

BEFORE THE ARBITRATOR

In the Matter of the  
Interest Arbitration between

CITY OF HORICON

And

HORICON PUBLIC WORKS EMPLOYEES  
UNION, LOCAL 13, AFSCME, AFL-CIO

Case 29 No. 59558  
Int/Arb-9156  
Dec. No. 30116-A

**INTEREST ARBITRATION AWARD**

Appearances:

Mr. Alan M. Levy, Lindner and Marsack, S.C., on behalf of the City.

Mr. Lee Gierke, Staff Representative AFSCME Council 40, on behalf of Local 13.

The above-captioned parties, hereinafter referred to as the City and the Union respectively, have been parties to a series of collective bargaining agreement throughout the years. The parties were able to resolve most issues for the 2001-2004 successor agreement including wages and fringe benefits except for the issue of retiree health insurance. The Union filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the City. The Union requested that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The undersigned was selected as arbitrator from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Horicon, Wisconsin on June 26, 2001. No stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on September 4, 2001. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

**ISSUE AND FINAL OFFERS:**

The Arbitrator is charged with selecting a final offer for incorporation into the parties' collective bargaining agreement.

The Union's final offer contains the following proposal:

Article XII Section 12.01 E-Add the following language

For employees hired after January 1, 2001, who retiree(sic) and have met the "rule of 75" and are at least fifty-five (55) years old, the employee will receive the same retiree health benefit as in the previous paragraph. To meet the "rule of 75" an employee must have a combined age and years of service that total a minimum of 75.

The City's final offer is as follows

Article XII Section 12.01 E-Add the following paragraphs:

Employees who retire after January 1, 2003, satisfy the "rule of 75", and are at least fifty-five (55) years of age, will receive the same retiree health benefit as in the previous paragraph. To meet the "rule of 75," an employee must have a combined age and years of service that total a minimum of 75. Employees hired on or after January 1, 2001, must satisfy a "rule of 80" (combined age and years of service at or after age 55) instead of a "rule of 75" to receive this benefit.

## **APPLICABLE LANGUAGE IN THE 1999-2000 AGREEMENT:**

### **ARTICLE XII – HEALTH AND RETIREMENT**

#### **Section 12.01 – Group Health Plan**

E. For those employees who retire and have at least fifteen (15) years of service and are at least fifty-five (55) years of age, the Employer shall pay the full cost of the single premium for those who retire prior to age sixty-five (65) and the premium cost of a Medicare differential single coverage policy for those aged sixty-five (65) or over. These provisions shall apply only if retired employees are not eligible for similar insurance at another place of employment. Employees may retain either family or single coverage, but the Employer's liability shall not exceed the single coverage premium. This provision is applicable to those employees in employment status on or after October 10, 1972.

## **STATUTORY CRITERIA:**

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis. Stats., 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.

- 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 under subd. 7r.
- 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized in 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of employees performing similar services.
  - e. Comparison of the 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 the 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 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 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.
  - j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in 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.

## **POSITION OF THE PARTIES:**

### Union

With respect to the statutory criteria, the Union argues that neither the greatest weight nor greater weight criteria apply. Because there has never been an interest arbitration between the parties, no established set of comparables exists. Both parties accept Beaver Dam, Columbus, Kewaskum, Lake Mills, Mayville, North Fond du Lac and Waupun as external comparables. The Union would also include Jefferson, Plymouth, Slinger and Watertown while the City would include Berlin. In support of Hartford as a comparable, the Union notes that it is only fifteen miles from Horicon and that many residents of both communities work for the same employers. The Union also notes that Beaver Dam and Waupun, both accepted comparables, have populations larger than Hartford. To support the two of the other three proposed comparables, the Union points out that other arbitrators have utilized Horicon as a comparable for these cities in other awards. The final proposed comparable, Slinger should be used because of its size, proximity, and general financial status. Berlin is not appropriate because it is 40 miles away from Horicon and its Wastewater and Water Departments are not represented by labor organizations.

