BEFORE THE ARBITRATOR

In the Matter of the Petition of WAUSAU CITY HALL EMPLOYEES UNION, LOCAL 1287CH, AFSCME, AFL-CIO To Initiate Arbitration Between Said Petitioner and CITY OF WAUSAU (SUPPORT/TECHNICAL)	Case 89 No. 56251 INT/ARB-8459 Decision No. 29533-A

Appearances:

Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin 54476, on behalf of the Union.

Mr. William P. Nagel, City Attorney, City of Wausau, 407 Grant Street, Wausau, Wisconsin 54403-4783, on behalf of the City.

ARBITRATION AWARD

Wausau City Hall Employees Union, Local 1287CH, AFSCME, AFL-CIO, hereinafter referred to as the Union, and City of Wausau (Support/Technical), hereinafter referred to as the City or Employer, having met on several occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 1997. Said agreement covered all support/technical employees of the City of Wausau employed in the City Hall and related buildings, excluding department heads, supervisory, managerial, confidential, seasonal/temporary employees and all other City employees currently represented.

Failing to reach such an accord, the Union, on March 11, 1998, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties by January 19, 1999, issued an Order wherein it determined that the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of seven arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on March 18, 1999, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on May 4, 1999, at Wausau, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial and reply briefs were filed

and exchanged, and received by August 28, 1999. The record was closed as of the latter date.

THE FINAL OFFERS OF THE PARTIES:

The Union and City final offers are attached and identified as Attachment "A" and "B", respectively.

No stipulations were entered into.

BACKGROUND:

At the hearing, each party presented one witness to address certain aspects of its final offer. Union witness Craig Gardner, President of Local 1287 and a Water Plant Operator in the Department of Public Works bargaining unit, testified that his unit settled with the City of Wausau and accepted the same insurance proposal as proposed in this unit, but only because of the amount of their monetary package. He testified that the DPW wage package was greater than that offered to the employees in the instant unit.

Employer witness Jackie Peterson, Human Resources Director, testified that the quid pro quo of 15 cents per hour and .2% additional wage increase offered to this unit for a 5% health insurance premium contribution by employees, and a change in the drug co-pay, was the same as offered and settled with other units of the Employer. Further, she testified that the 15 cents per hour was more than enough to make employees whole for the

insurance change proposed by the City during the term of this agreement. Peterson also testified that while the DPW received an additional wage increase, it was because they lagged in their wage rates as compared to their comparables.

In addition to the two witnesses, each party presented exhibits in support of their positions. Representatives for each side reviewed and explained their exhibits to the Arbitrator.

POSITIONS OF THE PARTIES:

Union's Position

Local Economic Conditions - Greater Weight Criterion (7g)

The Union points out that in 1996, the Wisconsin Legislature revised the Municipal Employment Relations Act (MERA) by modifying the criteria and providing arbitrators with legislative mandated direction on weighing.

Under the new system, arbitrators were required to accord "greatest weight" to any state laws limiting the right of a local government to raise wages. [1]/ In addition, the Legislature directed arbitrators to give "greater weight" to "local economic conditions."

The Union argues that since the Union health insurance offer in the instant proceeding is more costly, it believes this modification in the law should have considerable impact upon this dispute.

1/ The Union does not believe that this criterion applies to the

The Union argues that there is no question the Wausau/Marathon County area is thriving. The Union in support of its position cites Union Exhibits 5 - 21, the low rate of unemployment in the area, growth of the area's economy in recent years, increase in property valuation, and increase in personal income of area residents. The Union cites arbitration awards that have recognized the strength of the local economy and have applied the standard of "greater weight" in favor of the Union's final offer.

External Comparability Dispute

The Union notes that this is the first time the Wausau City Hall bargaining unit has resorted to arbitration to settle a contract dispute.

The Union proposes the selection of a grouping of six similarly sized cities (population between 30,000 and 70,000) which have been previously utilized by other arbitrators in City of Wausau disputes with other bargaining units. They include Appleton, Beloit, Fond du Lac, LaCrosse, Manitowoc, Oshkosh and Sheboygan.

Since the Wausau city Hall has not resorted to interest arbitration to settle a contract dispute before, the Union primarily bases its selection of comparables upon past awards in other City bargaining units.

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instant case.

Health Insurance Dispute - Bargaining History

It is the Union's position that health insurance is the major (perhaps the only) dispute in this proceeding. The parties are actually very close with respect to wages, with the employer offer (even aside from the identified quid pro quo) slightly exceeding that of the Union over the two-year span of the contract.

The current health insurance cost sharing arrangements between the City and the City Hall union dates back to the 1984 contract (Union Exhibit 44).

In the mid-1980's, Marathon County and the City of Wausau had a joint personnel function. At that time the Employer and its various unions implemented a series of changes in the health insurance benefit through voluntary agreements which could accurately be characterized as mutually beneficial.

