

## BEFORE THE ARBITRATOR

In the Matter of the  
Interest Arbitration between

CITY OF CORNELL (Department of Public Works)

And

TEAMSTERS GENERAL  
UNION, LOCAL 662

Case 25 No. 60544

Int/Arb-9438

Dec. No. 30407-A

### INTEREST ARBITRATION AWARD

Appearances:

Mr. Raymond Hoel, Hoel Law Office, on behalf of the City.

Ms. Jill Hartley, Previant, Uelmen, Gratz, Miller & Breuggeman, S.C., on behalf of Local 662.

The above-captioned parties, hereinafter referred to as the City and the Union respectively, have been parties to a series of collective bargaining agreements throughout the years. The parties were able to resolve most issues for the 2002-2003 successor agreement with the exception of health insurance, short-term disability, and wages. 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 Cornell, Wisconsin on August 23, 2002. 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 November 4, 2002.<sup>1</sup> 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:

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<sup>1</sup> The City submitted an affidavit after the close of the record and the Union responded. On December 9, the City notified the Arbitrator that it wished to submit other relevant evidence with respect to the settlement of an agreement between the City and another internal bargaining unit represented by the IBEW. Both parties were notified that this evidence would be considered and given the opportunity to submit arguments regarding the relevance of the additional information. The arguments were received on December 16, 2002.

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 proposals:

1. Page 22, Article 13, Health and Welfare

Section 1. The City will continue to offer health insurance coverage to all full-time employees after 30 days of employment. The City's premium contribution for health insurance for each employee of this unit that participates in the Wisconsin Health Fund health insurance plan will be as follows:

\$523.52 per month per employee – 01/01/02-3/31/02  
 \$633.06 per month per employee – 04/01/02-03/31/03  
 \$810.68 per month per employee – 04/01/03-03/01/04

However, should the aforementioned premium contribution exceed the City's contribution amount under the ETF State Plan for the other employees of the City, the employees of this unit will pay the amount above what the City contributes to the State Plan.

Employees of this unit will not move to the ETF State Plan during the terms of this agreement unless such move is necessitated to allow the City of Cornell to provide coverage for other employees (non-unit 662) which may be required because of the minimum participation requirements of the ETF State Plan.

In such event that employees of this unit have a change of carrier to the ETF State Plan, the City of Cornell will notify Teamsters Local 662 within ten (10) days of receiving notice that the City will no longer retain eligibility for employees under the ETF Plan without further participation by members of this unit. In such event, the City may change carrier to the ETF Plan. However, within two (2) weeks of the date the Union receives the aforementioned notice the City agrees to formally negotiate the economic impact of the insurance change with the Union. In the event that the City and the Union cannot reach mutual agreement, the issue will be subject to interest arbitration pursuant to the procedures of the Wisconsin Employment Relations Commission to achieve final and binding resolution. However, if the City of Cornell is allowed by the ETF State Plan to continue having other (non-unit 662) employees remain in the ETF Plan during the entire term of this Agreement (non minimum participation problem or a waiver is obtained) employees of this bargaining unit will remain in the Wisconsin Health Fund. Such Local 662 unit employees acknowledge that they have an opportunity to enroll in the State Plan, but decline to do so and will sign any forms necessary to evidence this refusal.

Change of Carrier. This language would remain the same as in the current contract.

2. Page 30, Exhibit “A”, Classifications and Wage Rates

	1/1/02 – 12/31/02	1/1/03 – 12/31/03
Street Department Operators	\$13.91	\$14.36
Administrative Secretary	\$11.50	\$12.18

This reflects a 3.25% increase each year for both classifications plus the \$.30 market adjustment each year for the Administrative Secretary.

Administrative Secretary. The market adjustment shall be in addition to the 3.25% wage increase and will be computed after the addition of the 4.30 per hour market adjustment to current wage rates.

The progression schedule for probationary employees on the bottom of Page 30, Exhibit “A” would now also apply to the Administrative Secretary classification.

The City’s final offer is as follows:

1. Article 12, Section 5. The City proposes no change, except for a change to provide that employees who retire (minimum age of 60) or leave with 20 years of service during this contract shall be paid fifty (50%) percent of the total amount of their sick leave bank, not to exceed twenty (20) days of pay. The rest of the language in Article 12, Section 5 to remain as written.

2. Page 22, Article 13, Health and Welfare

Section 1. The City will continue to offer health insurance coverage to all fulltime employees after 30 days of employment. The City premium contribution for health insurance for each employee of this unit that participates in the health insurance plan will be as follows:

\$523.52 per month per employee – 01/01/02-04/01/02  
 \$633.06 per month per employee – 04/01/02-03/31/03  
 85% of monthly premium per month per employee for 04/01/03 through 12/31/03.

However, said premium contributions shall not exceed the City’s contribution amount under the ETF State Plan for the other employees of the City for 2003.

Employees of this unit will not move to the ETF State Plan during the terms of this agreement unless such move is necessitated to allow the City of Cornell to provide coverage for other employees (non-unit 662) which may be required because of the minimum participation requirements of the ETF State Plan.

The City of Cornell will notify Teamsters Local 662 within a reasonable time not to exceed 45 days after receiving notice that the City will no longer retain eligibility for employees under the ETF Plan without further participation by

members of this unit. The City may change carrier to the ETF Plan. In the event of a change, the City's contribution will continue to be 85% of the premium and the employee's contribution will be 15% of the monthly premium.

