

BEFORE THE ARBITRATOR

In the Matter of the Petition of

CITY OF WHITEWATER
(PROFESSIONAL/CLERICAL)

To Initiate Arbitration
Between Said Petitioner
and

Case 60
No.56134 INT/ARB-8424
Decision No. 29537-A

TEAMSTERS LOCAL UNION NO. 579

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggemam, S.C.,
by Adnrea F. Hoeschen, Attorney at Law, appearing on behalf of the
Union.

Lindner & Marsack, S.C., by James R. Scott, Attorney at Law,
appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

Teamsters, Local Union No. 579, (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 Whitewater (herein "Employer"); and the WERC having
appointed the Undersigned as arbitrator to hear and decide the
dispute specified below by order dated February 24, 1999; and the
Undersigned having held a public hearing, followed by an
evidentiary hearing in Whitewater, Wisconsin, on June 18, 1999; and
each party having filed post hearing briefs, the last of which was
received July 13, 1999.

ISSUES

The parties last agreement expired December 31, 1997. The
parties have mutually agreed to have a two year successor agreement
from January 1, 1998 through December 31, 1999. The stipulation of
tentative agreements and the final offers of the parties frame the
issues. I summarize them as follows:

1. WAGES: The Employer proposes a 4% percent increase at the
beginning of each year of the agreement, the Union proposes a 5%
wage increase at the beginning of each year of the agreement.

2. HEALTH INSURANCE: The Union has accepted the Employer's
proposal to change the current health plan. This change is
discussed below.

POSITIONS OF THE PARTIES

The Union takes the position that the Employer must show that it is making an adequate offer of a quid pro quo for the adoption of the Employer's proposed change in health insurance. The Union takes the position that its proposal is closer to appropriate as a quid pro quo. It notes that the proposed change will shift any premium costs in excess of 105% of cheapest HMO the Employer chooses to offer. The Employer's proposed 4% wage increase is not significant enough to qualify as a quid pro quo because the same is essentially comparable to the general wage increase other comparable communities have given their employees as a general wage increase. In order for employees to maintain existing health coverage the employees will have to pay more out of pocket for the employee's share of premium than they would receive under the Employer's wage increase. The Union's comparable pool consists of the comparables set forth in City of Whitewater Decision no. 28710 (Tyson, 1997). The Union proposes to add Delevan, Lake Mills, and Milton as comparables because only Burlington, Elkhorn and Lake Geneva are unionized comparables in Arbitrator Tyson's set. The Union also proposes a secondary set of comparables as other University of Wisconsin cities from around the state. It argues that under both parties' sets of comparables, the Union's position is justified. While the Union's wages are respectable, they are not above average. Secretary I, II, II and Administrative Clerks are below average among the comparables used by the parties during bargaining. Lake Mills Clericals also earn higher wages than the bargaining unit. While the bargaining unit does not lead the comparables, it should get a wage increase similar to those in the comparables without having to sacrifice the existing health insurance plan. The settlements in the comparables ranged from 3.5% to 4% per year. The external comparables would favor a 4% increase even without the need for a quid pro quo. The range of health insurance plans among the comparables demonstrates that several comparable shave more generous benefits than here. Finally it argues that the internal comparables demonstrate that the Union's proposed quid pro quo is reasonable. The Employer's position relying upon the internal comparables is misplaced. This unit is lower paid and has a lower level of benefits than the other units. Accordingly, the Union's offer should be adopted.

The Employer takes the position that the statutory criteria favor its position. The Employer heavily relies upon the fact that other units in Whitewater have accepted the proposed change with a wage increase equal to or less than that proposed by the Employer. The Employer's offer to the dispatch unit is also consistent, but that case is not yet settled. While it is true that some contractual benefits are not the same in this unit as in the other units, those differences are not important in the decision of this matter. Unit employees do not wear uniforms and, therefore are not entitled to a uniform allowance. Police and DPW

are allowed to accumulate more compensatory time and receive a bonus for not using sick leave. Both benefits are longstanding and have no economic impact. The other units accepted the plan with less of a quid pro quo than the unit seeks here. This is true because the benefits of the health plan proposed here are superior to those of the former plan. The \$200/600 deductible is eliminated. While the HMO format eliminates some individual choices, however, it is the wave of the future. The employees will have the choice of three plans to which they will contribute and there are three more with employee contributions. Further, the Employer offered a generous fully paid income continuation program as an added benefit. This alone is sufficient as a quid pro quo. Three of the four primary comparables have the state plan. The cost of living criteria supports the Employer position. The arbitrator should adopt Arbitrator Tyson's set of comparables: XXX Oconomowoc, Fort Atkinson, Watertown and Elkhorn?XXXX. There is no data to support the addition of the four University of Wisconsin cities from around the state. The Employer recognizes that it is difficult to make comparisons between similarly titled positions and has substantiated its comparisons by actually comparing job descriptions. Notwithstanding the Union's argument that some positions have evolved since the job descriptions were written/updated, it still remains the view of the Employer that its comparison method is the most valid. Those comparisons show that this unit is well paid, if not the most highly paid, among the comparison group. In summary, it believes its position is fully supported on all criteria.