The Union disputes the City's information on the population for Columbus, Lake Mills, Kewaskum, and Waupun. It notes that both parties made errors in the data on the Adjusted Gross Income for Horicon, Beaver Dam, and Lake Mills claiming that its data is correct for Horicon and Lake Mills, while the City's data is correct for Beaver Dam. The Union also suggests that the property tax numbers do not match in any of the municipalities between the Union and the City. It also stresses that the City does not include any data for the City of Berlin in one of its exhibits.

According to the Union, for twenty-five years prospective employees made the decision to accept and continue employment with the City with the understanding that the collective bargaining agreement contained a post retirement health insurance benefit. Employees made the decision to stay expecting this benefit and some consciously decided not to change jobs even for higher pay because of this benefit. The bargaining unit, believing that this benefit was important, maintained it to the detriment of negotiating other benefits enjoyed by other surrounding municipalities.

The Union asserts that it has not been unresponsive to the City and has included in its final offer, a proposal to increase the eligibility requirements for new employees, but must stand firm in refusing to change the benefits for the current employees. The City has offered no *quid pro quo* for the changes it has sought. The arbitrator should not award this change to the City through interest arbitration.

The Union makes several arguments about not permitting the City to change a long-standing benefit. Generally the offer that makes no policy change, or the fewest changes, is that preferred by interest arbitrators. Where arbitrators are presented with an offer that makes substantial policy changes in the *status quo*, they should ascertain

whether the party proposing the change has demonstrated a need for the change. Assuming that there has been a demonstration of need, it must be determined whether or not the party proposing the change has provided a *quid pro quo* for the proposed change. Finally, to establish that both of the above conditions have been met, the standard utilized is whether or not they have been met by clear and convincing evidence. In its reply brief, the Union notes that the City dismisses the logic of most arbitrators concerning a *quid pro quo* by the party attempting to change the *status quo*.

Applying these criteria to the instant case, the Union believes that the City has failed to demonstrate a need for the proposed change in the *status quo*. The Union claims that the City's life expectancy argument is not as dramatic as the City asserts. Referring to the Statistical Abstract of the United States National Data Book, the Union suggests that the average expectation of additional life for a White Male Age 50 in 1975 was 24.4 years while in 1998, it was 27.9 years. Similarly for a White Male Age 55 in 1981, it was 21.4 years while in 1997, it was 23.5 years. Although the improvement in life expectancy would have an accompanying increase in the cost of the benefit for more years, the changes are hardly the dramatic ones claimed by the City. Therefore, the City has not met its burden in establishing the need for the change.

In its reply brief, the Union points out that the City has engaged in circuitous logic by initially arguing that the Union's offer simply continues the *status quo*, then alleging that the Union has accepted a fair *quid pro quo* when at no time in bargaining was a *quid pro quo* ever offered for a modification of this benefit, and finally insisting that the Union must show that it has provided a *quid pro quo* to maintain the benefit. The modification that the Union offered was not contingent upon any *quid pro quo* but simply an offer in order to reach a voluntary settlement. To claim that the 3% wage increase is a *quid pro quo* ignores the reality of the other settlements, when the 3% increase only solidifies Horicon's ranking at the bottom.

With respect to the cost analysis, in the Union's opinion, the City has used faulty assumptions for the purpose of costing this benefit. Acknowledging that it is difficult to cost this benefit, there are five basic assumptions necessary to derive an accurate analysis of the cost of this benefit: (1) when the benefit will start, i.e., a retirement age; (2) when the benefit is estimated to end, i.e., mortality tables; (3) who will leave before the benefit starts, the employee withdrawal rate; (4) the value of the benefit; and (5) the interest rate.

The Union disputes the City's assumption that every single employee will retire at the earliest possible age of 55. This assumption is totally unrealistic and greatly inflates the cost of the benefit. Because the benefit only covers the employee and not his or her family, many employees are deterred from retiring because the cost to cover a spouse or other family members is prohibitive. According to the Union, Social Security Administration reports that the average age for men retiring in 1998, is age 64. The State of Minnesota reports an employee retirement age of 59.6, and the State of Wisconsin Employee Trust Fund based on 2000 data reports an age 59.5. The Union would argue that using an average age of retirement of 59.5 years is a reasonable assumption.