However, if the City of Cornell is allowed by the ETF State Plan to continue having other (non-unit 662) employees remain in the ETF Plan during the entire term of this Agreement (no minimum participation problem or a waiver is obtained) employees of this bargaining unit will remain in the Wisconsin Health Fund. Such Local 662 unit employees acknowledge that they have an opportunity to enroll in the State Plan, but decline to do so and will sign any forms necessary to evidence this refusal.

Change of Carrier. The City may, from time to time, change the insurance carrier provided that such replacement carrier shall provide coverage that is substantially equal to or better than the benefits that are currently provided through the Wisconsin Health Fund (Direct Payment Premier Deductible Co-payment Plan.)

3. Article 30. The City proposes:

1. Street Department Operators. A wage increase of 3.25% each year of the term of this agreement.
2. Administrative Secretary. Increase this rate by an additional catch-up allowance of \$.30 per hour each year of this Agreement. This increase shall be in addition to the 3.25% wage increase will be computed after the addition of \$.30 per hour to current wage rates. Also, as set forth in paragraph 2 above, the contract will provide as a addition to Schedule A, the starting rates for probationary status and beginning employees for the position of Administrative Secretary, all as set forth in paragraph 2 above.

**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's Initial Brief

The dispute over insurance centers around the issue of payment of premiums. The Union's final offer maintains the *status quo* of 100% employer paid insurance premiums with a provision for employee contributions if the premium amount under the Wisconsin Health Fund plan in which the bargaining unit participates exceeds the amount of the premium under the ETF State Plan. In contrast, the City's final offer seeks a 15%

employee contribution to health insurance premiums with the potential for an even greater percentage if the Health Fund premiums exceed those of the ETF State Plan.

The second issue is language in Article 12, Section 5, providing for payout of sick leave upon an employee's retirement. The Union's final offer again maintains the *status quo* which allows employees to receive 50% of their sick leave bank up to twenty days of pay upon retirement. The City's final offer limits the payout of sick leave to employees who retire at or after age sixty or have twenty years of service with the City. In the Union's view, neither the "greatest weight" factor, nor the "greater weight" factor apply to the instant dispute. The other factors should be determinative.

The Union maintains that its offer maintaining the insurance *status quo* is the more reasonable and equitable and should be selected. Acknowledging that the street and maintenance employees currently enjoy 100% employer paid health insurance premiums under the Wisconsin Health Fund insurance plan, it claims that the Union's final offer seeks to maintain that benefit as it currently exists with provision for employee cost sharing if the premium amounts exceed the City's portion of the ETF State Plan premiums for the remainder of the City employees. It is the City's offer which changes the *status quo* by requiring a 15% contribution beginning in April 2003. The City has, however, failed to demonstrate a legitimate need for this change or to provide an adequate *quid pro quo* in exchange for the reduction in the valuable employee benefit.

With respect to the argument that the City has failed to identify a legitimate need for the change or to offer an adequate *quid pro quo*, the Union points out that the current premium per employee per month for coverage under the Wisconsin Health Fund plan is \$633.06 which will be in effect through March 31, 2003. Both offers propose to continue paying this amount through March 31, 2003. Given the ever rising cost of insurance, it is already known that the Wisconsin Health Fund premium will increase significantly to \$810.68 per month per family commencing on April 1, 2003. Here the two offers part ways. The Union's offer maintains the *status quo* with the City paying the entire cost of the premium on and after April 1, 2003 while the City proposes to pay only 85% of the premium with employees assuming the remainder.

The Union points out that where a party seeks a significant change from the *status quo*, like the City's offer does in the instant case, the party seeking the change must demonstrate that there is a legitimate need for deviation from the *status quo* and that a *quid pro quo* in exchange for the benefit at issue has been offered. The Union argues that the City has failed to provide a legitimate need for the deviation. There is no dispute that the City has gone through a number of difficulties trying to obtain and maintain insurance over the last several years. Those problems, however, do not justify the significant change which the City seeks here. Requiring a contribution toward premiums from employees will not resolve any of the issues that have led to the City's difficulty in maintaining an acceptable and affordable insurance carrier. Nor is the City's proposal to require the 15% contribution toward the premium justified by its desire to keep the City's share of the costs down and lower the tax burden on the citizens of Cornell.

The Union alleges that the City has saved a substantial amount of money by allowing the Local 662 bargaining unit to participate in the Wisconsin Health Fund Insurance Plan. Even assuming a modest increase of as little as 6.5% to the ETF State Plan premium, the City's 100% contribution for Wisconsin Health Fund premiums will still be less than its 85% contribution for ETF State Plan premiums. As such, the City has failed to demonstrate that its final offer seeking a 15% employee contribution is necessary to reduce its insurance costs. Without a legitimate need for such a drastic change to the *status quo*, the City's final offer must be rejected.

Assuming for the sake of argument that the City has demonstrated such a need, it has failed to provide the requisite *quid pro quo* to compensate the bargaining unit for the loss of the benefit. The Union points out that the parties have agreed upon a 3.25% wage increase for all employees as well as a \$.30 per hour market adjustment for the Administrative Secretary position. This unit's wage increase is the same as the increase negotiated by both the Police and Utility bargaining units. There is no merit to a claim that Local 662 employees have received an additional wage increase over the period of the contract as a *quid pro quo*. Any claim by the City that a previous larger wage increase constitutes a *quid pro quo* also fails. Rather, the greater wage increase in the previous contract was in recognition that the bargaining unit's participation in the Wisconsin Health Fund was a significant cost saving to the City. It realized a cost saving of \$1549.68 per employee over that which it spent on contributions for the rest of its employees and similar savings were realized in 2000 and 2001. These past increases are not an appropriate *quid pro quo* for the City's current proposal, especially since there is no evidence to establish that the City advised the Union at the time that the increase was also given in anticipation of an employee contribution during the next round of bargaining.

