STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition	
of	**Case 263**
AFSCME Local 284	**No. 64045 INT/ARB-10278** **Decision No. 30287-A**
For Final and Binding Arbitration Involving Personnel in the Employ of City of Eau Claire	

APPEARANCES

For the Union:

Steve Day, Staff Representative

For the Village

Steve Bohrer, Assistant City Attorney

PROCEEDINGS

On March 16, 2005 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm) 6. & 7. of the

Municipal Employment Relations Act, to resolve an impasse existing between AFSCME Local 284 of Wisconsin, hereinafter referred to as the Union, and City of Eau Claire, hereinafter referred to as the Employer.

The hearing was held on June 30, 2005 in Eau Claire, Wisconsin. The Parties did request mediation services which were unsuccessful. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on August 26, 2005 subsequent to receiving the final reply briefs.

FINAL OFFERS

July 1, 2005 through June 30, 2006

Employer	Union
The Employer will pay 95% of the health insurance premium if one plan is offered	Health insurance: If one plan is offered, the Union's proposal is the same as the Employer's. If two or more plans are offered,

If two or more plans are offered, then the Employer shall pay 95% of whatever plan is chosen. In 2005-2006 the Employer is offering one plan.

the Employer would pay 95% of average between the two plans. This means that, generally, HMO participants would generally pay a lower premium for that plan.

Wages: 3.25% across the board.

Wages: 3.0% across the board.

STATUTORY 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 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 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 other 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 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.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

The Union's offer retains and expands the historical 95% of the average premium formula. This steers family plan employees into lower cost health insurance plans. The current 95% of average language has existed in the contract since 1994. The Union at that time gave a quid pro quo in order to obtain this formula. Over the years this has saved the Employer money since it has steered Local 284 members to the less expensive HMO plan.

The Union's current offer provides for the same average language not only for family plan members but also now for all single and limited family plan members. This will correct the lack of movement to the HMO plan by these two groups. The Union note the overwhelming full family plan participation in the HMO program.

The Employer's proposal negates the language negotiated in 1994 when two or more plans are offered. It is the Employer that controls the number of plans offered. The only difference is under the Union's proposal single and limited family plan members would also be included. If the Employer prevails, there will be no incentive to move to the HMO plans. Even the Employer's own expert witness agreed to that fact. The Union is asking for a 3% across-the-board wage increase effective July 1, 2005. While the Employer's offer is somewhat higher, it provides an inadequate quid pro quo for the health insurance premium demands.

With respect to internal comparables, the Employer has only two settlements with units that are in agreement with the Employer's health insurance language. The other three units have not agreed to this proposal. Two out of five units do not constitute a pattern. The two units that have agreed constitute 96 employees. The three units that have not agreed are comprised of 230 employees. Arbitrators have found this situation to be unpersuasive.

With respect to other criteria, the greatest and greater weight criteria do not apply since the Employer's wage increase offer is more than the Union's. In addition the Employer's language will not save the Employer any money and it may even cost it more money. Finally,

the Employer is economically sound, particularly with respect to the average of the external comparables.

Regarding the external comparables, they show a similarity to the Union's wage offer. With respect to the health premiums, the contribution ranges from 90-100%. There is no discernible pattern emerging with the exception that, where the Employer offers two or more plans, there are at least two payment formulas which is what the Union proposes. In addition to the above most arbitrators look to internal rather than external patterns for guidance.

The Union's final offer of wage increase of 3% is certainly within the range of the consumer price index. Even so, many arbitrators including this one have given the consumer price criteria little consideration.

The Union also had the opportunity to reply to the Union's brief:

With respect to the greatest weight and greater weight criteria, the new state budget bill begins on January 1, 2006 and it concerns only the last half year of the labor agreement. The City of Eau Claire is in good financial condition including a huge recent rise in the per capita gross income in the City. If the Employer really believes that the Eau Claire economy is lagging, then why did it make a higher wage offer and have no provision or incentive for employees to move to the less expensive HMO plans.