DISCUSSION

The arbitrator is to select the final offer of one party or the other without modification. The arbitrator is required to make this decision applying the statutory criteria as follows:

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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- C. Comparison of wages hours, and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees, 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.
- h. 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.

Neither party has addressed an argument to either of the factors requiring greater weight than the others. The arbitrator is free to give such weight as he or she finds appropriate to the remaining factors.

The city has four bargaining units and 15 unrepresented employees. The units are:

unit	representative	number in unit
police	Wis. Prof. Police	25
public works	AFSCME	24
dispatchers	Teamsters Local 579	unknown

This unit consists of clerical and professional employees. There are 30 employees in the bargaining unit. The unit includes clerical employees, employees of the library, and some dispatchers, among others.

The main issue in this case is whether the Union's final offer is an appropriate quid pro quo for the change in the current health insurance plan. The Union has accepted as part of its final offer the Employer's proposed change in health insurance, but seeks a wage increase larger than a general increase because it believes that that proposal is an equivalent quid pro quo for the accepted change. Factor f. requires that arbitrators consider the overall compensation of the parties. This would include considering the total package of wages and benefits received by the employees and not just the specific compensation item in dispute. It includes, but is not limited to, the change in insurance benefits which the parties have agreed upon. See also, factor a.

Arbitrators have long held that a party proposing a change in contract language including a change in insurance benefits must show that the circumstances have changed such that a change in contractual benefits is necessary and that its proposal is reasonably necessary to accomplish that change. In the alternative, a party may show that it has offered an equivalent quid pro quo for its proposed change. The concept of a quid pro quo is a factor so common in bargaining and so long recognized by arbitrators that it, itself is a "other factor" within the meaning of factor h.

There are 30 employees in the unit, although the number of full-time equivalent employees is considerably less. Of those 30, ten are not electing health benefits because they are part-time. Fourteen have family coverage and five have single coverage. One is on insurance buy-out.

Under Article 15 of the current agreement, the Employer is

required to pay the full family health insurance premium for the current fee-for-service health insurance plan (herein "Wausau plan"). It also requires that the Employer pay \$60 toward the cost of a mammogram.

The Employer proposed in negotiations to go to the Wisconsin Public Employer plan (herein "state plan") which gives the employee the option to select from a number of different health maintenance organization plans and a fee-for-service plan (herein "HMO" and "standard" respectively). Under the Wausau Plan, employees had a \$200 per participant (\$600 maximum) annual deductible for medical treatment other than for immunizations and well baby care or as a result of an accident. There is no deductible under any of the state plans except in the standard plan there is a \$150 deductible per person (\$300 maximum) for the major medical portion. Neither the Wausau plan nor HMO plans have any co-insurance. [Except the state plan has 20% co-insurance on medical equipment not to exceed \$500] The standard plan pays specified benefits until limits are reached. When the employee uses the major medical portion of the standard plan, he or she pays 20% until the benefit payment totals \$4,000 single, \$8,000 family. There are minor differences between the HMO plan and the Wausau plan as to speech therapy, artificial limbs, ambulance, and medical equipment. The HMO plan excludes coverage for work or education related immunizations, but apparently covers all others. It is unclear on this record if there is a practical difference between the HMO and Wausau plans with respect to convalescent facility services, except Wausau provides only 30 days of coverage whereas the HMO and standard plan provide for 120 days skilled nursing care. None pays for custodial nursing home care. Essentially the two treat diabetes care the same, except the HMO plan requires a 20% co-insurance feature for insulin under the prescription plan. The HMO and standard plan provide coverage for a wider range of transplants than the Wausau plan; however, the Wausau plan provides for an additional \$10,000 for travel and lodging. The HMO unlike the other two plans puts a lifetime benefit for transplants at \$500,000. The current total health plan and HMO plans have little difference with respect to mammograms. There is no realistic difference between mental health coverage under all three plans. The Wausau plan does not pay for routine exams. the HMO plan pays for one complete eye exam one and one physical exam per year, including X-rays, etc. The standard plan pays for routine exams subject to the major medical deductible. The Wausau plan pays prescriptions, but the HMO puts a \$130 individual/\$230 family limit and requires a co-payment of \$4.00 generic/\$8.00 name brand per prescription. The standard plan provides prescription coverage with a \$3.00 co-payment per prescription.