The Union accepts the City's Life Expectancy Chart for costing purposes. With regard to the withdrawal rate, the City has given no consideration to employees quitting, dying, being terminated or leaving the bargaining unit for other reasons. Because the benefit is not a vested benefit but has specific requirements of working a minimum of 15 years and being at least 55 years old, an employee who leaves before starting to collect a pension at 55 does not receive the benefit. Within the past year, one bargaining unit employee has died and another has been terminated. According to the Union, it would be a reasonable assumption to reduce the cost by 5% for employees who leave before collecting the benefit.

The Union acknowledges that using the cost of the current premiums is a conservative assumption because the cost of this benefit will increase as the years go by. In fact, the Union admits that by assuming the current value, the City underestimated the cost of the benefit. In analyzing the interest assumption, the Union employs the "time value of money" theory by calculating the value of today's dollar into the future. The Union suggests that, with a retirement age of 59.5, the City's Mortality Table, a withdrawal rate of 5%; the value of the benefit and the interest assumptions negate each other. Using these assumptions the Union promulgates its own cost for current employees of the retiree health benefit ranging from .57 and hour to \$1.02 per hour depending upon the birth dates of various bargaining unit employees, the average being \$.80 per hour adjusted by a withdrawal rate of 5% resulting in a net hourly cost of \$.76. In the Union's opinion the City greatly overstates the cost of this benefit because it is not the financial albatross that the City argues it is. The solution proposed by the City does not address the problem the City has with the benefit.

The proposed "window" will increase, rather than decrease, the cost of the benefit because some employees will retire earlier than they would normally choose in order to receive the benefit during the "window". Even one employee retiring earlier as a result of the window, negates the cost savings produced by others staying and working longer. Thus the "window" does not afford the current employees an opportunity to retire with the benefit intact, yet it increases the cost.

The Union alleges that the City's exhibits overstate the effect of its proposal. The hypothetical future employees' costs were premised upon skewed comparisons that erroneously increased the cost of the Union proposal. If employees of the same age were utilized, the cost would be the same for employees hired under the age of 38. This is the case because employees who are 39 or over when hired would have to work past the average age of 59.5 to be eligible for the benefit. While the Union proposal increases the age when some people would be eligible to an average age of 60, it does not increase it as much as the City's proposal does to age 61.

In response to the City's change in life expectancy argument, the Union maintains that the change is much less than the City claimed. The change is from 21.4 to 23.5 years, not from 5 to 13 years. It notes that the City does not use its own 13-year figure in

costing the benefit. The Union maintains that the benefit is not as costly as the City portrays it to be due to the City's failure to use accurate assumptions and the poor methodology employed.

The City's attempt to single out the benefit rather than to look at the total compensation packages of the comparables is unsupported by the comparables. The Union concedes that the Horicon retiree health insurance benefit is better than most in the comparability group, but contends that the overall compensation package finds Horicon as one of the cities with the lowest compensation package. Moreover, Horicon is not the only city in the comparables to have such a benefit as both Hartford and Waupun have better retiree health insurance benefits than Horicon. Hartford's retiree health benefit is better than Horicon's because it has the same requirements but provides for family as well as single insurance for retirees and their families. Moreover, Waupun and Berlin also have an employee retirement benefit with no requirement of years of service, but employers contribute fifty percent of either the single or family plan. The Union stresses that all of the proposed comparables have a payout of unused sick leave at retirement time including those with the retiree health insurance provision, except for Horicon which does not have such a payout. According to the Union, this is one of the tradeoffs that have been bargained over the years. Horicon does not enjoy other common benefits that exist in the comparable units, such as longevity pay and dental insurance.

