ARBITRATION AWARD

- -

In the Matter of the Interest Arbitration between

:

MARATHON COUNTY

: Re: Case 255

and No. 56108

: INT/ARB-8420

MARATHON COUNTY PARK DEPARTMENT EMPLOYEES
UNION LOCAL 1287, AFSCME, AFL-CIO : Dec. No. 29513-A
29515-A

- -

APPEARANCES: For the Employer, Marathon County: Dean R. Dietrich, Esq., Ruder, Ware & Michler, S.C., 500 Third Street, Suite 600, P.O. Box 8050, Wausau, Wisconsin 54402-8050.

For the Union, Marathon County Park Department Employees Union, Local 1287: Mr. Phil Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin 54476.

The Union has represented regular full-time and regular part-time employees of the Marathon County parks for many years. Currently there are 28 employees in the unit. Their most recent labor agreement expired by its terms on December 31, 1997. In October, 1997, the parties had commenced bargaining over the terms of a renewed agreement. On February 6, 1998, the Union filed a petition with the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. Efforts to mediate the dispute by Commission staff were unsuccessful and final offers were submitted on December 16, 1998. This arbitrator was notified of his selection by letter from the Commission dated March 2, 1999.

A hearing was conducted in Wausau on May 25, 1999. The parties were given opportunities to present witnesses and written evidence as well as to cross examine witnesses. Initial briefs were timely received at the end of July and reply briefs on August 27. The hearing is considered closed as of that date.

THE ISSUES

The Union would increase wages by 3 percent in 1998 and 3 1/2 percent in 1999.

The Employer would increase wages by 3 percent in both years and would (1) introduce a 5 percent employee contribution to the health insurance premium on December 1, 1999, and would (2) introduce a VEBA program (Voluntary Employee Beneficiary Association) at the same time, wherein the Employer would contribute $12 semi-monthly to individual employee accounts that could be used at the time of termination of employment for medical insurance and expenses.

Note: In its original brief the Union stated on page 1 that under the VEBA the Employer would make "a $12 per two week pay period contribution." Similarly, on page 8 the brief refers to "a twelve dollar per (2

week) pay period contribution," In all other comments and calculations about the plan both the Employer and the Union assume that there would be semi-monthly contributions. This matter was never clarified for the arbitrator, so my calculations have assumed twenty four $12 contributions totalling $288 annually. If the contributions are to be made each two week pay period, the calculations should have assumed twenty-six $12 contributions totalling $312 annually.

Copies of the final offers are appended hereto, the Union's marked Addendum A and the Employer's as Addendum B. The parties had reached tentative agreement on several issues. A document showing these tentative agreements is attached as Addendum C.

THE UNION'S POSITION ON THE ISSUES

The Union asserts that the principal issue in this dispute is the proposed introduction of a 5 percent employee contribution to the monthly health insurance premium. At current rates this would amount to a $29.24 reduction in the paychecks of employees with families, who comprise 82 percent of the bargaining unit. The proposed VEBA program (designated herein as PEHP, for Post Employee Health Plan) would put an Employer contribution of $24 per month into a fund that would not become available to an employee until termination of employment. This would constitute an immediate loss of $29.24 in current income for family plan members in exchange for a contribution by the Employer that is $5.24 per month less than what is being taken away, the future proceeds of such fund being uncertain, depending upon future stock market or interest fluctuations. In addition, the employee contribution to health insurance is a percentage. Health insurance premiums are likely to increase. The PEHP contribution by the Employer is a dollar figure, which presumably will not increase. Although single employees would benefit eventually under the PEHP program because their premium contribution would currently be only $12.66 per month ($11.34 less than the PEHP allowance), a Union witness testified that there was no interest expressed in the plan when it was presented at a meeting of the members of the unit. In the opinion of the Union it is unreasonable to impose such a substantial loss of income on employees who "are already struggling to cope with high family deductibles and co-pays." The PEHP is an inadequate quid pro quo for a condition of employment that was negotiated by the Employer and has been in effect since 1983.