According to the Union, at that time, it was agreed that the City would match the level of benefits contained in the Marathon County health insurance plan. The Employer also agreed to pay the full cost for employees enrolled in the insurance plan. As part of the agreement, deductibles of $100 single and $200 for a family were instituted. Also as part of the bargain, a 50% Employer funded dental insurance plan was instituted.

Health Insurance Premiums - External Comparability

It is the position of the Union that the external comparables selected by the Union are extremely supportive of 100% health

insurance premium payment.

Relying on Union Exhibit 31, the Union contends the data establishes that the Union offer should be overwhelmingly favored with respect to the external comparables. In fact, it is argued, if the Employer offer were selected in this proceeding, the City would become the only one of the grouping requiring single subscribers to pay towards health insurance premiums.

The Union believes the City's selection of external comparables has no arbitral basis and is thus selectively self-serving. However, even using these inappropriate comparables, half actually provide a 100% contribution for the single plan, and three continue to maintain 100% family premiums.

The Union did not submit direct evidence as to prescription drug co-pay; however, the City did. The Union claims that while its data generally support co-pays within the group, it fails to identify the fact that the co-pays are $10 per prescription, which exceed the rates of all of its own listed comparables.

Health Insurance Premiums - Internal Comparability

The City maintains five bargaining units. They include the instant unit as well as the Department of Public Works (DPW), Police, Fire and Transit (WATS).

The Union claims that the 1998-99 internal situation among the group is mixed. The City placed two exhibits into the record relating to settlements in the Police Department and the DPW.

However, the Union points out, they did not include evidence with respect to the relative size of the bargaining units. Both Fire and Transit unions, it is argued, continue to enjoy 100% health insurance premium payment and prescription drug coverage without co-pays. In addition, the Union claims, other than health insurance changes, the DPW and Police settlements are inconsistent with each other as well as the final offer of the City in the instant proceeding.

However, it is argued, the two settlements do share a consistent characteristic in that both provide considerably more monetary compensation to groups who already enjoy higher wage levels than employees of the City Hall as follows:

Department of Public Works

This agreement, the Union claims, provides considerably more in exchange for insurance concessions. City Exhibit 9 identifies general wage increases of 3% and 3.2% for 1998 and 1999, respectively, for the unit. Also effective January 1, 1999, the City provided an additional 15 cents prior to the general increase. However, in all of the occupations of Level 7, as well as the Level 6, Traffic Maintainer, there is an additional adjustment of 25 cents effective January 1, 1998.

In addition, it is argued, effective on July 1, 1998 and June 1, 1999, all occupations receive another 15 cents per hour for a total of 30 cents, in addition to the general increase for

the two years of the agreement.

The Union argues that according to the unrebutted testimony from DPW Union President Craig Gardner, the DPW membership would not have ratified their 1998-99 contract without the special adjustments. There can be little question that in terms of wages, these increases are in excess of, and inconsistent with, those provided to the City Hall unit in the final offer of the City.

Police

The Union points out that while police officers enjoy an identical "longevity" provision with the City Hall (and DPW) groups, they also enjoy a wage schedule which, to a far greater degree, builds longevity into it.

For example, after 30 months a City Hall employee reaches their fourth and final pay step (Step D).

In sharp contrast, it is argued, a police officer position has a base rate, and five additional pay steps (for a total of six). For example, those under 3 years of service receive the "Police Officer" rate. After 3 years they move to "Police Officer 1." After 5 years they move to "Police Officer 2"; 6 years a "Police Officer 3"; 10 years a "Police Officer 4"; and after 15 years they attain their maximum rate at "Police Officer 5." [2]/

2/ The Officer 2, 3 and 4 also require a bachelor's degree; however, there is no such requirement for the Police Officer 5.

In addition, the 1999-2000 settlement for the Police also includes certain special provisions which likely represents "hidden" compensation. For example, for the first time "Canine Assisted Police Officers" are to receive an addition 3.5% per month.

In addition, a 1% premium is to be paid to all officers who meet department's certification firearm standards.

In any event, the Union contends that it is clear that in both of the settlements the City is relying upon to establish an "internal pattern," there are special wage adjustments which do not exist for the City Hall group. It is also clear that these adjustments could not have helped but to have provided considerable support for the ultimate voluntary adoption of the health insurance modifications.

In support of its position, the Union argues that arbitrators have held [3]/ that special adjustments are not properly excluded for purposes of internal comparisons.

The Union argues that in the final analysis the City proposes a triple whammy. Not one but two major involuntary changes in the health insurance plan. And they offer in exchange a substantially reduced rate of increase for City groups who already suffer with the lowest wage rates.

3/ Marathon County (Parks), Decision No. 27033-C, Stern (1992); Lincoln County, Decision No. 29340-A, Weisberger (9/2/98); Burnett County, Decision No. 29204-A, Petrie (1998).

"Compelling Need" and "Quid Pro Quo" Considerations

The Union seeks to maintain the status quo with respect to health insurance in this proceeding.

It is argued that while most arbitrators require quid pro quos

by a party moving to add, subtract, or otherwise change a benefit involuntarily, a number have employed different tests.

