STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition **of** **Labor Association of Wisconsin, Inc** **Professional Clerk-Matron Dispatcher Association** **For Final and Binding** **Arbitration Involving** **Personnel in the** **Employ of** **City of Oak Creek**	**Case 127** **No. 60041 INT/ARB -9267** **Decision No. 30398-A** **Raymond E. McAlpin** **Arbitrator**

APPEARANCES

For the Association: **Pat Corragio, Labor Consultant**
Kevin Naylor, Labor Consultant

For the City: **Robert H. Buikema, Attorney**

PROCEEDINGS

On July 16, 2002 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 (4) (b) of the Municipal Employment Relations Act, to resolve an impasse existing between Labor Association of Wisconsin, Inc. hereinafter referred to as the Association, and the City of Oak Creek, hereinafter referred to as the Employer.

The hearing was held on December 5, 2002 in Oak Creek, Wisconsin. The Parties did not request mediation services and the hearing proceeded. 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 March 21, 2003 subsequent to receiving the final briefs.

ISSUES

The following are the issues still in dispute between the Union and the City:

ASSOCIATION'S FINAL OFFER		**CITY'S FINAL OFFER**	
Wages:		**Wages:**	
1/01/01	**2.90%**	**1/01/01**	**2.90%**
1/01/02	**2.90%**	**1/01/02**	**3.50%**
Premium Sharing:		**Premium Sharing:**	
No Proposal - No change in insurance		**Effective upon implementation of the Arbitrator's award, or December 31, 2002, whichever is earlier, employees enrolled in the health insurance plan shall contribute 5.00% toward the monthly health insurance premium amounts.**	

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.

CITY POSITION

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

The City agrees with the Union with respect to South Shore contiguous communities for comparables. The City does, however, agree that West Allis should be included in those comparables because of its size and noting that the Association has not proposed other Milwaukee County communities of similar size to Oak Creek. The City would also include in the comparables other communities in Milwaukee County proximate to Oak Creek and similarly sized. The City has broken the comparables into two sets - the South Shore comparables and then the rest of Milwaukee County and has provided benefit data from all Milwaukee County municipalities with the exception of the City of Milwaukee which must be excluded on the basis of size alone. The appropriate comparable pool of municipalities should include at a minimum all of the South Shore and contiguous municipalities proposed by the City of Oak Creek as it is truly the most comparable group. The entire group of municipalities within Milwaukee County is also appropriate for consideration due to its overall proximity and common job market. The City would note that it has left some municipalities off its list as one has no dispatchers and the other municipality's dispatchers are not organized. Some

North Shore municipalities are part of the North Shore dispatchers' group and are included as part of that organization.

The City's final offer is supported by the health insurance contributions made by dispatchers and comparable communities. Only Franklin and Wauwatosa do not require employee contributions toward health insurance premiums. Therefore, the vast majority of organized dispatcher units require contributions. Even if the smaller comparable South Shore pool were used, only Franklin out of the seven municipalities does not require a health care contribution.

There is a compelling need to reduce the City's health insurance costs. The City has done what it can to reduce health insurance costs including establishing a labor/management health insurance committee. Since the City includes retirees in its plan, many health insurance providers would not bid and, as of recently, only Blue Cross/Blue Shield would provide a quote for the continuation of the indemnity plan. In addition, Blue Cross determined to discontinue its HMO plan, which resulted in higher cost to the City because employees were then enrolled in a more expensive plan. The City has made great efforts to try to educate its employees as to the excessive costs of health care insurance. The City would note that in 2001 alone the increases in costs were in excess of $27,000 for the eleven individuals in the bargaining unit. The City believes the two-year cost increase of 36.88% constitutes a compelling need for change for some type of relief by the way of employee contributions. The City is asking the employees to pay only a small share of the increased costs. Even then the City is willing to

shield the employees from the 2001 and 2002 contract in that its final offer does not take effect until the last day of the contract which would be December 31, 2002. The City further notes that it is paying a much higher premium over the average for the comparables. Even if the City's final offer is selected, it will continue to pay more than the average of comparables for both family and single plan coverage. The City has not elected to use the option of reducing coverages. That leaves the only other option as employee paying a portion of the premium cost. Many arbitrators have found that health insurance premium sharing is a valuable tool in containing costs.

There is no quid pro quo necessary for this change in the status quo because the City has demonstrated a compelling need for the change. Experts have noted that, unless employees have a share in the cost of health care, they have little incentive to hold down costs. The City has provided numerous citations and quotations from experts in support of this position.