The Union makes several arguments concerning the internal and external comparisons that are called for by the legislation. As far as internal comparisons are concerned testimony showed that there are ten Marathon County bargaining units, eight of them represented by AFSCME. These are respectively employees in the departments of: Highway, Social Service (two units, professionals and para-professionals), Health (professionals), Library, Courthouse (two units, professionals and office employees), and Parks, the unit in this proceeding. The other two units are composed of airport employees, represented by the Teamsters Union, and deputies in the Sheriff's Department, represented by the Wisconsin Professional Police Association.

At the time of the hearing and submission of briefs in this proceeding four of the units had settled. The Teamsters and the WPPA units had settled on the terms offered by the County in this proceeding, although the deputy sheriffs had also received some wage rate adjustments, which this Union considers to have been important in convincing the WPPA members to accept the County's offer. The Union argues also that the PEHP is attractive to police officers because they expect to retire earlier than other employees.

Two of the AFSCME units had also settled, neither getting the PEHP, although both accepted the 5 percent employee contribution to the health insurance premium. The Union representative at the hearing in this dispute declared that the library unit is new and that he had recommended against accepting the terms offered by the Employer. In that case the members of the unit apparently were impressed by the offer of an additional personal holiday. The Union asserts that members of the Health Department professional unit received wage adjustments that were more important to them than the employee health insurance premium payment.

Since there were six AFSCME units that had not settled at the time of the hearing and initial brief filings in this procedure, the Union argues that the four settlements did not constitute a pattern of internal settlements. Before the filing of the reply briefs, however, there had been an arbitration award in the Highway Department unit which favored the Employer's final offer. The Union argues that although this means that half of the units have settled on the Employer's terms, this represents only 213 of the 602 employees in the ten units or 35 percent. The Union argues also that there are special circumstances in all the cases that differentiate them from the Parks employees unit. In the Highway Department arbitration the Union asserts that the arbitrator had considered both wages and health insurance as major issues. The Union had proposed a reclassification for the Highway Worker classification. As a part of his award favoring the Employer the arbitrator had stated that there was "no convincing evidence supporting (the) reclassification." The Union argues that this, together with the fact that four other issues in the Highway Department arbitration are included with the tentative agreement in this dispute, is ample evidence that the Highway Department arbitration should be distinguished from this proceeding.

The parties agree on jurisdictions for the external comparisons, as established in an earlier arbitration. They are the adjoining counties of Portage and Wood and the nearby cities of Marshfield, Stevens Point, and Wisconsin Rapids, as well as the city of Wausau. On the employee insurance premium contribution issue, these comparisons support the Employer. In Portage and Wood Counties employees contribute 5 percent, as do the employees in the city of Wausau. In Wisconsin Rapids employees contribute 10 percent; in Stevens Point the family employee contribution is 6 percent (zero for single members); and in Marshfield employees contribute 15 percent.

The Union argues that these figures should be considered with figures for deductibles, co-payments, and maximum out-of-pocket expenses under the plans. They would not change as a result of any of the proposals in this proceeding. Marathon County has the highest family deductible among the comparables at $600. Next highest is the city of Wisconsin Rapids, $500, then Marshfield, $400, Wood County, $300, Portage County and the city of Wausau, $200, and Stevens Point, zero. Co-payments for Marathon County are zero for the preferred plan and 90/10 for those outside the preferred plan. In comparison, the cities of Mrshfield, Stevens Point, and Wausau have zero co-payments, the Counties of Portage and Wood have 90/10, and the city of Wisconsin Rapids has 90/10 for the preferred plan and 80/20 for plans outside the preferred plan. Marathon County has $600 out-of-pocket maximum for the preferred plan, $1,200 for outside plans while the city of Stevens Point has zero, the city of Wausau $200, and the Counties of Portage and Wood and the city of Marshfield all have $400. Wisconsin Rapids has $1,000 for the preferred plan and $1,500 for outside plans. The Union argues that these figures show that in terms of dollar outlays the employees in this unit are already sharing equitably in the cost of health care.

The Union supports its 3.5 percent wage increase proposal in the second year by suggesting that the County could use the reductions in Wisconsin Retirement System contributions from 12.4 percent to 11.6 percent in 1999 as well as a .3 percent reduction in 1998 to pay for the extra half of one percent. It also argues that the healthy economy in Marathon County warrants a wage settlement "at least modestly in excess of (the comparable jurisdictions)."