The Union submits that arbitrators regularly require substantial benefits to employees in exchange for such a drastic reduction in a benefit such as health insurance, especially where the offer without an adequate *quid pro quo* would result in a reduction of the employee's take home pay. If the City's final offer is selected, the 3.25% wage increase will be insufficient to cover the 15% premium contribution and employee's take home wages would be reduced. The employee would be required to pay a total of \$1094.40 from April 2003 through December 31, 2003 pursuant to the City's offer. During that same period of time, street department operators will earn \$702.00 in additional compensation as a result of the 3.25% wage increase, while the Administrative Secretary will earn \$1060.79 over the same time period. Neither classification's wage increase for 2003 will cover the cost of the health insurance contribution.

The Union also points out that the City's final offer has the potential to exceed the insurance contribution required of the internal comparables. The Union's proposal maintains the *status quo* of 100% contribution on the City's part. It also recognizes the City's need to limit its costs for employee health insurance by providing that if the City's contribution at 100% beginning in April 1, 2003 exceeds its contribution under the ETF State Plan for other City employees, then Local 662 bargaining unit employees will pay the difference over and above that which the City pays for the ETF State Plan. This

contingency ensures that the City's costs for the Local 662 unit will never be greater than its costs at 85% for the rest of the City employees covered by the ETF State Plan. Because the total premium per family for the State Plan is \$896.70 and the City's cost at 85% is \$762.20 per month per employee, even assuming a small increase in the State Plan premium of 6.5%, the City would still pay less for Wisconsin Health Fund participants at the 100% contribution than for employees in the State Plan. In the unlikely event that the ETF State Plan does not increase by at least 6.5%, the Union's offer would then require the Local 662 employee to pay any amount over what the City pays for coverage under the State Plan. Therefore, the Union's offer more closely matches the internal comparables. The City's offer has the potential to require Local 662 employees to pay even more than the 15% required by the rest of the City under the ETF State Plan in future years.

According to the Union, the internal comparables do not justify the City's final offer. Just because the two other represented units pay 15% of the cost of the monthly premium in the ETF State Plan, this fact does not automatically justify the City's position. This is especially the case where the Union is seeking to maintain the *status quo* for its members. The Union points out that for nearly three years the City has been content to treat the Local 662 bargaining unit members differently from the rest of the City with respect to insurance. The Union argues that internal comparables should not be controlling, where, as here, employees in the City's various bargaining units have received different benefits in the past.

The Union claims that the external comparables favor the Union's offer. Looking at Boyd, Cadott, Augusta, Cornell, Thorp and Bloomer, the Union points out that in none of those municipalities is the employee required to pay 15% of the premium which the City is seeking here. Because this is the case, the external comparables more closely favor the Union's final offer. The City of Thorp pays 90% of the premium while the City of Stanley pays 97%. In the Village of Cadott, the employees pay 10% of any increase in the cost of the rates in existence on September 30, 1998. In Bloomer, the City pays 90% while in Boyd and August, the municipal employers pay 100%. Given these practices, the Union's offer is more comparable.

Finally with respect to the health insurance issue, the Union's final offer more appropriately addresses the issue of potential transfer to the ETF State Plan. The Union acknowledges that the City currently has an insufficient number of employees enrolled in the ETF State Plan to meet the plan's participation requirements. Because there is no guarantee that the plan will waive the participation requirement, both the Union and the City's final offers provide that the Local 662 bargaining unit employees will move into the State Plan if necessary to fulfill the requirements. Although the Union's offer recognizes this possibility, it proposes formal negotiation over the impact of the insurance change. In contrast, the City's offer requires the 15% contribution by employees to the State Plan premium if it is necessary for them to enroll. The Union's offer is more equitable and reasonable. If the employees are required to move into the ETF State Plan, the significant change in benefits in mid-contract term justifies negotiation of premium contribution rates at that time. It is not reasonable to set these



premium rates and the contribution when the potential event has not even occurred. It is mere speculation on the City's part at this time.

With respect to the issue of banked sick leave, the Union's submits that its proposal to maintain the *status quo* is the more reasonable. By imposing age requirements or service requirements the City's offer changes the *status quo* without presenting evidence of a need for the change or a *quid pro quo*. The Union stresses that the City has failed to provide any data about the costs of the benefits as it currently exists or data supporting the contention that paying the employees under the current language is so costly as to require modification. No evidence was submitted as to how many employees have taken advantage of the provision and how much the City will save by its proposal in the future. In sum, it has failed to demonstrate that a legitimate problem exists and the proposed change should be rejected. The internal comparables support the Union offer on this issue because the bargaining unit represented by the IBEW has agreed to contract that mirrors the benefits currently enjoyed by Local 662 members.

### City's Initial Brief

The City argues that as far as the "greatest weight" factor is concerned, Act 109 of the Legislature will grant the City only a 1% increase in shared revenues for 2002 and 2003. The remainder of the costs of increased wages and benefits will be borne by the local taxpayer. Insofar as the "greater weight" factor is concerned, the City is on the decline. The largest employer, the paper mill, went bankrupt in 2001. The average household income before the City lost its largest and highest paying employer was only 50% above the poverty level as compared with 200% on average for the entire State of Wisconsin. Cornell is a "mill" town; and when Globe Materials closed in 2001, it employed 120 employees. The latest owner is now employing 40 employees. As of the year 2000, the City has experienced a decline in population from 1,954 to 1,466.