The Union cites the test adopted by the late Toby Reynolds which has been adopted by other arbitrators:

> This Arbitrator has subscribed to a three-prong test to be used to evaluate whether a party desiring to alter contract language has met its burden. Here the burden is upon the County to show:
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> (1) That the present contract language has given rise to conditions that require amendment;
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> (2) That the proposed language may reasonably be expected to remedy the situation; and
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> (3) That alteration will not impose an unreasonable burden on the other party. [4]/

In the instant proceeding, it is argued, the City cannot even meet Reynolds' first condition. There is no evidence of a condition which requires change.

The Union notes that it could cite many arbitrators relative to the question of adequacy of quid pro quo. However, the Union claims, the one that seemed to fit this case the best was provided by Arbitrator Kessler:

> A "buy out" is not something that is involuntarily imposed. The union may be willing to go along with it under some circumstances, but the price acceptance may not yet have been reached. This contract involves a continuing relationship, not a first time contract. The City's proposal might be acceptable if this was a first time contract, but it is not. An imposed "buy out" unduly alters the relationship between the parties and probably will have a negative impact on future negotiations. If one party can secure a major contract alteration in this fashion, the other party can return the compliment at the time of the contract expiration. The process will then result in each side trying to gain advantage through arbitration, rather than "fine tuning" their relationship by continuing good faith discussion and compromise. [5]/

Thus, it is argued, the record of this proceeding clearly establishes that there is neither "compelling need" for the Employer to require a change in the current health insurance benefit, nor is there an appropriate quid pro quo for the changes proposed by the City.

For all of the foregoing reasons, the Union believes that its final offer is far more consistent with the statutory criteria and its subsequent applications. The final offer of the Union should be selected.

Employer's Position

The City asserts that it has offered the Union a reasonable wage increase--commensurate with the settled unions, and in addition, a quid pro quo of 15 cents per hour to offset the

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4/ Adams County, Decision No. 25479-A, Reynolds.
5/ City of Onalaska, Decision No. 26652-A, Kessler (5-5-91).

12 cents and 4 cents per hour that the Union members will pay for health insurance premiums. The 5% premium payment is capped at $32 per month, and is re-negotiable after the two-year contract term. The offer of the City, it is argued, not only maintains the status quo by placing enough money on the "teeter-totter" to more than equalize the premium payout, but the City puts more money into the pockets of many of the Union members than the Union's own proposal would. And the City's offer definitely increases the lift of the bargaining unit members going into the next contract period.

The Employer contends that the "drug" change will help some members and hurt others, so it cannot be termed as a negative for the Union as a whole. For example, a family of four, where under the old contract each family member used only one prescription in a calendar year, will probably save under the City's proposal, while an individual who pays, say, $300 out in drugs during a year will lose. Under these examples, the full payment of up to $50 per person would have hurt the family of four under the old plan, but
the $200 total deductible will hurt the individual under the new plan. Under the examples, the family will spend less under the new plan, and the individual could have spent less under the old plan.

In short, it is argued, the City's offer is actually better for the Union than the Union's own offer. Because of the "pre-

tax" provision in the City's offer, the only real "losers" are the Department of Revenue and the IRS.

The City argues that its offer is in line with the settlements in 1287, Police and WATS, and in line with the settlement proposal which the Fire union has ratified and which the City Council will be considering in the future. (The Human Resources Committee has approved of the agreement and has recommended its adoption to the Common Council.) The actual insurance policy provided to the employees (with the exception of the drug policy) is the exact same "Cadillac" policy that has been in place for a number of years. The only change is the aforementioned drug policy in which some may lose, but that loss is capped at $200. And, the City claims, some will gain under this drug plan. The City's offer maintains between the Union and the City the status quo of the excellent labor agreement which was in place before the expiration of the contract. Some employees will actually get more money under the City's final offer, and because of the cap on the insurance contribution, no members will be hurt by the City's offer, with the exception of perhaps some under the drug provision.

It is the Employer's position that the use by the Union of other cities outside the area to somehow show that the 3.5% Union offer is more reasonable is totally misplaced and really does a disservice to the Union's argument. It is argued that if the Union is attempting to show that clericals in Appleton and Beloit

and Manitowoc and other cities "make more" and thus this Union's clericals should get catch-up, then they would be better advised for the sake of many Union members to take the City's offer, because the City's offer is more money and offers a bigger lift. If the Union is "holding out" because it does not want to agree to the "5 percent" payment provision, then they may be placing what could be misplaced principle ahead of dollars and benefits, both short term and long term.

The City asserts that looking directly at the Union's "comparables" from the other cities draws far more questions than answers, because in Appleton, Beloit, Manitowoc and Oshkosh, the deductibles ranged from $300 to $500 per family (Wausau stays at $200) and there are co-pays for services and drugs.