Looking at the total compensation package, Horicon's total package is at the bottom of the comparables. Horicon is comparable in holidays, sick leave, pension, health insurance and vacation but ranks at or near the bottom in wages, sick leave payout at retirement, dental insurance and longevity. Only with regard to the post-retirement benefit does Horicon rise to the top as compared to the other comparables. With respect to the City's wage exhibits, the Union notes various errors and inaccuracies making it difficult to draw conclusions with respect to wage comparison. It refers to its own exhibits to assert that Horicon DPW wages are approximately \$1.05 behind those of the comparable units, which is much more than the value of the entire retirement health insurance benefit.

With respect to the internal comparables, the Union believes that the recent police settlement supports the Union's Final Offer. As the only other unionized group within the City, the police reached a voluntary settlement with a wage increase of over 15% over the three-year period and no change to the retiree health plan that the police unit had in its contract. The City has erroneously relied upon the internal police settlement when arguing that it is granting the bargaining unit \$.10 an hour over the increase to the police unit because the City has not included the \$.35 increase each year which it offered to the police as catch-up. Utilizing the police settlement, the Union claims that the police formula generates \$2,400.55 more in wages over the three-year period plus significantly higher wage rates at the end of the contract for the police.

Although there is significantly different language in the police contract, especially with respect to more stringent language for eligibility, the Union merely notes that the benefit for retired eligible police and their families is a significantly greater benefit than

exists for the current unit. Moreover, the change in eligibility was negotiated several years ago through a voluntary settlement. An arbitrator did not impose the change. The Union points out that from the time both units negotiated a retiree health benefit in their respective contracts, the two benefits have never been the same. The police benefit was richer in that it extended the paid coverage to spouse and family, while the instant bargaining unit's benefit was limited to single coverage. However, it took the police employees longer to earn their benefit, 25 years versus the 15 for this bargaining unit. The difference that currently exists has been in place for six years and there has been no bad feeling, conflict or poor morale to date. The Union also notes that it has included a modification for future hires at which the City scoffs, but that this is the same process used in negotiations with the police unit where the changes were voluntarily negotiated and only implemented for future hires. This is how the City should accomplish its ends with the instant unit.

The Union distinguishes the two awards by Arbitrator Baron as involving new units with no prior bargaining history whereas here, where the benefit has been around for over 25 years.

The Union disputes that the vacation improvement in the tentative agreement is a *quid pro quo* noting that it affects one person who will receive 2 extra vacation days and that it will be nine years until the next employee can take advantage of this enhancement. A wage increase that is less than any other comparable unit and a vacation improvement affecting one bargaining unit employee is simply not a sufficient *quid pro quo*. Despite the smoke and mirrors, the City did not meet any of the requirements of a party moving to make a change in the *status quo*.

With respect to City arguments that its offer is necessary because of changes in the bargaining unit composition, other than the hiring of one female employee, there have been no great changes. The Union acknowledges that women have a greater life expectancy but rejects this as a basis for a roll back in benefits.

Based upon the record as a whole, the Union asks that its final offer be adopted.

### City

According to the City, the total value of the compensation package for Horicon's public works employees is in the middle of those of comparable communities, whichever list of comparables is utilized. The general fringe benefit package, with the exception of the disputed retiree health insurance program, is about the same or better than those of comparable communities. The only genuine dispute is whether the enormous increase in the cost of retiree health insurance warrants an early modification of that benefit. What is really at issue here is whether current employees who retire in 2003, the final year of a three year contract, must have age and service totaling at least 75 years and those hired after January 1, 2001 must meet a "rule of 80," or whether all current employees may receive the benefit at age 55 with only 15 years of service, and only those hired after January 1, 2001 will be subject to a "rule of 75."



Bargaining history demonstrates that the City has been attempting to limit the application of this benefit since 1975 when another union represented the bargaining unit. In 1975 the provision required fifteen years of service, but no particular age under 65 was required. In 1986, the other union and the City agreed that to be eligible the minimum retirement age was 55 and employees must have a hiring date on or after 1972. At the time of the 1975 agreement, all of the bargaining unit employees had been born in the 1920's with a life expectancy of 54.1 or in the 1930's with a life expectancy of age 60. Given these life expectancies, the parties expected to have the City pay insurance benefits for retirees for about five years. Today, the City asserts, the life expectancy is two and a half times that originally anticipated and the Union has gained a two and one-half to three fold benefit increase with no complementary value to the City.

