans are self-funded. The impetus to make the change in the current plan occurred because in 1997, the Employer experienced unusually high claims and because local providers were attempting to shift costs to fee-for-service insurers. The result was that the 20% reserve for prudent administration was exhausted and the Employer had to add $32,000 to return to a zero balance. The premium equivalent rose from $488.37 per month family to $774 in 1998. This makes the premium in Wapun the highest among those in the local area by a very substantial margin.

Comparative data offered by the parties demonstrates that in this area, traditional fee-for-service plans are rare. Every feature of the plan proposed by the Employer would be the best or nearly the best of those in the local area. The deductible based upon use of the PPO is among the lowest and reasonable when not using PPO providers. The new prescription drug plan is still the best whether using generic or not using generic drugs. In short, the new plan appears to be the best or one of the best in the local area.

There is some disagreement between the parties as to the concept of a quid pro quo. A quid pro quo is an exchange of a similar or dissimilar benefit of the same or greater value. It often includes, for example, economic exchanges for language concessions. In making the choice as to which proposal is closer to an equivalent quid pro quo, I give heavier weight to items which the receiving party was not likely to have obtained through ordinary adjustments during the instant negotiations. Further, I also take into account that it is the employees' ordinary responsibility to make responsible cost effective choices consistent with their needs when using employer funded benefits. Finally, a quid pro quo should share cost savings with the bargaining unit in an appropriate way.

The Employer has concentrated its analysis on its "worse case scenario" while the Union has concentrated on the "worst case scenario" plus potential prescription costs. In my view, the Employer's proposed quid pro quo is closer to appropriate than that proposed by the Union. Even concentrating my analysis on the $.17 versus $.30 per hour increases, the Employer's offer is closer to appropriate than the Union's. The offer of $.17 per hour would give each of the 19 employees in the unit $353.60 more per year in straight time wages, while the Union's $.30 per hour would give him or her $624 per year. The "worst case scenario" offered by the Employer in which an employee uses over $2,200 of non-covered non-PPO services and two non-covered non-generic prescriptions per month would cost the employee $620 after deductible. While the Employer's offer would not compensate the employee for the year of the expense, over a period of time it would more than offset the scenario if it occurred to that employee in only one year. There is no evidence that any unit employee is involved in a situation in which they have a non-PPO provider with whom they will have continuing high medical expenses. Only 30% of claims now involve non-PPO providers. Thus, employees have a clear choice to avoid this type of situation and the employee would have some leverage to encourage an existing provider to join the PPO or lose a well paying patient. Thus, while there is a disadvantage for one employee, on the average, the unit as a whole is more than adequately compensated.

The second point made by the Union, under the prescription drug plan is without merit. It appears that there are several families in this unit with heavy prescription drug costs. Nonetheless, the out of pocket expense for them is minimal if they use generic drugs. The plan covers name brand drugs at the generic co-pay if a doctor states they are medically necessary. It appears under these circumstances, that if the employee meets his or her responsibility to discuss the potential use of generics with their health care provider, the resulting choice will be medically efficient and covered. For the above reasons, I am satisfied that the proposed quid pro quo of the Employer is closer to appropriate than that of the Union.

Total Package

Wages are not in issue in this proceeding. Nonetheless, the Union offered a comparison to wage increases obtained by various other units of similar public employees which is offered to show that the agreed upon wage increase is low by comparison in each year of this agreement. The data is extensive for the first two years and insufficient for meaningful comparison in the last year. The first year of this agreement is consistent with the voluntary police settlement and is not otherwise in dispute. The

comparative data includes a very large 1998 settlement for Rice Lake which is aberrant and which is not in this area of the state. Excluding that settlement, the 1998 settlement here would be slightly less than the average of the remaining settlements. The 1999 settlement data suggests that the wage settlement might be .25% low, while it appears that the 2000 settlement is likely to be slightly high.
When considering the good level of wages and insurance benefits and considering the inordinate increase in premium equivalents still required for the health insurance plan, it is far more likely that the total package of wage and benefits is adequate, if not generous, irrespective of the quid pro quo elements. Accordingly, based upon the applicable statutory factors, the final offer of the Employer is to be preferred.

AWARD

That the final offer of the Employer be incorporated into the parties' agreement.

Dated at Milwaukee, Wisconsin, this _26th_ day of May, 1999.

Stanley H. Michelstetter II
Arbitrator