External Comparables

The City contends it compared Wausau to Appleton, Beloit, Fond du Lac, Sheboygan, Manitowoc, Oshkosh and LaCrosse. In the City's hypothetical, the City used family insurance with an average of three members per family, an average number of prescriptions per family member of seven at a cost of $26.14 per prescription, and the actual premium numbers from each contract. The estimated annual cost to the employee carrying the health insurance was $1,281 for Manitowoc, $1,005 for Appleton, $983 for Fond du Lac, $563 for Oshkosh, $405 for Beloit, $342 for LaCrosse, and $105 for Sheboygan. The City's proposal, it is claimed, would

mean an estimated annual cost to the employee of $753, or approximately in the middle range of the comparables. The City contends it ran wage rate comparables using the same cities and the City's offer would put those in the Union in the upper end of the pay range. For instance, the City's offer would pay an administrative specialist at the end of the contract period (after 7/1/99) $14.11 per hour. The following numbers are for calendar year 1999 in the stated cities: Appleton $14.22, Beloit $13.35, Sheboygan $13.91, Manitowoc $13.20, Oshkosh $12.85, and LaCrosse $14.00. In each case addressed by the City (Clerical Assistant II, Secretary, Account Clerk I, Administrative Specialist, Account Clerk II, and Payroll Systems Specialist), the wage under the City's offer was certainly comparable.

The City utilized the communities within the upper and middle Wisconsin River Valley Area. The City asserts that it used these because they are geographically close to Wausau, they are full-service communities within a 50-mile radius of the community, they compose the Central Wisconsin labor market, and they have traditionally been used as comparable communities in the City's bargaining relationships. All of these cities have the same "shopping basket" within which to buy goods and commodities. The City fails to see any reasoning why cities in the Fox Valley or south of Madison should be used as comparables.

City Exhibits 6 and 7 are the insurance and wage rate comparables. It is argued by the City that if the arbitrator were

to maintain that cities in the Fox River Valley and South of Madison were comparable to Wausau, the City's internal labor stability that it currently has with the other unions would be negatively impacted. The City hires from a local pool of talent, and our employees generally live within the area. There are clearly dissimilarities between our labor pool and labor pools contained in the Union's external comparables because of geographic, economic, cultural and other conditions which affect wages and prices of subsistence goods.

Status Quo

The City is certainly changing the method that the health insurance premium is paid. The City recognizes that it must show a need for this and then offer a quid pro quo in order to meet the standard for quid pro quo. The City feels its cost of health insurance and the health insurance premium trends certainly meet the need standard. The City argues that as the hearing showed medical and surgical costs and drug costs, and the premiums to pay for health insurance for those costs have escalated and will continue to escalate in the future. There is no question there is a need. With respect to the quid pro quo standard, it is the City's position that it has more than met the standard, because it has placed in its final offer to the Union dollars at least equaling what the Union will pay out, and in many cases more dollars than they will pay out. Also, the City has added the

15 cents to the base wage. Frankly, it is argued, this may have been a bit generous in the long term, as this 15 cents will always go up with any increase; however, the City did not want to leave any room for miscalculation.

The Internal Comparables in this Case Strongly Favor the City's Position

According to the City, arbitrators have long agreed that an established pattern of bargaining among an employer's internal units is the single most important factor in evaluating the appropriateness of final offers. As Arbitrator Gil Vernon stated in City of Appleton (Police), Decision No. 25636-A (4/89):

> In municipalities that have a number of different bargaining units the internal pattern of settlements--if one exists--deserves a great deal of attention: This is well established and the reasons have been well expressed Arbitrators across the state. A pattern of consistent increases agreed to by various bargaining units is a collective consensus of the appropriate influence all the various statutory criteria should have as a whole relative to the particular economic circumstances in any city. It really is a good yard stick for the proximate mix of all the factors as it subsumes all of them. As such, the internal pattern is more important than any single other criteria. (Emphasis added.)

This principle, it is claimed, is just as valid today as it was then. The City's five labor Agreements are very similar. There are small differences, but with regard to wages and health insurance, there has been a very strong internal consistency in the City of Wausau. In addition, this internal consistency has

been maintained through voluntary settlements. It is argued that City Exhibits 8 and 9 provide two examples of this. City Exhibit 10 is
the non-rep clerical provision which also provides an internal standard. The City points out that the WATS agreement has been signed, and the Fire agreement has been ratified by the Fire Union.

Significant in this regard of internal comparability is the fact that the other four City unions voluntarily agreed to the 5% premium payment by their employees.

The City argues that there is no question that the City has internal comparability on its side, and this internal settlement pattern within the City cannot be overemphasized. It has consistently been the general practice of management to insure that "what one union gets, all the unions will get." There have been variances from this policy, usually because of different working conditions; however, this consistency premise has generally been the practice of the city and the unions in the past.

Another key, the City contends, is that the city is changing the status quo very, very little. The cap of $32 insures that there will not be a large "negative" to any employee. Except for the minor change in the drug plan, the City's health insurance package is the same as it has been, and it is truly outstanding. According to the City, $100 per person and $200 family deductible

per year makes this policy second to none, anywhere. In addition, the doctor pool consists of all physicians in Wausau and Marshfield and a number of other areas, as well as chiropractors and therapy clinics.