The monthly family premium for health insurance as of the end of 1997 is not in evidence. The premium for the proposed Wisconsin plans various coverages is as follows:

Plan	1998 Premium	Single	Family
Dean Health Plan		190.60	481.94
Mercy Care		194.38	491.38
Physicians Plus, S.C.		194.38	491.38
Network Health Plan		291.62	554.48
CompCare SE		271.16	683.34
Standard Wisconsin		282.32	693.06

It is unclear whether any of the HMO's other than Dean Care are available in Walworth County.

Section 6 of the agreement states that the "...City agrees that it will implement group income continuation insurance program through the Wisconsin Retirement System on a (me, too, basis)."

It appears that none was ever implemented during the term of the agreement. The Employer and the Union have agreed upon the Employer providing up to .375% of the employee's monthly earnings toward the income continuation plan. This is part of the Employer's proffered quid pro quo for the change in health insurance.

Turning to the application of relevant factors on the available evidence, The first factor is the cost of living factor.

The national CPI-U change for the year ending December, 1998, was 1.6% and for the year ending April, 1999, the national CPI-U change was 2.3%. The only data which is available in this record to measure against the consumer price index is the wage rate proposals of the parties. Based upon that comparison, this factor favors the position of the Employer. This factor is given little weight because it does not measure local conditions, does not take into account the total package and does not reflect upon the quid pro quo issue.

The arguments the Union has used to support its position toward a quid pro quo is its assertion that a change from the current fee-for-service insurance plan to the Wisconsin group of plans is that many in the unit will be forced into HMO's because of the high employee premium contribution. Essentially, the position is based upon its fears about the quality of service in an HMO. It is difficult to quantify this argument and even more so because this record is limited. The HMO approach to medicine provides cost savings in medical treatment. These savings are a benefit to both parties in that the cost of essentially the same level of benefits is lower. The Employer's approach also involves cost shifting in that it shifts a significant share of the health care premium to those employees who would choose to stay in a fee-for-service plan.

The Union measures this solely by assuming that everyone in the unit would prefer to stay in the fee-for-service plan at a cost to the employee of \$187.02 family/\$82.19 single per month over the

Employer's contribution.¹ Certainly for those individuals who are dissatisfied with the HMO concept, the Employer's offer will not offset the cost of remaining in a fee-for-service plan. Similarly, the Employer's offered quid pro quo pales by comparison, if all fourteen people in the unit receiving health benefit are dissatisfied. The offsetting increased benefits and wage increase beyond a normal cost of living increase, paid to all 30 unit employees would not be sufficient to offset the effective loss of benefits.

However, I am not willing to make the assumption that everyone who receives health insurance would be dissatisfied with the level of care under the managed care options of the state plan. Some might well be satisfied with the higher level of benefit in the HMO style plans. The Employer's offer is an adequate quid pro quo if at least half of the employees are satisfied with the level of care under the managed care option. The state plan offers options with respect to specific HMO's and the Employer's proposal at present would allow employees to choose between many HMO's at no cost. Based on the analysis below, the Employer's offer incorporates a wage rate increase of about .4% higher the first year than comparable and likely to be the same in the second year. Based upon the only available evidence in the record, it appears more likely that the Employer's offer is closer to an adequate quid pro quo than the Union's given the number of choices available to employees at no cost.

This is further supported by the internal comparison factor. The police association accepted a settlement with a 3.5% wage increase in each year (1998-9) and the same health plan. The DPW unit accepted the same with a 3.25%/4% lift in 1998 and 3.5%/4.5% lift wage increase in the second year. The Employer has been consistent in its offer to the police dispatchers also represented by the same union and to its unrepresented employees. This factor is entitled to strong weight.

Next is the external comparison factor. The Employer heavily relied upon the award of Arbitrator Tyson in a case involving the police unit for the the appropriate set of comparables for the dispute with this unit. In that case the Employer argued that comparably sized municipalities in Dodge, Jefferson, and Walworth counties were the appropriate comparables, namely Beaver Dam, Burlington, Delevan, Elkhorn, Fort Atkinson, Jefferson, Lake Geneva, Lake Mills, Watertown, and Wapun. The police union argued for two sets of appropriate comparables. It included Watertown, Oconomowoc and Fort Atkinson in the first group because they were

¹ There is insufficient evidence to evaluate this with respect to the Wausau plan.

nearby. It then included all of the other small university cities in the state; Stevens Point, Menomonee, River Falls, and Platville.

The Employer argued that its comparables were more appropriate on the basis of proximity. It excluded Oconomowoc on the basis that it was a suburb of Milwaukee; in the Milwaukee labor market and having a equalized valuation per capita of three times that of Whitewater. By contrast therein, the police union argued that the expanded set was necessary because the Employer's offered set involved municipalities which were much smaller and the police union's offered list includes comparably sized communities. It also argued that its list included university cities which it argued had essentially the same municipal problems, particularly with respect to law enforcement.