Since the City's proposal is supported both internally and externally in the comparables, the need for a quid pro quo is diminished. The City has met its burden to demonstrate a compelling need for its final offer. Many arbitrators have found that, if there is support among the comparables, the need for a quid pro quo is diminished. In fact, however, in this case the City did offer a quid pro quo, a ½ per cent increase higher than the Union's final offer for the 2002 contract year. In addition, as noted above, the City delayed until the last day of the contract year the implementation of the premium sharing, thus

eliminating financial impact on dispatcher wages during the term of the contract. This offer by the Employer goes well beyond what is expected by arbitrators. Again, the City provided numerous citations in support of this position. Finally, the City noted that it did provide clear and convincing evidence of a compelling need for this change in addition to a more than adequate quid pro quo.

The Union may argue that, because the police officers are paid a much higher rate than the dispatchers, this somehow favors the Union's position. There was no showing that any comparable proposed by either side charged a lesser or greater amount for premium based on wage rates or that premium sharing rates are calculated on a lesser basis for dispatchers than those for police officers. There was no evidence that dispatchers utilized these benefits at a lower rate than any other employees.

The City residents, the personnel committee, and the mayor have made it clear that premium sharing is a priority. The City believes that employees need to be paying a part of their health insurance premium to be more reflective of what the community does as a whole. The City is facing difficult economic times and it is determined to act responsibly in cutting its costs. The input of the citizens of Oak Creek is an integral part of this case.

Cost containment in City spending is imperative both in the City of Oak Creek and nationally. Municipalities are operating under a unique set of financial constraints. Taxpayers are asking municipal employees to tighten their belts just as they have been

required to do in the private sector.

The internal comparables support the City's final offer. Premium sharing settlements reached with other city bargaining units support the City's position in this case. The City would note that of four represented and one non-represented employee groups, three of them share in health insurance premium payments. Police supervisors' pay has a dollar amount. DPW and non-represented employees pay a 5 per cent portion of the insurance premium. The internal settlements need to remain consistent to maintain good employee morale and encourage voluntary settlements. Again, numerous citations were provided. If the Association were successful in this arbitration, it will send a clear message to other bargaining units within the City of Oak Creek. That message would be to refrain from reaching a voluntary settlement. Collective Bargaining is to be a give and take process. It is not about refusing to make any changes no matter what the circumstances. The Oak Creek dispatchers enjoy a wage and benefit package that is better than or comparable to wages and benefits received by dispatchers in comparable communities. The Employer provided numerous charts in support of this position. In addition, the Consumer Price Index (CPI) criteria mandated under the statute favors the City's final offer. The dispatchers' increases from 1996 through 2001 have exceeded the cost of living factor. For all the reasons above, the City submits that its offer should be selected by the Arbitrator in the subject case.

The Employer was also given the opportunity to reply to the Association's initial brief. Its arguments are as follows:

The Association has mis-characterized the internal settlements. Only those contracts that were settled prior to December, 2000 did not require a health insurance premium contribution. All City contracts settled after October, 2000 require employee premium sharing.

The Association incorrectly suggests that the enhanced benefits which the City agreed to for the dispatchers are financially insignificant. In fact, the City agreed to four significant benefits as part of the tentative agreements for this negotiation.

The Association would like the Arbitrator to ignore the voice of the citizens in their demands for cost savings in the City. The Association may choose to insulate itself from the citizens of Oak Creek, but the City does not have that luxury. Again, the City would note that the percentage increase offered by the City is higher than the increase being proposed by the Association. The City has never claimed that citizens are protesting dispatcher wages. The only claim by the City is that citizens are requesting that employees share in health insurance costs.

The economy is a major concern in this negotiation and must be considered in rendering an arbitration award. Oak Creek does not operate in a vacuum. The City believes

that it will receive a reduction in shared revenue during 2003.

Realizing that its position on health insurance is not supported, the Association attempts to claim that the dispatchers are not adequately paid. There is no internal wage comparison in the record. Even if it had been introduced, it would not be relevant to the variable duties and responsibilities and educational requirements of each position within the City. The facts are that the dispatchers in Oak Creek are well paid with respect to any comparable group that might be utilized.

Internally, the City's offer is the most reasonable. The most recent settlement with the Department of Public Works requires a 5 per cent contribution beginning July, 2003. The argument that the dispatchers are not getting as favorable a settlement as other units is incorrect and not bolstered by any facts in evidence.

Based on the above, the City respectfully requests the Arbitrator to select the City's final offer as it is the most reasonable.

ASSOCIATION POSITION

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

The Association has proposed a list of South Shore communities. The City would add in addition to these communities other Milwaukee County communities commonly called the North Shore communities. In addition, the Employer would add Hales Corners, Wauwatosa and West Milwaukee. The Association agrees with the additional comparables as proposed by the City as almost every community is within the 20-mile residency requirement area established by the labor agreement.