The City, in its reply brief, claims that the Union costs the present retiree benefit at \$.76 per hour while the City calculates it to be \$1.20. The cost of the benefit has increased not only because of its extended duration but also because of the escalating costs of health insurance. Utilizing the health insurance rates in effect for 1999, a current employee's retiree benefit cost under the Union's offer would have been \$.95 per hour and \$.90 under the City's offer. A new hire would have a \$.94 per hour cost under the Union's offer as compared to only \$.74 per hour under the City's proposal. Using 2001 premium rates the cost per hour is even more dramatic. The savings impact of the Union's offer is \$.06 per hour for present employees and \$.26 per hour for new hires. This results in only minimal new hire saving and not significant short term or long term savings. Given an average of 54,766 hours of service in a career, using the Union figure, this benefit's cost rose \$.20 cents per hour from 1999. The City did not receive a *quid pro quo* for this extra, non-negotiated increase in annual labor costs. It is paying more for the same thing.

The City maintains that the Union offer simply continues the *status quo* for virtually all current employees. To the contrary, the City offer has limited impact to minimize any adverse affect on current employees, but would still hold most to an age and service combination like that in the original agreement twenty-five years ago. The new imposition of the "rule of 75" for current employees affects at most five current employees who will have to work past age 55 and all will qualify before age 57. Expecting the five current employees to work six months or a year more to get the benefit, i.e., to retire at age 56, is not a great hardship. The City's proposal will force employees to work longer to earn the benefit as it was originally intended. Using the Union's analysis, a benefit funded by five additional years of service would cost \$.14 less per hour. The City anticipates that longer service requirements and later retirement ages will offset the inevitable increases each year in the health insurance costs.

The City contrasts this situation with the collective bargaining agreement covering the police unit. It notes that police employees hired prior to January 1, 1994 must work 25 years to gain the benefit public works employees receive with 15 years of service. Those hired in 1994 and 1995 must work 30 years to retire with a single coverage supplement. Officers hired after January 1, 1996 only receive an indirect

subsidy resulting from a conversion of unused sick leave if they have 15 years of service. If the City's offer is selected the current unit will still enjoy more generous retirement health insurance benefits than the police unit represented by the same union.

The City claims that the wage offer for this unit is proportionately higher than for the police bargaining unit if the regular wage increase for police is considered. The City concedes that this does not include an annual \$.35 per hour "catch-up" compared to the average for other comparable police departments. It contrasts the 1 ½% every six months for the three years in the police unit with 3% at the start of each year in this unit. According to the City, this is worth ten cents per hour each year-- half of the savings the City is seeking with its retiree health care proposal. In contrast to the police agreement, the current unit will enjoy richer vacation benefits than the police. Citing arbitral precedent, the City contends that a combination like this which does not "treat all workers the same regarding all the fringe benefits of health insurance...would really be asking for future trouble, not to mention bad feelings, conflict and poor morale..."

With respect to the external comparable units, the City insists that with the current retiree health insurance worth approximately \$1.25 per hour (and the real impact of the annual instead of semi-annual wage increase worth another dime), Horicon wages are in the range of \$14.86 to \$15.67 for street workers and \$15.94 to \$17.91 for water employees. This puts Horicon above every comparable community in its area with a population within 2,500 of its own and well above the average for the "comparables" identified by the Union. The City also maintains that no one has more generous active employee health insurance, vacation or holiday benefits than Horicon.

There is, the City submits, no justification for this costly favoritism. It is the arbitrator's function to consider each offer in the context of the "comparables," overall compensation, and the interests and welfare of the public. Of the external comparables proposed by the City, only Hartford, with twice as many people and 20% higher adjusted gross income, has a comparable benefit and then only for employees who work to age 65. Comparability, if applicable, supports the City's offer. The fifteen-year eligibility will cost Horicon over \$55,000 per present employee at current health insurance rates and even adopting the City's proposal will cost almost \$1.00 per hour.