THE EMPLOYER'S POSITION ON THE ISSUES

The Employer argues that both external and internal comparable support its position. On the internal comparables the Employer argues that four of the ten units have essentially accepted the Employer's proposals and in a fifth unit the Employer's proposal has been accepted by an arbitrator. Thus half of the units have been settled, three of them being AFSCME units. All those settlements include a 3 percent wage increase for 1999, three of them include the PEHP.

The Employer suggests that the 5 percent employee health insurance premium contribution would not be as expensive for employees as the Union has declared. The Employer has provides an IRS Section 125 Plan for employees which allows deductions such as health insurance premiums, insurance deductibles, and prescriptions to be paid out before taxes. The Employer estimates that this would save

employees 27.65 percent on the 5 percent contribution (15 percent federal, 5 percent state, and 7.65 percent FICA). For a family plan contribution of $29.24, this would reduce the actual contribution to $21.15, which is smaller than the non-taxable contribution of $24 per month that would be made by the Employer to the PEHP. According to the Employer estimates, the Section 125 Plan reduces the $600 per year deductible figure to $434.

As to the external comparisons, the County asserts that the evidence is clear. All the comparables require an employee contribution for their health insurance premiums. The County also provides dollar figures that purport to show that the employees of the comparables pay from $26.42 to $83.38 per month for their health insurance, an average of $46,18 as compared with the proposed contribution of $29.23 in this proceeding. The Employer also points out that after the $600 deductible is met, the health plan pays out 100 percent of the cost for all medical services provided by the preferred plan while three (half) of the comparables require a 10 percent co-payment, and a fourth makes no payment outside of the preferred plan if the patient has not been referred. It is pointed out that several ancillary services offered under the County's plan are not subject to the deductible provision. The Employer cites several arbitration awards where the arbitrators have perceived a trend within the State of Wisconsin toward employee payment of a portion of health insurance premiums. It is said to be recognized that rising health insurance costs can be met by reducing benefits. In this case benefits will not be altered.

The Employer asserts that the Union has not produced any evidence of 1999 wage increases among the comparables to support its proposal of a 3.5 percent increase.

OPINION

Both parties made arguments about the criteria in Section 111.70(4) (cm) 7. and 7g. of the Municipal Employment Relations Act. The former (subparagraph 7.) adjures the arbitrator to "consider and . . .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. . ." and "give an accounting of the consideration of this factor in the . . . decision."

The Employer cited Section 66.77(2) of the Wisconsin Statutes which states that "no county may impose an operating levy at an operating levy rate that exceeds .001 or the operating levy rate in 1992, whichever is greater." The Union responded that the Employer's dependence upon this wording is meaningless without some data to show how the County is limited in its ability to pay for the Union's proposal if the arbitrator were to adopt it. Since this admonition was contained in the Union's initial brief and the County did not respond with any data to support its argument either at the hearing or in its final brief, I conclude that the "greatest weight" criterion is irrelevant in this dispute. I may also say that as a property tax payer in several Wisconsin counties, my property taxes have been raised substantially since 1992, based largely, if not completely, on increased assessments. It is puzzling that the County should make this unsubstantiated argument when anyone who owns property knows that property taxes have risen since 1992, perhaps without any reference to the levy limits cited by the County. It is even more puzzling when the County states in its brief: "The County does not contend that it has an inability to pay for the Union's offer."

Both parties cited subparagraph 7b. noted above. This states that the arbitrator "shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subdivision 7r." The Union submitted data purporting to show that Marathon County is in the midst of an economic boom and that the County should have no trouble meeting the additional expense of the Union proposals. The Employer agreed that economic conditions in Marathon County are excellent and added the bizarre argument that because of these economic conditions the employees could now afford to contribute to the health insurance premium! No doubt the legislature added this criterion to protect municipal employers suffering substandard economic conditions from having to adopt expensive union proposals even though they might be justified in terms of the comparables. The Employer quoted another

arbitrator's prescient comment that because conditions have changed and economic conditions are currently very good does not mean that a union's proposals must automatically be adopted. In my opinion, because of the splendid economic conditions currently being observed in Marathon County, this criterion is irrelevant.

Under subparagraph 7r. of the statute, subsections a., b., and c. are not involved or in any way disputed in this proceeding.