In a very closely reasoned opinion, Arbitrator Tyson stated he made his selection of comparable communities on the basis of geographic proximity, similarity size and other characteristics of the communities and similarity of jobs. As to the comparison to university cities, he found that there was no direct evidence to support the police union's contention that policing in university cities required police officers to have different skills than those in non-university cities. He also concluded that the data offered by the police union did not demonstrate that university cities were necessarily different from non-university cities. He then stated politely ambiguously that he found the historical data on salaries for those communities "useful." He selected the following cities on the basis of proximity and somewhat similar population and proximity, the cities Watertown, Fort Atkinson, Oconomowoc, Burlington, Delevan, Elkhorn, Jefferson, Lake Geneva, and Lake Mills. He also included Burlington on the basis of being closely similar in size and nearby. He then excluded Oconomowoc on the basis of its much greater property valuations. Thus, he selected the following primary comparable group: Watertown, Fort Atkinson, Oconomowoc and Burlington. He included Delevan, Elkhorn, Jefferson and Lake Geneva as a secondary group. He gave the university cities consideration where the salary trend in those cities gave "useful insight."

The sound reasoning of Arbitrator Tyson is generally applicable to this case. There is no need to supplement the pool of closely comparable communities to deal with the issues presented here. In any event, there is no direct evidence in the record which would support the addition of other university cities from around the state. All are outside the local labor market. The vast majority of employees in this unit do not have a state wide labor market. Stevens Point is 2.5 times the size of Whitewater.

It is highly unlikely that the presence of the university in Whitewater affects the duties of unit employees.

Similarly, there is no reason to add the communities of Milton and Lake Mills to the comparable pools, as the Union has proposed.

The Union's chief reason for adding the smaller communities of

Milton and Lake Mills is because of its concern that too few of the "Tyson" comparables are unionized. It argued that only Burlington, Elkhorn and Lake Geneva are organized. Contrary to the position of the Employer the extent of organization is a factor in this case and with respect to these issues. It is not unreasonable for a union to seek to advance wages irrespective of comparability as a quid pro quo. Unrepresented employees here and in other communities do not have the capability of seeking quid pro quo or otherwise advancing their conditions through the advantages of collective bargaining. Nonetheless, it is not necessary to expand the set of comparables for the purposes of that analysis. The better approach is to emphasize comparisons to the communities in the comparable group which are organized, as appropriate. Therefore, given the nature of the positions involved and the issues, the "Tyson" group of comparables is appropriate. I note that I have used all eight of the comparables.

The available evidence indicates that the 1998 settlements/non-represented increases among the comparables that were reported were as follows:

city	1998 wage increase
Watertown	3%
Fort Atkinson	not uniform
Oconomowoc	3.75%
Burlington	4%
Delvan	not uniform (range 3 to 8%)
Elkhorn	not settled
Jefferson	3.75%
Lake Geneva	4%

The above would indicate that the Employer's offer is about .4% above the norm (if the general increase in Delvan is 3%).

This unit contains positions which are not easy to compare to other communities as job titles and duties vary. The Employer used the method of making comparisons which ideally is to take accurate current job descriptions of unit employees and compare them to the accurate current job descriptions of comparable positions in the comparable communities. The Union amply demonstrated during the hearing that many of the job descriptions upon which the Employer relied were out of date. The Union actually surveyed other employers, but the accuracy of those surveys is subject to challenge. Using both Union and Employer exhibits., it is apparent that both parties agree that of the 22 positions surveyed, the following employees were comparably paid:

treasurer (1) (insufficient data for legitimate judgment)
youth librarian (1)
CDA admin assist (1)
court clerk (1)
Library Associate (3)

Library Assistant (4)

The Union's data would suggest that there are wage disparities for the following positions. The wage disparity for the Secretary I was about 1%. The reported wage disparity for the Administrative Clerks was substantial.

Issue

Admin. Clerk (2)

Secretary I (7)

Secretary II (2)

However, the Employer's data does not show a disparity for the Secretary I. In either event, the Employer's offer is adequate to address the disparity for the Secretary I. The information as to the Secretary II shows a fundamental disagreement between the parties as to what positions are comparable among the other communities. The wage disparities which the Union shows for the remaining positions are substantial. However, these disparities would not justify the difference between the parties' offers in that the Union's offer does not provide for targeted increases for those positions and the total disparity does not justify the Union's position.

Summary

The primary issue in this case is the appropriate size of a guid pro quo for the health insurance change. The better judgment on this record is that the Employer's offer is closer to appropriate than the Union's under factor h. The Employer's position is supported by the cost of living and internal comparisons. While a guid pro quo is not necessarily limited to establishing and maintaining comparable wages, the external comparability factor does not support the Union's position. Accordingly, the Employer's offer is adopted.

AWARD

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

Dated at Milwaukee, Wisconsin, this 4th day of November, 1999.

Stanley H. Michelstetter II
Arbitrator