With Horicon's total compensation package, the City is not pressing its public works employees to accept an oppressive economic loss, but rather to regain a reasonable basis for its benefits package. The combination of inflated health insurance rates, extended life expectancy and changes in bargaining unit composition have created a challenge to the public interest. The City argues that it is in the community's interest to reach a new balance of moderated costs, parity among represented employees, sharing of savings with employees and greater incentive for retention of career employees.

In the City's view, its proposed change in eligibility is reasonable and appropriate. Describing Wisconsin public employment bargaining as a victim of the "tyranny of comparables," the City alleges that requiring any proposal for innovation or change to be

accompanied by a *quid pro quo*, a compelling reason and a comparable action elsewhere results in a lock-step adherence to automatic increases averaging those of “comparable communities, and perpetuating all other provisions of the prior contract. A fresh analysis is needed.

Insofar as the *quid pro quo* argument is concerned, the City submits that the impact on employees is minimal, and a fair *quid pro quo* has been agreed upon and accepted by the Union because the parties’ tentative agreements provide ample *quid pro quo* for the City’s proposal. This, it insists, is a combination of wage improvements, retention of the old benefit for most of the bargaining unit, and increased dollar support for the benefit at no expense to the employees. In particular, the wage escalation for this unit is worth \$.10 per hour more than the proportionate schedule for the police unit. The bargaining unit is also enjoying more vacation; 27 days after 27 years of service, two more days than the police receive. Therefore, the City has “paid for” its future advantage in the third year of the proposed contract by granting significant and valuable compensation above the police pattern. Yet, the Union response is a proposed change worth only four cents per hour for new hires, less than half the value of the extra economic improvements granted by the City.

In its reply brief, the City points out that the Union data is conflicting, in particular its assumption of retirement at age 59 ½ for employees now 38 years old and for those now 54. This assumes people will not retire at age 55 although the current benefit allows them to do so. Nevertheless, the Union resists the City’s proposed “rule of 75.” According to the City, it is a mystery why the brief extension of service requirements for a third of the unit and a longer service expectation for new hires is so strongly resisted by employees who will not be adversely affected and have agreed that some future employees should accept the program.

The City’s attempt to be fair with its police unit by adding some payments over the last 25 months of the agreement as “catch-up” to external comparables should not be used against it to prove that the City’s offer here is inadequate. The City poses the dispute as being whether any change in the status quo can be made without an external compulsion like a statutory mandate or an economic set-off so great that it will negate any savings from the proposal. In the City’s view, to justify preservation of this valuable benefit, the Union must show that it has provided a *quid pro quo*, which its proposal has failed to do, with the surrendering of four cents an hour while accepting special advantages worth more than two and a half times that amount elsewhere in the compensation package. This, the City argues, is not preservation of an existing benefit but expansion and excess in the guise of continuation. The City seeks to regain a *quid pro quo* of substantial service in return for the increased cost of retiree benefits. The Union’s arguments turn bargaining into public employee cost paralysis because they prevent employer innovation unless a union voluntarily accepts it in return for some new payoff.

The City cites arbitral precedent to support the contention that excessive increases in the cost of pre-existing benefits warrant a realignment of the parties' economic support for those benefits. The history of health benefits has been one ranging from benign neglect early on when it was relatively inexpensive, to intense concern as the benefit has become more costly. These health benefits should not be immune from reasonable modifications by the Union's insistence upon maintaining the *status quo*.

In summary, the City argues that labor cost dollars are the same whether they pay wages or benefits, overtime or pensions. The tax burden does not vary with the purpose of labor costs. Health insurance for retirees now costs between 267% and 357% of the 1975 expectation. To accept the Union's offer is to allow the Union to impose an ever greater cost on the taxpayers.