In the City's view, to accept the Union's offer is to agree that a mill town where over one third of the households have individuals over the age of 65 and that has lost 50% of its manufacturing jobs, must still pay 100% of the health insurance premiums for municipal employees. The municipal employees currently enjoy wages and benefits which far exceed the average household income in the municipality. The economic conditions of the City warrant accepting the City offer.

It is in the interest and welfare of the public to provide health insurance for all employees at an affordable rate. The public interest is best served by having all City employees receive health insurance as a part of a large group. Over the long-term, being part of a "large group," will provide the most stability in the current health cost environment. The Union's final offer provides no incentive for any employee to join with their fellow employees in securing the City-wide solution to the health insurance problem. The City submits that because it has had to recognize three separate bargaining units, it is burdened with the task of almost "non-stop" bargaining. If the arbitrator accepts the Union's offer, the other two units will also undoubtedly ask for a 100% contribution to their insurance premiums or want to seek their own plan, leaving some

nonrepresented employees in the lurch. The City is in sufficient financial straits so as to qualify for a Community Development Block Grant to repair City streets. Moreover, to accept the Union's final offer forces the City to yet another session of interest arbitration and additional expense.

The City points out that its experience factor negates getting any provider, other than the ETF State Plan to secure coverage for all employees. It also points out that the "*status quo*" is only of two years duration, 2000 and 2001. Prior to this, Local 662 employees had to contribute to their health insurance premiums. Furthermore, the City insists that there is no dispute that the State Plan provides better coverage. It insists that Local 662 employees were given a wage lift which results in their receiving comparably higher wage increases than other internal comparables. The higher 2000-2001 wage lift is a *quid pro quo*. The ETF State Plan offers better coverage than the current Wisconsin Health Fund. The existing health care language has only been in effect of two years. The City has agreed to a wage increase of 3.25% for Local 662, as for all other units, despite the wage lift still in effect from the 2000-2001 bargain.

The City insists that a compelling need exists because the City of Cornell cannot provide health insurance for all employees without meeting the 65% participation requirement. With bad experience overall, and the refusal of the Wisconsin Health Fund to cover all City employees ("cherry-picking" only one group which currently has a better experience factor), the City of Cornell is compelled to take the only available alternative, the State Plan.

The internal comparables favor the City's offer. Both the law enforcement and the IBEW bargaining units contribute 15% toward the insurance premium. Although both proposals address potential Local 662 unit inclusion in the State Plan in 2002, the difference in the offers is that the parties would bargain over the contribution to be made by Local 662 employees in the event that this occurs under the Union's offer. It is ridiculous to subject the City to another round of bargaining when the contribution issue can be settled now where the issue has been bargained to impasse and all rate information is available. The City notes that Local 662 will more than likely again demand a wage increase for switching over, although they received a wage increase during the last bargain to take the Wisconsin Community Health Fund. With both internal units contributing 15% of the premium, the internal comparables strongly favor the City's offer.

Looking at the amended Exhibit, which establishes that 100% contribution on the part of the City for the Wisconsin Health Fund is less than the 85% contribution to the State Plan, the City stresses that the argument that the plan is less expensive, misses the point. Given the existing data, the City's offer under the ETF State Plan provides better coverage and will cost more for Local 662 employees than the Union's offer. The point, however, is that should employees of Local 662 not enter the State Plan, the City may not be able to secure coverage for the other employees. The City also notes that the amended Exhibit is mere speculation that the cost of insurance under the State Plan will increase 6.5%. In the City's view, it does not seem unfair or inequitable to require a 15%

employee contribution in view of the fact that employees covered by Local 662 have already received a past additional wage increment over other units. Local 662 employees for 2000-2001 received a lift of 11.3%, law enforcement employees, a lift of 6.1% over the same two years, and employees represented by IBEW, Local 953, a lift of 7.4%.

Having opted for wage lifts to make up the difference in the costs of the two plans in the past bargain, the continuing pay lift is a *quid pro quo* for the increase in their contribution during 2002-2003 because the lift still continues in the present salary schedule.

The City is willing to permit Local 662 employees to continue to be covered by the Wisconsin Health Fund if the State Plan permits it to do so. Even under these circumstances, a 15% contribution is fair because the wage lift continues to compensate the Local 662 employees for participation in the lesser plan at less expensive cost. Furthermore, the Wisconsin Health Fund rates have increased 28% in one year which requires a greater contribution by the City over the two years (\$468.56 as of January 1, 2000 versus \$633.06 as of December 31, 2002 and a projected increase to \$810.68 as of April 1, 2003.)

The City cites arbitral precedent for the proposition that even if an employer fails to provide the customary *quid pro quo* for changing the health insurance *status quo*, the change may be justified by the fact that it is required to pay substantial increase for health insurance. Past arbitral decisions indicate that internal comparisons should prevail over external comparables. This is especially true for fringe benefit issues because of the concept of “whipsawing” on such fringe benefits as health insurance issues.