Regarding the internal comparables, the award by Arbitrator Bellman is not relevant since he concluded that the Union was asking for far too much in retirement benefit improvements. The Local 284 is only asking for the current language with some progressive modifications. The Employer also claimed that the firefighters have agreed to the Employer's health insurance proposal. Such statements are simply untrue. A letter was provided from the firefighter President which will clear up any confusion on this issue.

The record is clear. The Union's health insurance language in its final offer provides steerage of employee groups into less costly plans when two or more plans are offered. The internal settlement pattern favors the Union's final offer and, therefore, it is that offer that should be adopted by the Arbitrator.

EMPLOYER POSITION

The following represents the arguments and contentions made on behalf of the Employer:

Both Parties seek a change in the status quo regarding sharing the cost of employee health insurance. Escalating insurance costs are a fact of life. Interest arbitrators have concluded that employees must share the burden of these costs through reasonable premium contributions.

With respect to the greatest weight factor, the Governor signed a biennium budget

which includes a property tax freeze. This limits revenues that may be collected by the Employer. The Employer will have a $1 million operating deficit for 2006. The negative economic impact for such a large unit would be far greater if the Union's proposal were selected. Therefore, the greatest weight factor supports the Employer's final offer.

The greater weight factor involves the economic conditions in Eau Claire. The per capita annual income is at the bottom of all metropolitan areas in the state. Although the economy in west central Wisconsin is growing, Eau Claire's economy is still lagging behind the rest of the state. This economic problem compared to the relative wages of the employees in the dispute makes this greater weight factor support the Employer's position.

With respect to the other factors, the internal comparables favor the Employer's position since three out of the five units have committed to the Employer's proposal. Arbitrators have supported internal comparables even if a minority of the bargaining units has accepted where the Employer has made the same proposal to all of its bargaining groups.

A review of the external comparables and cost of living also supports the Employer's position. When considering the entire health care coverage, the actual coverage by the Employer is well above average. External comparables are relevant and support the Employer's position. In addition the Employer's wage proposal further supports the Employer's position with respect to the external comparables.

Regarding the quid pro quo, the Employer has established a great need for change. Therefore, the value of the quid pro quo is diminished. For the last ten years employees have paid little or next to nothing toward their health insurance contributions. There is a need to equalize employees' contributions so that all pay 5% and to do away with the averaging formula within the Union's final offer.

The Union asserted that the Employer's proposal will negate steerage toward lower cost premiums. History supports the position that the difference in cost between the HMO and non-HMO plans is great enough that steerage will occur. Unless the averaging formula is done away with, history is bound to repeat itself and the problem will persist.

The Employer's quid pro quo is adequate. The going wage increase is approximately 2.75%. The Employer's proposal is .5% above the going rate. In addition the Employer's wage offer surpasses the Employer's anticipated savings.

A 5% contribution is not unreasonable or too much. Arbitrators have recognized that health care premiums are a real problem and that such a contribution reasonably addresses that problem.

Finally, the Union's position would provide a disincentive for the Employer in the future to have a two plan system. It would also eliminate employee incentive to shop for and compare different plans. The Employer's hands would be unreasonably forced toward a one

plan system and, thus, it would lose flexibility of seeking other options.

The Employer also had the opportunity to reply to the Union's initial brief:

The Union asserts its final offer is more internally comparable. This argument is based on outdated evidence. Since the time that the Union put together its exhibit, the firefighters have agreed to the Employer's proposal. In addition the non-bargaining Employer units have changed to the Employer's proposal in this matter, thus making 70% of the entire Employer work force committed to this program. Even if the Arbitrator would limit this to the groups bargaining by contract, more than half have agreed to the Employer's health insurance proposal. Sufficient numbers of employees, both Union and non-Union, have agreed and, therefore, a pattern exists.

The Union has asserted that internal comparables are the determining factor in this area. The Employer would note that it has made a quid pro quo wage offer which would surpass the Employer's savings on health insurance. Therefore, the internal comparables favor the Employer's position.