With respect to the wage and health insurance proposals, the Association argued that the greatest weight and greater weight factors are not determinative factors in this case. Therefore, the Association will argue from the other factors to be considered under the statute. There is no question that it is within the lawful authority of the City to accept and abide by the terms of the Association's final offer. The City has not argued a contrary position. With respect to the stipulations, the financial burden placed upon the City as a result of the tentative agreements is insignificant. These agreements highlight the problem in this case in that this bargaining unit has historically received the same wage and health care benefits as those received by the Police Association. These tentative agreements, while not placing a monetary burden upon the City's taxpayers, do indicate a mutual desire by the City and the Association

to treat the dispatchers in a manner consistent with the City's police officers.

The City has the financial ability to meet the cost of the Association's offer without negatively impacting the interest and welfare of the public. The City failed to offer any evidence of a financial inability to abide by the Association's final offer. The City failed to offer any convincing evidence that its citizens are opposed to the Association's offer. The City only offered vague and unsupported testimony regarding alleged complaints made by taxpayers. The one specific complaint provided shows that the taxpayer was more concerned with individuals making over $40,000 a year, which does not include anyone in this bargaining unit.

The Association admits that health care insurance costs have risen dramatically over the past several years. Certainly, the City was well aware of these factors when it provided two of its bargaining units with increases in excess of what it offered the dispatchers and other bargaining units with fully paid health insurance through 2003. The Association would note that these were voluntary settlements. In addition, the City should not be allowed to use Wisconsin Statute 111.70 in order to help elected officials keep campaign promises. As in previous negotiations members of the Association should be treated in a manner that is consistent with the Police Association. While the City officials provided anecdotal evidence, there was no hard evidence or any written document from a citizen expressing these concerns. Finally, the alderperson's campaign promises were made more than 15 months after the City and the Association had commenced good faith bargaining.

The statute requires the Arbitrator to compare the wages and hours and conditions of employment of other employees in the same community. Contrary to the City's argument, the entire settlement packages that have been agreed upon do not support the City's claim. The Association would note that police, fire and water utilities associations have settled labor agreements containing identical wage increases and health insurance contributions as proposed by the Association in its final offer. The police supervisors agreed to make an insurance contribution but as a flat dollar amount which will result in contributions of less than 5 per cent in 2003. The DPW agreed to pay a 5 per cent contribution but beginning July 1, 2003, six months after the labor agreement in dispute expires. Non-represented employees do pay the 5 per cent contribution, however, these individuals received substantially higher raises in January 1, 2001 which more than offset any premium contributions. This is a generous quid pro quo. The Association would also note that other bargaining units have been able to achieve a three-year voluntary agreement. Only the dispatchers have been offered a two-year agreement. Arbitrators have found that there is a great reason to utilize internal consistency, and the Association provided numerous citations in support of this position. The overall internal settlement pattern more closely resembles the Association's final offer in these proceedings.

The City will be able to negotiate insurance contributions immediately after receiving the Arbitrator's decision since the contract under discussion here has already expired. Should the City prevail, this would put the Association in a very difficult bargaining position with respect to wages. Finally, the Association's wage request more closely resembles the CPI for

the years 2001 and 2002, therefore supporting the Association's final offer.

The Association also had an opportunity to respond to the City's initial brief:

The Association is not asking the Arbitrator to ignore the alderperson's testimony. The Association merely pointed out that her testimony was self-serving and more of a political statement than any relevant facts. Both her testimony and Mr. Kufrin's testimony were merely conjecture and hearsay without any relevant proof to support their conclusions.

The City claimed that it lost $800,000 in revenue from the state. The facts are that the City did not lose any money from the state in the relevant years of this arbitration. Furthermore, the City testified that taxes in Oak Creek have actually gone down.

The City stated that the firefighter and police contracts were settled prior to November, 2000. The facts are that the dispatchers stated negotiations at the very same time since, historically, the Parties have followed the lead of the police settlements; however, in this matter the City procrastinated and made the negotiations drag on forever. The Association surmises that this was part of the Employer's strategy to isolate the dispatchers until other bargaining units were settled.