The City’s rests its case on twelve points. First, there are three very small bargaining units in the City which always result in whipsawing during negotiations. Second, there has been a dramatic increase in the Wisconsin Health Fund premium. Third, the ETF State Plan provided better coverage and is demanded by the other bargaining units. Fourth, past history demonstrates that the City cannot get health insurance for all of its employees. Fifth, the only provider with “large group” rates has a policy to prevent cherry-picking, i.e., the ETF State Plan has a 65% enrollment requirement. Sixth, the ETF State Plan is the only known provider with “large group rates” that will cover all of the City’s employees. Seventh, there is a pattern of internal settlement. Eighth, even under the Union offer, bargaining unit employees will almost certainly be included in the State Plan as of January 1, 2003. Ninth, not accepting the City’s offer will result in mid-term bargaining over the percentage of contribution by unit employees and wages. Tenth, the *status quo* is only of 2 years duration. Eleventh, Local 662 employees were already given a *quid pro quo*, the wage lift in 2000-2001. Twelfth, the City has a compelling need to provide coverage under the State Plan. The City cites arbitration decisions favoring the policy of having employees contribute to health insurance premium costs.

With respect to the external comparables, the City suggests that the arbitrator is being asked to compare apples and oranges. With respect to the City of Thorp, without

knowing the details of the coverage in place, the City suggests that one cannot make a meaningful comparison. The City also points out that the wages of the Wastewater Treatment Operators in Thorp, these employees being included in that Public Works bargaining unit and not in a separate unit represented by the IBEW, are much less than those enjoyed by similarly situated Cornell employees. Acknowledging that in Stanley, the employer pays 97%, although nothing is known about the provider or the coverage. Furthermore, the wage rates for Water Plant Operator and Sewer Operator are less than those received by Cornell employees. Stanley's is more prosperous in view of the construction of a new state prison. Insofar as the Village of Cadott is concerned, it has only one maintenance worker and combined sewer, water and electric utility departments, unlike the instant bargaining unit. The Village of Boyd employees have combined utility and street department duties. Acknowledging that the Village pays for the insurance plan, the details of the plan, especially the coverage and deductibles, are unknown. Furthermore, wages in Cornell were higher for the maintenance workers as of January 1, 2001, than those paid to the worker in the Village of Boyd. Boyd is located close to the Stanley prison and the median household income for Boyd is \$37,250 as compared to Cornell's \$30,690.

The City insists that the external comparables relied upon by the Union do not show that the Union's offer should be preferred because sufficient information is not provided, and the costs to the municipal employers is not provided, nor is coverage set forth for comparison purposes. The lack of information when coupled with Cornell's higher wage rates does not support the Union's offer.

Insofar as the private sector is concerned, prior to the wage lift granted in the previous contract, the City's employees received higher wages than those of production workers in the community, 2 having gone out of business. According to the City, for all the private community employers, employees pay a portion of the health insurance costs ranging from 8% to 20%.

With respect to the CPI, the City points out that it increased wage benefits by 6.5% in 2001 as opposed to the CPI of 2.6%. The City's offer results in a wage/benefit increase of 5.68% for 2002 for operators and 8.16% for the Administrative Secretary. For 2003 the wage/benefit increases are 4.66% and 6.95% respectively. This contrasts with the Union's 5.68% and 8.24% offer in 2002 and 7.3% and 10.10% in 2003. The focus should not be on the additional cost to the employee, but to the employer and the reasonable need of the employer to control health insurance costs.

The City claims that the normal positions are reversed in this arbitration because the City, through the State Plan, seeks to provide the best plan available with superior benefits with no annual deductibles, an out of pocket maximum for prescription drugs of \$220.00 (as compared to \$1,000.00 in the Wisconsin Health Fund) per person and \$540 per family as compared to \$2,000. Many other aspects of the plan are also superior to the benefits provided by the Wisconsin Health Fund plan. Furthermore, there are other generous benefits enjoyed by the bargaining unit employees such as 100% pension contribution to the Wisconsin State Retirement System, good vacation, holidays and

excused time benefits. No employees leave to go to private employment under the existing wage/benefit framework.

A significant change in the City's circumstances is the fact that the City does not meet the Waiver Requirements for the ETF State Plan and that as of January 1, 2003, it is unlikely that an additional waiver will be obtained. All employees may very well be required to go into the ETF State Plan on January 1, 2003. To accept Local 662's offer, is to say that these bargaining unit employees will not have to pay any share towards their health plan, a view that is not supported in any recent arbitral decision. Due preference to internal comparables has been accepted over external comparables.

The City stresses that the economic condition of the City should be given greater weight and its condition is declining. This factor along with the internal comparables warrants acceptance of the City's offer. External comparables to the extent that they are meaningful demonstrate that Cornell leads comparable groups. There is a "compelling" reason for changing the "2 year" *status quo*. Because of declining health the City must seek refuge in the State Plan and the Union recognizes this. The employees agree to go in, but want another bargaining "kick at the cat" to gain a 100% contribution from the City in the State Plan, although they have already been compensated for taking a lesser plan in the past. The City's offer should be accepted.

#### Union's Reply Brief

Insofar as the City's health insurance proposal is concerned, the Union argues that the greater weight and greatest weight statutory factors are not relevant in this case. The City's receipt of a mere 1% increase in State Shared Revenues for 2002 and 2003 is completely irrelevant to the greatest weight statutory criteria because criteria 7 requires review of the limits that have been placed upon revenues collected from taxpayers and not the State under the shared revenue program. The City has not identified the applicable levy limit or demonstrated how the Union's offer will impact that levy limit. Only hard financial information is utilized by arbitrators in determining that income and expenditure limits are relevant. In the absence of a showing that the municipal employer has been taxing at the maximum allowable rate, or that there are specified limitations on expenditure or revenues, Factor 7 does not apply.

Factor 7g. does not justify the City's final offer because the purpose of factor 7g. is to assure that "an employer's economic conditions are fully considered in the composition of the primary intra-industry comparables and that undue and disparate economic burdens are not placed upon an employer. It should not be applied when the employer has not claimed an inability to meet the cost of the Union's final offer and the City has made no such claim.