With respect to external comparables, the Union's brief downplays and minimizes the external comparables. It is the Employer's position that there is a direct correlation between

higher wages and insurance concessions in these external communities. Contributions do vary, however, the Employer's offer to pay 95% is well within the average for external comparables. A majority of the externals offered two or more health insurance plans with two payment formulas. The proposal by the Union would average any and all plans that are offered regardless of type. Under this formula employees will continue to contribute little or next to nothing toward their health insurance premium. The Union's proposal is likely to perpetuate the continued minimal contributions by employees. The Union's contention that its proposal requires a shared amount that is inadequate is not at all proven.

The Union argued that its program offers incentive for employees to control the rising cost of health insurance by steering employees to less costly plans. This argument does not take into account historical changes and rate differentials. In the past differentials between plans have not been close, therefore, the Union's argument falls flat. The Employer's offer gives employees more of an incentive to control the rising cost of health insurance. With higher premium amounts comes a higher shared sense of responsibility. The Employer's witness verified this concept. The Union contended that the Employer's offer negates the Union's 1994 health insurance gain. When Parties are at an impasse, their only alternative is to proceed to interest arbitration. If the Union's argument would be favored, this would mean that employers would be forever locked into unfavorable language. In any event the steerage argument is far outweighed by other statutory factors.

The issue in this case is not now much more employees will pay. Rather the issue is

which offer of an increased amount is more reasonable. The Employer is facing extremely difficult economic times. The internal comparables support the change. The external comparables show that it's well grounded and within the average. The .5% wage concession is an adequate quid pro quo. The averaging formula which results in a $6.24 per month contribution is unreasonable. Therefore, for all of the above reasons it is the Employer's position that is most reasonable.

DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Wisconsin legislature determined that it would be in the best interest of the citizens of the State of Wisconsin to substitute interest arbitration for a potential strike involving public employees. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must choose the last best offer of one side over the other. The Arbitrator must find for each final offer which side has the most equitable position. We use the term "most equitable" because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most

equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 11 factors contained within the Wisconsin revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees

generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

Both sides are seeking a change from the status quo, and the record in this case shows that neither side has fully justified its position. Therefore, the Arbitrator is required to determine which proposal most closely follows the statutory criteria.

The record shows that the Employer is in total control of this situation since it, and it alone, determines the number of plans that will be offered. Since the Employer has already determined to offer only one plan this year, neither side's proposal will have any effect. The change in the state budget law is an item best left for the next round of negotiations. Therefore, the factor given greatest weight is not determinative in this case.

The Union has argued that the current contribution program has, as one of its effects, steered employees into choosing less costly plans when more than one plan is available. The Arbitrator will find that the Union has proven that argument. The Employer by its own admission stated that the extra increase in wages offered would more than offset its anticipated

savings under its language. Therefore, the factor given greater weight is also not determinative.

As with many of these cases, the analysis comes down to the internal and external comparables. The information provided with respect to the external comparables does not support either side's contentions and arguments. Quite frankly, the external comparables cover a wide variety of health and welfare and wage levels. There is no discernable trend. Therefore external comparables are not determinative.

With respect to the internal comparables, the record shows that two of the smaller bargaining units have agreed to the Employer's position. Two have not and the firefighters are somewhere in the middle but not determined at least at this point. Since the external comparables show little or no clear trend and the internal comparables at least at this moment somewhat favor the Union's position, the Arbitrator will find that the comparables somewhat favor the Union's position.

The Arbitrator would state for the record that neither side has justified its proposed change in the status quo. The facts are that many employees have paid little or nothing toward the cost of their health insurance. This is due in large measure to the fact that they have chosen the less expensive insurance plan which is favorable to the Employer's overall economic position. This Arbitrator agrees that employees should make, in this day and age, reasonable contributions toward their health insurance costs. The Arbitrator notes that both sides have

offered a sort of quid pro quo by proposing different wage increases. There will be no effect this contract year since the Employer is offering only one plan. Finally the Union has proposed a smaller deviation from the status quo. However, since neither side has fully justified its position and the Arbitrator by law is required to pick one over the other, in a very close call the Arbitrator finds that the Union has sufficiently justified its proposal particularly based on the smaller wage increase and deviation that is contained in its proposal.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the Union is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the June 1, 2004 through June 30, 2006 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 1st day of September, 2005.

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Raymond E. McAlpin, Arbitrator