## **DISCUSSION:**

Any evaluation of the offers submitted by the parties must begin within the statutory framework set forth above. Section 111.70(4)(cm) 7. is inapplicable because no state law or directive exists which places limitations on expenditures made by a municipal employer with respect to this bargaining unit. Because the City is under no such statutory limitation, this factor does not clearly favor one offer over another and the case will be determined by evaluation of the lesser factors.

Likewise, Section 111.70(4)(cm)7g. is not determinative. Although the evidence establishes that the continuation of the disputed benefit in its present form is expensive, the City makes no argument that it is unable to pay or that special economic factors exist in this particular municipality which distinguish it from comparable municipalities so as to warrant special consideration.

The 'other factors considered' in Section 111.70(4)(cm) 7r. determine the outcome of the instant dispute, in particular, subsections b., c., d., e., f., h., and j.

The City has stressed that the economic factors do not support the continuation of the health insurance benefit for retirees pointing out the significant costs that continuation of this benefit will have in the future. It should be noted, however, that despite its protest, this is not a new benefit but a very old benefit which the City has agreed to for a very long time. Furthermore, it is evident that the Union's offer most closely resembles the *status quo*. The City, therefore, has the burden of establishing the need for the requested change in the language. The City contention that the Union has the burden of offering a *quid pro quo* to justify the City's continuation of an established previously bargained-for benefit is simply erroneous.

Health insurance for retirees has existed since the 1970's and the City has unsuccessfully attempted to modify the benefit throughout the parties' bargaining history. As the Union correctly points out, bargaining unit members settled for lesser amounts or

no benefits in other areas to hang on to what they perceived as a very valuable benefit and have declined to surrender it or even substantially modify it with certain exceptions fully detailed in the City's brief. In short, the City has not been able to gain a reduction in this benefit through voluntary agreement. For this reason, the undersigned is cautious, as are most arbitrators, in considering the appropriateness of awarding the City something that it could not obtain at the bargaining table.

The City's contention, however, that what started out as an insignificant inexpensive benefit has now become quite costly and will continue to spiral unless certain checks are imposed is meritorious. Nevertheless, the City has the burden of showing a need for its proposed departure from the *status quo* and that it has offered a sufficient *quid pro quo* for such a change by clear and convincing evidence.

In holding the City to the traditional standard, the undersigned is mindful that some arbitrators have, on rare occasions, found that a benefit has become so costly that a *quid pro quo* is unnecessary. This benefit does not fall into that category. It is a labor cost among other labor costs as the City has pointed out. Moreover, the Union, in this instance, has not insisted upon retaining the benefit in the present form, being mindful that the costs are escalating. Rather, it has attempted to preserve the "bargain" which it secured for all of the current bargaining unit members and upon which they have relied, while offering to modify eligibility for future employees. Given this concession by the Union, the City must show why its proposal is the more reasonable.

The City has argued that no other municipality of its size in the comparables enjoys such a benefit. There is a dispute as to what are the appropriate comparables. The undersigned accepts all of the municipalities upon which the parties agree and also includes Jefferson, Watertown, Slinger and Berlin (insofar as information has been provided) for comparison purposes. Plymouth is closer to Sheboygan and too geographically remote from Horicon. While Horicon is at the top of the comparables with respect to this single benefit, it does not stand alone in providing health insurance for retirees. Hartford, Waupun, and Berlin provide some form of health insurance for retirees. Also significantly, Horicon provides no sick leave payout on retirement for purchase of health insurance or otherwise, a benefit which all of the other comparables possess in some form. Some of the comparables which do not have a retiree health insurance benefit permit conversion of accumulated sick leave for the purchase of retiree health insurance. Horicon employees do not have longevity either while eight of the fourteen comparables enjoy some form of longevity. Seven of the thirteen (it is unknown whether Berlin DPW employees have paid dental insurance) have dental insurance paid in whole or in part. Horicon is not one of the seven.