The Union avers that the City has failed to provide evidence supporting its concerns regarding "whip-sawing" by the other bargaining units. The City's claims in this respect are mere speculation unsupported by any evidence and contrary to the past actions of the other units. Acknowledging that the Union began receiving a 100%

contribution in the year 2000, the Union notes that that City has negotiated successor agreements with both other bargaining units and neither agreement provided for a 100% contribution on the City's part. The voluntary settlements reached with the other bargaining units contradict any suggestion that such a demand was made. The Union also points out that it has not proposed to continue the 100% employer contribution if the bargaining unit is required to enter the State Plan. To the contrary, the Union's proposal seeks to bargain the impact of the insurance change if and when this may occur in the future. The City's offer cannot be justified on the basis of speculation.

Because it is not known whether the bargaining unit will be required to enter the State Plan or what the State Plan premiums will be for 2003, City representations that all rate information is available are incorrect. To impose a 15% contribution on employees without knowing what that percentage translates into in terms of dollars is unreasonable and contrary to the principles of collective bargaining. At least one arbitrator has chosen a one-year agreement as opposed to a three-year agreement where the insurance information for the second and third year was unknown. The same principle should apply here.

The Union argues that the previous wage lift does not qualify as a *quid pro quo* for the City's insurance proposal. The wage increase was negotiated in recognition of the cost saving for the units participation in the Wisconsin Health Fund Plan at that time. Local 662's continued participation at the current premium contribution rates saves the City \$1549.68 per family per year in comparison to the ETF State Plan. There is no evidence that at the time the City agreed to the wage increase that it informed the Union it was agreeing to the increase in anticipation of a future contribution on the employee's part to the health insurance. Even assuming that the previous increases were an appropriate *quid pro quo*, the City has not provided evidence that this is an adequate *quid pro quo* for the 15% employee contribution that it now proposes. Given that the cost is unknown, the Union's offer is more reasonable.

The Union points out that the parties agreed upon and utilized the same external comparables during negotiations and the City's arguments that these are comparisons between apples and oranges are disingenuous given the City's reliance upon these comparables during the present and past negotiations. The City has not proposed any different comparables and the external comparables support the Union's final offer.

The Union stresses that its offer recognizes the rising costs of health insurance and makes provision for an employer contribution under certain circumstances. The employees will pay the excess premium costs to the Wisconsin Health Fund Plan if the City's 100% contribution exceeds the cost of the City's 85% contribution to the ETF State Plan. Thus the City will not be required to pay more for Local 662 insurance than it does for the rest of the City employees covered under the ETF State Plan. Should the ETF State Plan not increase at all, Local 662 employees would be responsible for contributing \$48.48 per month for their coverage under the Wisconsin Health Fund Plan. Moreover, as noted above, if forced into the ETF State Plan, the Union's offer requires

bargaining over the economic impact of that action and interest arbitration should the parties not resolve the issue at the table.

With respect to the sick leave payout provision in the City's final offer, the Union alleges that the City has failed to identify a need for its proposed change, nor has it offered the Union a *quid pro quo* in exchange for the benefit reduction. The change is not a clarification and there is no bargaining history to support the contention that the language has been the source of a dispute or conflict. There has been no grievance filed over the language. The Union points out that if the City's final offer is accepted, it will undoubtedly reduce the benefits to which certain employees are entitled upon retirement. Without a *quid pro quo* this change should be rejected.

For all of these reasons, the Union argues that its offer is preferable.

### City's Reply Brief

Addressing the Union's argument that the City is proposing to change the *status quo* without offering a commensurate *quid pro quo* to justify the change, the City maintains that the *status quo* is not an employer contribution of 10% of the health insurance premiums as the Union maintains but a definite monetary amount or cap. It points to the current contract language to support that contention. The City contrasts that with the language in the parties' previous contract which provided for a 90% contribution on the City's part. The *status quo* in the City's view is a definite monetary contribution of \$523.50 and that it is the Union that wants to change the *status quo* by increasing the monetary contribution of the City from \$532.50 to \$810.68.

The City points out that the Union's final offer is expressed in a definite monetary contribution to \$633.00 on April 1, 2002 and \$810.68 on April 1, 2003. These are definite monetary amounts although expressed in terms of a percentage, this is a 40% raise in the City of Cornell's monthly monetary contribution to health insurance premiums. Pointing to the current language, the employer's contribution is expressed as a cap with the risk of the premium increasing beyond predicted levels place on the employee. These negotiated caps were not inadvertent on the City's part. Thus the existing *status quo* is a definite monetary contribution amount on the part of the employer.

In the City's view, the Union's final offer does not propose a change to a percentage but continues the current language expressed in terms of a definite monetary contribution of cap. The Union's brief focuses on the *status quo* as it would like the existing language to read, not as it actually reads. Only by viewing the language of the current contract from the employee's perspective entirely can one accept the contention that a 100% contribution is the *status quo*. The City's final offer recognizes the need for fairness to all employees and is clearly in accord with the internal comparables. Only by setting up the proverbial "straw man" can the Union support its final offer.

The City strenuously asserts that the only viable alternative to solve the City's health insurance dilemma is to place all employees in one plan at "large group" rates and that State Plan is expensive. The Local 662 employees will get more from the City's offer in terms of the best health insurance available. Employees are placed on the same footing as all other units. The change to the State Plan will finally "resolve" the difficulty in maintaining an acceptable and affordable insurance carrier for all employees.