The Average Consumer Prices for Goods and Services, Commonly Known as the Cost of Living

As the City's Exhibit 12 indicates, the percent change in the cost of living for calendar year 1999 to date is 1.6%. Certainly, it is argued, the City's offer exceeds that.

The Interests and Welfare of the Public and the Financial Ability of the City to Meet These Costs

Obviously, the City reasons, with the ability of the City to tax, it is foolish for any municipality to say that "it cannot pay for a settlement package." However, it is argued, it is just as obvious to anyone living in our society that the pressure on municipalities to maintain level tax rates is immense.

The City argues that because of the internal comparables and the CPI, it is in the public interest to implement the City's package.

Changes in Any of the Foregoing Circumstances During the Pendency of the Arbitration Proceedings

Other than the WATS settlement and the Fire Union's ratification of the tentative fire agreement, the City claims there is no known changes which would impact the decision of the Arbitrator.

Conclusions

The City argues its offer is the more reasonable offer. It is the City's position that internal comparability, the lack of any reason to adopt external comparables, the maintenance of the status quo, and the interest of the public all are reasons for adopting the City's final offer.

Union's Reply

The Union notes that the City maintains that there is now a settlement with the firefighters union and the transit union with both accepting the City's insurance proposal and quid pro quo. It is the Union's position, however, that said settlements are not in evidence, thereby rendering it virtually impossible for it to advance an argument with respect thereto.

Further, the Union questions the City's claim that employees are better off under the City's proposal than the Union's; that the health insurance plan is a "cadillac" plan; that the City's internal labor stability will be adversely affected; and that the City's external comparables based on geographic proximity is not appropriate and that the Union's, based on relative size, as accepted by prior arbitrators, should be selected.

Employer's Reply

The Employer argues that the Union's position that the City has the ability to pay because of a strong economy is misplaced.

It is argued that the City's power to generate dollars is limited, except to a few instances where it can generate minimal fees, to taxing people and receiving State aids.

Further, the Employer takes issue with the Union's claim that employees in this unit are "some of the lowest paid classifications in the City" and claims that there are many jobs in the City which pay far less; and that when the City's health insurance plan, including its deductibles and co-pay, is compared with the external comparables, it is a better plan.

DISCUSSION:

Section 111.70(4)(cm)7 of the Wisconsin Statutes directs the Arbitrator to give weight to the following arbitral criteria:

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

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization 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 the parties, in the public service or in private employment.

In applying the above criteria, the Arbitrator must determine which offer is more reasonable based on the evidence presented.

Both parties agree that the determinative issue in this case is the health insurance issue. The parties' final offer on wages

is very close and, undoubtedly, would have been voluntarily settled without the issue of health insurance.

It is the Employer who proposes to change the status quo by (1) requiring employees to contribute on a monthly basis 5% of the health insurance premium not to exceed $32 per month, and (2) a change in prescription drug plan co-pay with an annual $200 out-of-pocket maximum per policy.

Both changes would be effective January 1, 1999. The Employer offers a quid pro quo of 15 cents per hour for the premium change and a .2% wage increase for the drug plan co-pay proposal. Further, the deductions for health and dental premiums would be on a pre-tax basis.

In support of their positions, both parties rely on internal and external comparables. Additionally, the Union relies on "7g. Factor Given Greater Weight," while the Employer relies on "7r.g, CPI" and "7r.i, Changes During the Pendency of the Arbitration Proceedings." The parties presented no evidence or arguments with respect to criteria 7, [6]/ 7r. a, b, e, f, h and j, and, therefore, said criteria are determined, as the parties have, to be non-determinative.

1. 7g. Greater Weight

6/ Although this is the factor that must be given greatest weight, it is undisputed that the Union's final offer is not precluded by any "limitations on expenditures that may be made or revenues that may be collected by a municipal employer."

It is the Union's position that the local economy is very healthy and, thus, this criterion favors the Union's final offer.

The Employer does not dispute that the economy is doing very well, but argues that a healthy economy does not mean that the City should spend money unwisely or that it has an unlimited supply of money. It is argued that even in good times it is hard to raise taxes.

The Arbitrator recognizes the importance of the 7g. criterion and the "greater weight" it is given. However, notwithstanding same, it should be noted that a conclusion that the Employer's economic condition is strong does not automatically mean that the higher of the two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer.

Here, a review of the record evidence convinces the Arbitrator that the condition of the local economy can easily support either party's final offer in that the two are very close in total package cost. The dispute, herein, is not so much over the cost of the package as it is over where to place the money: fringes or wages. This being the case, the Arbitrator is convinced that both offers are supportable by the economic condition of the local economy of the City of Wausau and, for said reason, other criteria must be considered to determine which of the two final offers is most reasonable.

2. c. Interest and Welfare of the Public

The Employer argues that the public is best served with its proposal to have employees contribute to the cost of health insurance by contributing 5% of the health insurance premium. Further, given the internal comparables and the CPI, it is the Employer's position that the public will be best served by the implementation of its final offer.