Subsections d. and e. relate to the internal and external comparisons. As to the internal comparisons the decision is a toss-up. Two of the Union's own units have settled for what I estimate to be less than what the Employer offers here and an arbitrator has awarded for the County in a third AFSCME unit. Two other unions have settled with the County on terms equal to what the County offers in this proceeding. That total of five constitutes half the bargaining units in which the County has prevailed. Some observers would say that is a fairly strong trend. Others would say it is only half, not yet definitive. It represents only 35 percent of organized employees.

It is in the external comparisons that the Union suffers. All of them have some employee contribution to health insurance. And although the Employer's family deductible is higher than any of the others and its out-of-pocket maximum exceeds five of the six others, its co-pay is better than half of the others. The Employer also introduced exhibits at the hearing purporting to show that the prevailing practice among surrounding municipalities, school districts, and private employers in the Wausau community and vicinity is to have employees contribute to the cost of health insurance. On the issue of employee dollar contributions to health insurance the evidence favors the Employer's proposal.

Although it declares that the wage increase is only a minor issue in this proceeding, the Union does not produce any comparable evidence to support its wage proposal. It argues that in the cases that have settled there have been upward reclassification adjustments that should be taken into account when comparing those wage settlements with this Union's 3.5 percent wage increase proposal. The Union, however, has not produced any specific data to back up this argument except for some details of one external comparable, the City of Wausau-DPW settlement, and one internal comparable, the August, 1999, Highway unit award by Arbitrator Zeidler in which he was said to have declared that there was "no convincing evidence supporting (the) reclassification." On its part the Employer argues persuasively that the 3.5 percent proposal of the Union is more than any of the internal settlements as well as larger than Frank Zeidler's August award in the Highway unit.

Evidence of pay increases among the internal units as well as in the external comparable jurisdictions favors the Employer's proposal.

Factors g., h., i., and j. have little if any bearing upon the issues in this proceeding and in my opinion do not warrant separate discussion.

I am generally sympathetic with the Union's resistance to the PEHP. I believe the Union witness's assertion that the plan has no interest for members of the unit. Economists would say that these employees have a high discount rate for the value of dollars to be received in the future. And they may be right. I have made some rough calculations of the possible size of individual PEHP funds after ten years. If the Neuberger and Berman Partners Fund were to maintain its record of the past five years, a 21 percent annual return, an individual's PEHP fund could approach $9,000 over a ten year period. That record is unlikely to be attained in the next ten years. Assuming a ten percent rate of annual return, my estimate is that a personal account would accumulate to almost $5,000. (As noted above, these figures would be larger if the contributions are to be made bi-weekly rather than semi-monthly, that is, at an annual rate of $312 instead of $288.) While these ten year figures may look large, it is not unreasonable for members of the unit to be more concerned about how the premium contribution would reduce present take-home pay. We do not know what a problematic $5,000 may be worth ten years from now. It certainly will be less than the present value of $5,000. If it were not for the weight of the external comparables on the insurance contribution and the fact that the Union has not been able to show evidence to support its 1999 wage

proposal, I would be inclined to say that the adequacy of the PEHP is questionable as a quid pro quo for the health insurance contribution. I need to add one more consideration:

The evaluation of a quid pro quo in interest arbitration is indeterminate and inexact. Here it should be pointed out that in two other AFSCME units the employees have in one case accepted an additional personal holiday worth on an annual basis about a quarter of what they accepted in exchange as a pay reduction. In the other case, in exchange for the 5 percent health insurance contribution, it appears from the 1998-99 Health Department-AFSCME labor agreement introduced at the hearing that the employees settled for no 1999 pay increase for three classifications in exchange for increases in six other classifications to bring them to the level of two of the classifications that received no 1999 increase. Neither of these units received the PEHP. The quid pro quo offered by the Employer in this case is better than what employees accepted in settlements in the two other AFSCME units as just described.

The weight of the external comparables as well as the lack of an internal pattern that favors the Union's proposal persuade me to make the following

AWARD

Having considered the evidence and arguments presented and given appropriate weight to the factors listed in the statute, for the reasons outlined above, I select the final offer of Marathon County, which together with the parties' tentative agreements are to be included in the 1998-1999 collective bargaining agreement.

Dated: Sept. 28, 1999

at Madison, Wisconsin ____________________________________

David B. Johnson
Arbitrator