After the police were settled without an insurance contribution and with increases of 3.7% in each of the three years, the City decided to orchestrate a plan to get insurance

contributions from all of its employees both union and non-union. This strategy worked with the policy sergeants; however, the increases that they were paid were much in excess of what the City is offering the dispatchers. Had the City made the same offer to the dispatchers as it made to the sergeants, the Association believes that the bargaining unit would have been more than willing to make the health insurance contribution. The record shows that the wages afforded the police officers, the sergeants' union and the non-represented employees in the Police Department do not come even remotely close to what the City is offering the dispatchers. The facts are that the Employer distorted the internal settlement pattern as not one other police employee received only 2.9% in 2001 or 3.5% in 2002. How can there be labor peace when the City offers 3.7% to the police officers, 4.8% to the sergeants and 12.8-14.8% to the non-represented police employees? If the City really wanted labor peace, it would have settled the dispatchers' contract based on the police officers' voluntary agreement. Finally, the Employer stated that, if the Association is successful, this will send an inappropriate message to other bargaining units. The facts are that the Association did not prolong the collective bargaining process and stall it for two years. The Association will not gain more through arbitration than face-to-face negotiations. In fact, it will be getting less money than other City employees for the same two years and will begin negotiations immediately after the award for a new agreement, which is already months' old.

The Association would ask, based on the arguments above, that it is the Association's position that more closely meets the criteria as stated in the statute and reproduced above.

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 does not provide that the Arbitrator must choose the last best offer of one side over the other. Therefore, 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 interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is not precluded from fashioning a remedy of his choosing. He must by choose that which he finds most equitable under all of the circumstances of the case. This Arbitrator will base his decision on the combination of 12 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.

With respect to the comparables, it is extremely rare to find Parties that are willing to agree on all of the comparables proposed. While the Arbitrator cannot help but feel that there is some ulterior motive lurking in the background, it is not his duty and obligation to make determinations on comparables where the Parties have apparently reached a voluntary agreement. Therefore, the comparables as proposed by the Association and by the City will be deemed the appropriate comparables for this interest arbitration.

The record of this case shows that in fact the total economic package for this bargaining unit for the contract years 2001-2002 are generally not in dispute. Therefore, the factor given greatest weight and the factor given greater weight are not at all determinative to the decision in this matter.

What is in dispute is the concept of whether or not employees should contribute toward the cost of their health insurance. The Association wishes to maintain the status quo, which is no contribution, and the Employer has proposed a 5% contribution effective the last day of the contract. The Employer has also offered an addition .5% wage increase over the Union's proposal in the second year of the contract. As noted above, it is the Employer that wishes to changes the status quo. Therefore, it is the Employer who bears the burden of proof in this matter.

There is no question that health insurance costs have been, along with wages, the most

problematic aspect of collective bargaining not only in the public sector, but in the private sector as well. The Employer certainly has shown a proven need to control health care costs. The record demonstrates that it has made many efforts to lower or at least control its health care premiums. These efforts generally have not been entirely successful. The City has, therefore, chosen to negotiate contracts within the past 18 months or so that would require employee contributions. In addition, its non-represented employees are making contributions. The internal comparables are difficult because the City is in the middle of a bargaining cycle with its represented employees. The City has represented to this Arbitrator that it intends to pursue employee contributions among all of its employees, not only to reduce the overall cost of health insurance premiums, but also to give employees an incentive to help the City control its health care claims experience. It is no secret that insurance premiums are really a result of claims plus administration fees. The City hopes that, if employees are contributing to the cost of the insurance premium, they will then have an incentive to seek out less costly treatment options.

With respect to the external comparables, the Employer has successfully proven that the overwhelming majority of organized dispatch groups make contributions either on a percentage basis, a percentage with a cap, or a flat dollar amount contribution. Wages and benefits paid to this bargaining unit are well within the range of external comparables. The external comparables do support the Employer's position.

The Union argued that arbitral authority supports maintaining internal consistency,

and many of the Association's arguments were well taken by the Arbitrator in this area. However, the City is in the middle of a transitional bargaining period. The City has represented to this Arbitrator that it intends to make insurance contributions a key proposal in the rest of the contract negotiations in this cycle. At this time the Arbitrator will take the City at its word. Based on this representation, the Arbitration would find that the arguments made by the Association with respect to internal consistency must be taken in this context. The Association argued that other groups receive higher pay raises. There was no showing that those raises were not consistent with the external comparables.

Based on the above, the Arbitrator will find that the City has made its case for the deviation from the status quo in that it has shown a proven need, at least a partial quid pro quo, and support within the external comparables. The Arbitrator, however, would specifically warn the City that, if it is not successful in achieving employee health insurance contributions with the remainder of its bargaining units during this bargaining cycle, its insurance contribution position with respect to this bargaining unit would be much less tenable and would surely affect future decisions involving the Dispatchers.

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 City is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the 2001-2002 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 5th day of May, 2003.

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Raymond E. McAlpin, Arbitrator