With regard to wages, all are settled for 2001, with the exception of Horicon. Five of the comparables received 3%, three received 3.5%. one has settled for 3.4% and 3.23% for its two different employee groups and two received mid-year splits increasing their end year wage rates to 4%, but costing 3%. No information was presented on the Berlin wage rate increase. The story is similar for 2002, but four of the comparables are not settled. Of those settled, two have settled for splits resulting in end rate increase of

4% and 3.25%, three have settled for 3.5%, one has settled for 4% and one has agreed to 3.5% and 3.14% for two different groups of its employees. Again, it is unknown what the Berlin wage proposal for 2002 is. Evaluation of the wage rates, however, indicates that with the 3% for each year, Horicon will still rank low in wages for wastewater operators and will not make any gains in position with respect to comparable street employees.

Analysis of the total compensation of the external comparables leads to the conclusion that Horicon's enjoyment of the current retirement benefit does not place its total compensation package substantially higher than that of comparable units. Rather, where other comparable employers may be paying longevity, dental and sick leave accrual payouts, Horicon is saddled with generous retiree health insurance benefits. This has been a result of the bargaining choices made by the various units throughout the years. The undersigned is loathe to disturb the bargaining pattern which the parties have established vis-à-vis comparable external units over the years and the choices they have made. It is simply concluded that the City has not established that the continuation of the retiree health benefit with the Union's proposed modification results in labor costs significantly different from those born by the other external comparables.

Even assuming that the need had been adequately established, certainly no *quid pro quo* has been built into the agreed-to wage offer when it is contrasted to the voluntary settlements among the external comparables. The Union has agreed to a reasonable wage increase and has not been greedy in this respect. As noted above, many are receiving in excess of 3%, or splits which raise the end rate to 4% in one or both years.

It is true that the tentative agreement provides for a modest vacation improvement that will benefit one current employee in the near future, but this benefit cannot be construed as a sufficient *quid pro quo* to offset the City's retiree health insurance proposal. The combination of wage improvements along with the retention of the benefit for most employees and the increased dollar support for the benefit in combination with the vacation improvement or standing alone are insufficient *quid pro quo* for the City's proposal. First of all, the retention of the benefit and the continuing provision of the benefit to all qualifying bargaining unit members along with the increased dollar support for the benefit is the *status quo* because that is the position in which the parties remain as of the expiration of the last contract at the commencement of bargaining for the new contract. Continuing to pay the increased cost is not a *quid pro quo* for retention of this benefit. As noted above, the Union has not been greedy in requesting in excess of the average wage offered to comparable units, so the agreed to wage increase cannot serve as part of the *quid pro quo* offered. The City has simply not offered anything that can be considered an equal trade for its substantive change.

With respect to the internal comparables, the City has not offered this unit the wage package which it presented to the police, assuming that "catch-up" was warranted for the police unit. Furthermore, here again, it is evident that the City and the police unit achieved the changes in the police retiree health insurance benefit which help control the spiraling costs incrementally through bargaining to voluntary agreement over the years.

In summary, the City has established that the retiree health insurance benefit has become costly and will continue to cost more in the future. Its proposal is, however, a significant departure from the *status quo* that will affect one third of the current bargaining unit, substantially changing the formula and the eligibility requirements for earning the benefit for both current and future employees. The Union, while acknowledging the increasing costs of the benefit, has proposed a modification with respect to future employees while preserving it for current members of the bargaining unit. The City has not demonstrated that the benefit is so costly as to skew the total compensation received by unit members as compared to either internal or external comparables. Furthermore, the City has not provided a sufficient *quid pro quo* to support its proposal. Having considered all of the statutory criteria, the Union's offer is more reasonable.

### **CONCLUSION:**

Evaluation of the 'other factors' criteria set forth in Section 111.70(4)(cm)7r., in particular, the external and internal comparables among the other represented public employees and the City's failure to provide a sufficient *quid pro quo*, results in this

### **AWARD**

That the Union's final offer is adopted as the award in this proceeding and incorporated into the parties' 2001-2003 collective bargaining agreement.

Dated this 24th day of September 2001, in Madison, Wisconsin.

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Mary Jo Schiavoni, Arbitrator