The Union did not specifically address this criterion, but it can reasonably be assumed that it views its proposal in the best interests and welfare of the public because it is supported by criteria of "greater weight" (local economy) and internal and external comparables.

It is the opinion of the Arbitrator that since the total package costs of the two final offers are so close, the interest and welfare of the public is best served by the final offer that best meets the other statutory criteria.

3. External Comparables

A. Insurance

The parties disagree as to the appropriate comparables to the City of Wausau.

For external comparison purposes, the City urges the Arbitrator to utilize the communities within the upper and middle Wisconsin River Valley area. [7]/ The City argues that these

7/ Lincoln County, Marshfield, Merrill, Mosinee, North Central

communities are geographically close to Wausau; they are full-service communities within a 50-mile radius of Wausau; they compose the Central Wisconsin labor market; and they have traditionally been used as comparables in the City's bargaining relationship.

The Union urges the adoption of the cities of Appleton, Beloit, Fond du Lac, LaCrosse, Manitowoc, Oshkosh and Sheboygan as appropriate comparables. Even though this unit has not previously been to interest arbitration, the Union claims that its proposed comparables have been established in other city units. It is argued the same comparables should apply here.

Over the years, the City of Wausau, has been party to many interest arbitration cases with its other bargaining units. In the most recent case, [8]/ Arbitrator McAlpin discussed previous City of Wausau cases and the history of the issue of appropriate comparables. He concluded that Arbitrator Bellman in a 1996 case [9]/ had indeed established the appropriate comparables and that he found no persuasive reason to deviate from the status quo. The established comparables were determined to be the following: Appleton, Beloit, DePere, Eau Claire, Fond du Lac, Janesville, LaCrosse, Manitowoc, Marshfield, Neenah, Oshkosh, Sheboygan, Stevens Point, Watertown and West Bend. It is readily apparent

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Technical College, Portage County, Wausau School District, Wisconsin Rapids, Stevens Point and Marathon County.

8/ Wausau Fire Department, Decision No. 29062-A (1997).

9/ Wausau Fire Department, Decision No. 25529-A (1996).

that neither side is proposing the Fire unit set of comparables in total. For purposes of this case the Arbitrator will consider each party's set of comparables. [10]/

Six of the seven Union comparables pay 100% of the health insurance premium. However, this is somewhat offset by Wausau's lower deductible ($100/$300), than Appleton ($100/$300), Beloit ($100/$300), LaCrosse ($100/$300), Manitowoc ($250/$500), and Oshkosh ($250/$500). Oshkosh also requires a 5% premium contribution by its employees.

The City's set of comparables clearly favor its offer. Seven of the ten require 5% - 11% premium contribution by employees and six have higher deductibles. [11]/

Thus, there is some support for both proposals. However, as will be discussed next, the Arbitrator finds that in the instant case internal comparables are considered to be more important than external comparables. This is true even if the Union's external comparables are adopted.

B. Wages

There is no record evidence of the wage increases negotiated or awarded in the external comparables. There is a record of the actual wage rates of some, but not all, of the comparables but not

10/ The Arbitrator does not find the record evidence sufficient to determine whether the Fire unit comparables should apply and control in this case or if there is another definitive set of comparables.

11/ Figures for the other four secondary comparables are not in

the actual increase. To make a meaningful comparison, the Arbitrator needs both. For said reason, and because the Employer has settled with all of its other bargaining units, the Arbitrator finds the internal comparables to be determinative.

4. Internal Comparables

A. Insurance

There are five collective bargaining units represented in the City of Wausau. In addition to the City Hall unit herein, the other units include the Department of Public Works (DPW), Transit (WATS), Police and Fire units. At the time of the hearing both the DPW and Police units had settled. Since that time the two other units, WATS and Fire, have settled as well.

All four units accepted the same insurance changes (5% employee contribution with a $32 per month cap, deductibles, drug plan, etc.) proposed by the City in its final offer herein to City Hall unit employees.

Given the above and the external comparables as discussed earlier, the issue remains whether the City's proposal to change the health insurance premium contribution to require a 5% pick-up by employees is reasonable. In cases like this where one party seeks to make a significant change in existing benefits (status quo), generally arbitrators believe the interests of the parties and the public is best served by imposing on the moving

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the record.

party the burden of establishing (1) a compelling need for the change, (2) that its proposal reasonably addresses the need for the change, and (3) that a sufficient quid pro quo has been offered, if needed. In each case the sufficiency and weight to be given to each element must be balanced.