The Union's representation that its final offer will save the City money ignores the fact that the total cost to the City for all employees will be less. Furthermore, there is no evidence of the reliability of the Wisconsin Health Fund and evidence that this Fund needs to drastically increase its premiums. The City is looking "long-term" and attempting to consider the interest of all employees.

Even assuming that the "*status quo*" is a 100% employer contribution as opposed to a definite monetary amount, there is still an adequate *quid pro quo*. The Union previously bargained and agreed to a wage lift with a definite monthly contribution by the City and to change the language from a percentage computation of health insurance costs. It now seeks to ignore the contract language by characterizing the definite monetary contribution as a 100% contribution, and ignoring the continuing effects of the wage lift.

The 3% wage increase is accompanied by providing superior insurance coverage. Only by keeping its employees out of the State Plan can the Union argue that the employees are not receiving an appropriate *quid pro quo*. Inclusion of the Local 662 employees in the State plan is not speculative but virtually guaranteed at this point due to the City's non-compliance with the minimum participation requirements of the State Plan. The City believes that the Union misrepresents the effect of the 3.25% wage increase, suggesting that the effect of the wage lift in 2000 and 2001 was much more dramatic. It contrasts the effect of the health insurance in the IBEW unit pointing out that those employees paid 20% of the premiums for the State Plan to July 1, 2001 and 15% thereafter which resulted in no increase in out-of pocket income. Reviewing the wage increases in 2000 and 2001, the City maintains that these increases are a more than adequate *quid pro quo*.

With respect to the Union argument that the City's final offer has the potential to exceed the insurance contribution required of the internal comparables, the City points out that the employees in the unit will most certainly switch to the ETF State Plan under either Final Offer. Bargaining unit members will also have a choice of plans and providers which could result in less cost to them than the Wisconsin Security Health Plan after the increase to \$810.68.

With regard to the issue of banked sick leave for employees, the City submits that it is the desire to clarify the term "retirement" which motivates it to propose the language change. If the term "retirement" is defined as the City interprets it, there is no change in the *status quo*. If "retirement" is defined as actual retirement in the ordinary sense, this benefit would not be paid to one employee with 20 years of service under the new language. Clarifying the meaning of the current language will prevent a grievance, when



and if, this clause is invoked by an employee “allegedly retiring” but merely changing or switching jobs to another city bargaining unit.

The City cites recent arbitral precedent for the proposition that internal comparables should control and that *quid pro quo* may not be necessary where there are dramatic increases in health insurance. It also cites precedent about the impact of local economic conditions as favoring acceptance of the City’s award.

In summary, Factor 7g. should apply because census statistic show that an average household income in Cornell is only 50% above the poverty level as compared with 200% above the poverty level across the state, over 1/3 of the households have an individual over 65 years of age, the median household income in Cornell is \$30,690.00, and the community has lost its largest private employer in 2001.

The internal comparables favor the City’s offer because it provides the same wages and the same percentage contribution after April 1, 2003 as the 2 units which have settled. There is a clear internal settlement pattern and arbitral precedent holds that a pattern of internal settlement controls over external settlements. With respect to the external comparables, there is insufficient information as to the deductibles, the coverage, and the co-insurance to provide meaningful analysis. In the local private sector, insofar as the City is aware, employees contribute a percentage towards their health insurance premiums. Under the City’s offer, the employees will have an excellent wage program and the best insurance obtainable. There wage increase is over six times the inflation rate of .005. Both the “whipsaw” effect on the other bargaining units, and the superiority of the State Plan are other factors which favor the City’s offer.

## **DISCUSSION:**

### **BANKED SICK LEAVE**

The City proposes to amend Article 12, Section 5, to provide that: “employees who retire after (minimum of age of 60) or leave with 20 years of service during this contract shall be paid fifty (50%) percent of the total amount of their sick leave bank, not to exceed twenty (20) days of pay.” The Union, on the other hand, would retain the *status quo* for that provision of the contract. The current language states: “Employees who retire during the term of this contract shall be paid fifty (50%) of the total amount of their sick leave bank, not to exceed twenty (20) days of pay.”

The City contends that it is simply clarifying the provision so that its interpretation of the term “retirement” would be given its normal meaning. However, the Union believes the City’s proposal would alter the age and service requirements, without any rationale.

The current language is not so ambiguous as to be fraught with ready misinterpretation. Moreover, there has been no evidence that the parties have a history of

differing interpretations of the provision. The undersigned finds that no persuasive reason has been demonstrated for altering that provision.

The evidence with respect to the newly negotiated IBEW contract demonstrates that that unit has accepted the City's proposed language change. It is unclear whether a *quid pro quo* was offered to that bargaining unit to secure the change. What is clear is that no *quid pro quo* has been offered to this unit and no showing of necessity for the change has been made. Given the fact that the law enforcement unit has no payment of banked sick leave and the IBEW has now accepted the City's language proposal, on this issue, the City's is slightly preferred.

## **HEALTH INSURANCE**

### **A. PREMIUM CONTRIBUTION**

The parties' final offers are similar with respect to Health Insurance premium payments through March 31, 2003. At that point, they diverge substantially. The Union proposes that from April 1, 2003 through March 31, 2004, the City would pay \$810.68 toward the premium, with the qualification that should that amount exceed what the City will pay for other employees' under the ETF State Plan, employees in this bargaining unit will pay the amount above what the City pays to that plan unless the bargaining unit employees are forced into the ETF State Plan. In that case, the Union proposes to re-open the contract to negotiate this issue at that time. The City, on the other hand, proposes that it pay 85% of the premium in effect from April 1, 2003 through December 31, 2003, with a cap at a maximum of no more than the City pays for other employees with the ETF State Plan.