Here, the external comparables as a whole do not support the change proposed, but the internal comparables do. Four of the five City units have voluntarily settled for the same insurance change proposed here, which persuades the Arbitrator that the internal comparables support the Employer's "need" to make a similar change in this unit and that its proposal reasonably addresses the need. The undersigned is of the opinion that the need for uniform benefits in the area of health insurance is vitally important. Some municipal employers have as many as 15 - 20 collective bargaining units each with its own collective bargaining agreement. To allow each unit to alter its total package with respect to health insurance benefits and the level of premium contribution,

if any, by its employees, would make the administration of a health insurance program more difficult and raises a fairness issue among its employees. [12]/

12/ Other arbitrators have stated the same but differently. Arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91), stated:

> . . . Internal comparables historically in municipal units have been given great weight when

For the reasons stated above, the Arbitrator finds the City's insurance proposal to be totally reasonable if a sufficient quid pro quo is offered. Since the Employer has settled with its other units with the same insurance proposal, a sufficient quid pro quo, in the opinion of the arbitrator, is one that is reasonably close to that offered to the other units. All of the

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> it comes to basic fringe benefits. There is great uniformity in contribution levels and in the specific benefits, particularly in health insurance. Significant equity considerations arise when one unit seeks to be treated more favorably than others.

Arbitrator Malamud in Greendale School District, Dec. No. 25499-A (1/89), stated:

> Consistency in the level of benefits among employee groups is a widely accepted tenet in labor relations.
>
> . . .
>
> The Employer demand for consistency in benefits as expressed through its final offer is accorded great weight by this Arbitrator.

Arbitrator Nielsen in Dane County (Sheriff's Department), Dec. No. 25576-B (2/89), stated:

> In the area of insurance benefits, a uniform internal pattern is particularly persuasive. . . . Unless the benefit is demonstrably substandard, and not made up for in some other component of the compensation package, external comparables will not generally have great weight in disputes over the features of an insurance plan.

Arbitrator Kessler stated in Columbia County (Health Care), Dec. No. 28960-A (8/97):

> Particularly in the administration of health insurance benefits, a government should be treating

other units accepted additional money as a quid pro quo. They accepted an additional 15 cents per hour and .2% wage increase in 1999. Since the Arbitrator has already concluded that the Employer, based on internal comparables, has shown a need for its insurance proposal, it follows that the Employer's offer of the same quid pro quo here, as settled with other City units, is also sufficient and reasonable. Further, and importantly, the City's economic quid pro quo is inherently fair. Considering that the employee 5% premium contribution can be paid with tax free dollars, the cost of the 5% premium contribution, currently, is equal to 12 cents per hour for a family plan and 4 cents per hour for a single plan (Employer Exhibit 3). Thus, the Arbitrator finds the Employer's insurance premium proposal, including its quid pro quo, more reasonable than the Union's proposal maintaining status quo.

B. Wages

Except for the quid pro quo, the internal comparison of wages and other forms of compensation is somewhat difficult due to the lack of information contained in the record. Two of the settlements, WATS and Fire, occurred after the hearing in this case and the complete terms of those settlements are not in evidence. It is clear, however, as discussed above, that both agreed to the City's insurance proposal with the same quid pro

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all of its employees the same.

quo. It is also clear they both received the same general wage increase of 7% as proposed here. What is not apparent is if there was any other form of compensation such as classification adjustments, etc. Not knowing same, the more meaningful comparison to be made, in the opinion of this Arbitrator, is with the settlements of the DPW and Police units, the terms of which are known. For the purpose of making wage comparisons, the arbitrator has subtracted the insurance quid pro quo of 15 cents per hour and .2% on wages from each package. Thus, the actual DPW and Police two-year wage packages and the Employer's final offer in this unit are as follows:

DPW	6% plus 30 cents and two classification adjustments
Police	7% plus 1% firearm certification bonus and 3 1/2% per month for canine duty [13]/
Support/ Technical	7%

The Police settlement, however, is difficult to calculate. It is noted that firearm certification bonus benefit is not an entirely new benefit. The 1% across-the-board bonus replaces a previous bonus which was determined by the skill level of each officer. There were four skill levels: quality, marksman, sharp shooter, and expert with employees at each level receiving $100, $200, $275 and $325, respectively. Therefore, no one will actually be receiving a 1% increase.

13/ The Union argues that the Police unit has a better longevity provision than the unit herein. While this is true, it is not a benefit that was negotiated in this contract. This was

Further, not knowing at what skill level and classification the police officers are currently at makes it impossible to determine the impact of the firearm bonus unit-wide. If most are at the expert level, the 1% bonus would not amount to a big difference. It could be that this benefit, unit-wide, only amounts to a few tenths of a percent.

That leaves the DPW settlement. The record is complete with respect to the terms of that settlement. However, one cannot accurately convert the 30 cents per hour to a percentage, for comparison purposes, since there is no record evidence of the unit's average hourly rate. If one were to guesstimate from the contract an annual average wage of $27,5000, the 30 cents per hour increase would equal about a 2.3% increase. This added to the 6% general wage increase would total an 8.3% package [14]/ compared to the 7% package offered herein. The Employer, however, argues that the extra increase, above 7%, was for "catch-up" because DPW employees are lagging behind their comparables. The Union does not contend otherwise, but does argue that, notwithstanding same, the total package settlement of the DPW, including catch-up, must be used for comparison purposes.

The key issue, then, in comparing the parties' offers with the DPW package is whether the cost of "catch-up" increases in the

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part of a total package in a previous settlement.

14/ The Traffic Maintainer and Level 7 classifications received an additional 25 cents per hour. But this involves only a very few employees and, unit-wide, has a minimal impact.

DPW package should be included in the cost of that settlement for comparison purposes. The Union argues that it should citing three interest arbitration cases in support thereof. The cases, Burnett County, Lincoln County and Marathon County, have been thoroughly reviewed by the undersigned. The Arbitrator does not necessarily agree that they stand for the proposition claimed by the Union. Each case addressed the issue of other forms of compensation, but the Arbitrator is not convinced the arbitrators were addressing "catch-up" or "equity" adjustments.

In the Lincoln case, it appears the arbitrator did not. The arbitrator footnoted the issue as follows in her discussion of the total value of all wage improvements.

> The parties probably disagree as to how equity and/or other wage adjustments should be weighed along with an across the board increase. Neither party addressed this point, however. (p. 10)

With respect to the two other cases cited by the Union, the issue of "catch-up" or "equity" adjustments was not specifically discussed. It is unclear whether their decision to cost additional increases included same. For said reason, the Arbitrator does not find those decisions very helpful.

To begin with, I agree with the general proposition that regardless of the form of compensation, all compensation must be costed as part of the total package. Thus, a general across-the-board increase, for costing purposes, should not be treated any

differently than an increase in classification, bonuses, added benefits, etc. [15]/ Units may differ on where they want their money placed. However, with respect to extra compensation for catch-up or equity [16]/ adjustments, it is the opinion of this Arbitrator that such adjustments should not be considered part of the cost of the package when compared to other units. The reason is simple. The very nature of such an adjustment is to bring the affected employees in line with their market comparables. If their "comparables," either internal or external, are entitled to receive the same increase on the basis that they are entitled to the same total package, then nothing has been gained. The purpose of the "catch-up" or "equity" has been defeated. There would be no incentive for an employer to grant such adjustment if they are obligated to give the equivalent of said adjustments to their other units. Likewise, with external comparables, there would be no reason to grant a catch-up increase if all comparables were, in turn, forced to meet the cost of said adjustments in their settlements. Nothing would be gained.

For reasons discussed above, the catch-up increase in the DPW

15/ Additionally, parties should not be allowed to "hide" the cost of their settlement from other units by granting increases other than a general wage increase and not counting same.

16/ What constitutes a "catch-up" or "equity" increase in any given case must be determined on its own facts. As indicated earlier, the Union, which also represents the DPW unit, does not dispute the Employer's claim that extra compensation in the DPW unit was for the purpose of "catch-up," only that it should be costed for comparison purposes.

unit should not be considered in comparing the DPW settlement with the final offers of the parties in this case. Thus, the Arbitrator considers the DPW wage package, for comparison purposes, to basically be a 7% package.

Based on the above, with respect to the wage and compensation issue as compared to other internal units, the Arbitrator concludes that the DPW settlement is about the same, the Police settlement is somewhat higher, and the WATS and Fire settlements are probably the same but might be higher. Given same, the Arbitrator finds the Union's proposal to be slightly favorable over the Employer's final offer.

Conclusion

In deciding which final offer, overall, is more reasonable as measured by the statutory criteria, the Arbitrator must balance the parties' final offer with respect to the health insurance issue with their final offer with respect to wages. In so doing, the Arbitrator finds the Employer's offer the more reasonable. In the opinion of the Arbitrator, the Employer's final offer with respect to insurance is much stronger than the Union's position on wages. The Arbitrator so concludes because (1) the City's other four bargaining units have accepted the same insurance change, and (2) the Employer's quid pro quo is a full quid pro quo compensating employees, in additional wages, sufficient money to pick up the proposed 5% insurance pick-up and drug co-pay.

Employer Exhibit 3 correctly calculates (assuming payment with tax free dollars at minimum tax rates) the 5% premium contribution to equal 12 cents per hour for the family plan and 4 cents per hour for the single plan.

To exclude this unit of employees from an insurance change agreed to by all other City employees would require a much bigger discrepancy between the compensation offered to this unit as compared to the settlements reached with the other four bargaining units. As discussed earlier, while the Union has proposed a 7% wage increase and no other compensation in order to maintain status quo with respect to insurance, the Union's offer does not sufficiently outweigh the Employer's position on the insurance issue. While two of the units, DPW and Police, received more, the additional DPW increase was based on "catch-up" (which was not a factor in this case) and the Police additional compensation is impossible to determine from the record and may only amount to a few tenths of a percent. Likewise, while the WATS and Fire settlements include the same 7% general increase as proposed here, it is impossible to determine from the record if there was any additional forms of compensation.

AWARD

Based upon the statutory factors listed above and the record established in this proceeding, including the testimony, exhibits and arguments of the parties, and for the reasons discussed above,

the Arbitrator selects the final offer of the Employer and directs that it be incorporated into the parties' collective bargaining agreement for 1998 and 1999.

Dated at Madison, Wisconsin, this 16th day of November, 1999.

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Herman Torosian, Arbitrator