Employers around the country have been wrestling with the difficult issue of rising health insurance premiums. Here, the problem has an added level of complexity because of the City's difficulties in securing an insurance carrier who will cover the remaining City employees not included in this particular bargaining unit.

With respect to employer-employee premium contributions, the 1999-2001 collective bargaining agreement lists the City's contribution amounts toward the premium at a level that reflects full payment. The City's arguments notwithstanding, it is the City's proposal which alters the *status quo* by requiring the employees to begin paying 15% of the premium rather than a monetary amount. While the City points out that the full employer contribution has been effective only for the last two years, nonetheless, the City proposes to alter the *status quo* with a change in both the language, i.e. departing from the dollar contribution being specified, as well as the contribution level.

Because the parties were unable to voluntarily settle this issue, the statute requires an analysis of how other comparable municipal employers have responded to the dilemma of rising insurance premiums. The following table gives some guidance:

**COMPARABLE EMPLOYER CONTRIBUTION EMPLOYEE CONTRIBUTION**

AUGUSTA	100%	0%
BLOOMER	90%	10%
BOYD	100%	0%
CADOTT	Employees pay 10% of any increase in cost of rates on September 30, 1998	
STANLEY	97%	3%
THORP	90%	10%

The table reflects that none of the external comparables require its employees to pay 15% of the premium, while two of them pay 100% of the premium.

Although the City contends that each of the external comparables are different from the City of Cornell, external comparables are by definition of such similar circumstance so as to be used for comparison purposes. In other words, the statute requires that when the municipality has been deemed a comparable, it can be used to assist in comparing final offers. The external comparables favor the Union's final offer on the health insurance premium contribution.

In addition, the Union's proposal, to some extent, recognizes the rising health insurance costs, for it includes a provision that should the premium contribution exceed the City's contribution amount under the ETF State Plan for the other employees of the City, the employees of this unit would pay the amount above what the City contributes to the ETF State Plan. The City's offer, on the other hand, caps its contribution at no more than what it would pay for other employees under the ETF State Plan for 2003, which may result in less than an 85% contribution. Consequently, the City's proposal may be even more severe than a straight reduction to an 85% employer contribution level.

The internal comparables, however, favor the City's final offer on the premium contribution, since collective bargaining agreements for both the law enforcement and the IBEW bargaining units require employees to contribute 15% toward the Health Insurance premium.<sup>2</sup>

The City has argued that it paid a *quid pro quo* by the wage increase which it provided in the previous bargain while the Union submits that the City has saved a substantial amount of money from the Union's choice of insurance plan. Wage increases granted in a previous bargain cannot be offered as a *quid pro quo* for current proposed changes, absent extraordinary circumstances. Here, it is concluded that no meaningful *quid pro quo* has been offered for such a substantial change.<sup>3</sup> Because the City proposes a substantial change in the *status quo* from payment of 100% City contribution as reflected in dollar amounts for the premium to 85% (or less) without an appreciable *quid pro quo* and the external comparables favor the Union's proposal on the premium

<sup>2</sup> The newly submitted evidence with respect to the successor contract for the bargaining unit represented by the IBEW continues the contribution of 15% by those employee towards the ETF State Plan.

<sup>3</sup> This conclusion is reached although it appears that for 2004, IBEW employees will receive a 3.1% wage increase as compared to the 3.25% increase offered to Local 662 employees in the City's Final Offer.

contribution, the undersigned finds the Union's Health Insurance premium contribution proposal is favored.

### **B. INSURANCE CARRIER**

As both sides acknowledge, the City has had a poor Health Insurance experience factor. As a result, it appears that the only Health Insurance plan that will accept the City's employees is the ETF State Plan. The final offers differ on how to handle that prospect. The Union proposes bargaining over the economic impact, with the right to proceed to interest arbitration if the parties cannot reach agreement, while the City essentially proposes that it may change to the ETF State Plan, without bargaining the impact.

Although these bargaining unit employees may be forced into the ETF State Plan should the State Plan fail to waive its membership requirements and become the next insurance carrier for these employees, it is still unknown at this point whether this bargaining unit will be required to join that insurance plan during the term of this agreement. Granted, it is not particularly palatable to contemplate another round of bargaining and possible final offer arbitration. However, given the significant future lack of certainty as to which Health Insurance carrier will be used and the rate of increase in the State Plan, the Union's proposal to reopen negotiations (should the employees be required to accept the ETF State Plan) is somewhat preferred.

### **CONCLUSION**

Each final offer has troubling aspects: the City proposes a significant departure from the *status quo*, with the City's premium contribution decreasing to 85% or less, while the Union's offer contemplates a cumbersome re-opener. Nonetheless, the Union's proposed approach to premium contributions and to a possible future change in Health Insurance carriers is favored. While the City's proposal for retiree sick leave is slightly preferable given the newly negotiated agreement with the IBEW, it is the Health Insurance issue which controls the outcome of this Award. On balance, the Union's final offer is found more reasonable.

Having considered the statutory criteria, the evidence and arguments of the parties, the undersigned concludes that the final offer of the Union is more reasonable and therefore should be favored over the offer of the City, and in that regard the undersigned makes and issues the following

### **AWARD**

The Union's final offer is to be incorporated into the 2002-2003 two-year collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those

provisions in their expired agreement which they agreed were to remain unchanged.

Dated this day 20<sup>th</sup> day of December, 2002, in Madison,  
Wisconsin.

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Mary Jo Schiavoni, Arbitrator