In the Matter of the Stipulation of

CITY OF ONALASKA

and

SERVICE EMPLOYEES INTERNATIONAL UNION - LOCAL 150

To Initiate Arbitration Between Said Parties

Case 41
No. 61586
INT/ARB-9738

Decision No. 30550-A

Appearances:

Ms. Janet A. Jenkins, Johns & Flaherty, S.C., Attorneys at Law, 205 5th Avenue South, Suite 600, La Crosse, Wisconsin 54601, appearing on behalf of the City of Onalaska.

Ms. Marianne Goldstein Robbins, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North RiverCenter Drive, Suite 200, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Service Employees International Union - Local 150.

ARBITRATION AWARD

The City of Onalaska, hereinafter referred to as the City or Employer, is a municipal employer maintaining its offices at 415 Main Street, Onalaska, Wisconsin. Service Employees International Union - Local 150, hereinafter referred to as the Union, is a labor organization maintaining its offices at 1920 Ward Avenue, Suite 1, La Crosse, Wisconsin. At all times material herein, the Union has been and is the exclusive collective bargaining representative of certain employees of the Employer.

The parties exchanged their initial proposals and bargained on matters to be included in a successor collective bargaining agreement. On September 13, 2002, the City and the Union filed the instant stipulation requesting that the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act, hereinafter referred to as MERA. On November 6, 2002, a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. By February 3, 2003, the parties submitted to the Commission their final offers, as well as a stipulation on matters agreed upon.

On February 7, 2003, the Commission concluded as a matter of law that the parties had

substantially complied with the procedures set forth in MERA. The Commission further concluded as a matter of law that an impasse within the meaning of MERA existed between the parties with respect to negotiations leading toward a new collective bargaining agreement covering wages, hours and conditions of employment affecting employees in the bargaining unit herein. The Commission therefore certified that the conditions precedent to the initiation of Arbitration as required by MERA had been met. The Commission ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The Commission further ordered the parties to select an arbitrator from the panel of arbitrators it submitted to the parties.

On March 28, 2003, the parties advised the Commission that they had selected the undersigned as the arbitrator. On March 31, 2003, the Commission appointed the undersigned as the arbitrator to issue a final and binding award pursuant to MERA to resolve said impasse by selecting either the total final offer of the City or the total final offer of the Union.

Hearing was held on June 24, 2003, at the Onalaska City Hall in Onalaska, Wisconsin, at which time the parties were afforded the opportunity to offer evidence and make arguments as they wished. The hearing was not transcribed. The parties filed briefs and letters which served as reply briefs, the last of which was received on August 12, 2003. Full consideration has been given to all of the testimony and evidence and arguments of the parties in issuing this Award.

FINAL OFFERS

City

On-Call Pay: The City's final offer retains the status quo under which employees required to be on-call receive $75 per week.

Health Insurance: The City's final offer seeks to alter the status quo as follows:

> Section 27.1. The City will pay one hundred seventy-five dollars ($175.00) of the premium for medical, dental, hospital and surgical insurance for each participating employee, including family plan and single plan. Amounts over one hundred seventy-five dollars ($175.00) will be split: the City will pay ~~ninety percent (90%)~~ eighty percent (80%) and participating employees will pay ~~ten percent (10%)~~ twenty percent (20%).
>
> Section 30.1. For the period January 1, 2003 through December 31, 2003, each employee will receive a one time payment attributable to the conversion of the 80/20 versus 90/10 split on health insurance. This one time payment of ($0.45) will become part of the employee's base pay.

2002 Wages: For all office clerical support/secretarial employees, the City offers $0.23 per hour or approximately 2.0% increase across the board commencing January 1, 2002. For street/utility/park and recreation/cemetery employees, the City offers $0.29 per hour or approximately 2.0% across the board commencing January 1, 2002.
2003 Wages: For all office clerical support/secretarial employees, the City offers $0.18 per hour or approximately 1.5% across the board commencing January 1, 2003. For street/utility/park and recreation/cemetery employees, the City offers $0.22 per hour or approximately 1.5% across the board commencing January 1, 2003.

Crew Leader Premium: The City's final offer retains the status quo under which the sewer and water crew leaders receive a $1.00 per hour wage premium.

Union

On-Call Pay: The Union's final offer seeks to change the status quo as follows:

> Section 20.2. Employees who are required to be on-call and available for duty during non-scheduled working hours shall be paid an additional ~~seventy-five dollars ($75.00)~~ one hundred dollars ($100.00) per week for each of (sic) on-call duty.

Health Insurance: The Union's final offer retains the status quo under which employees contribute ten percent (10%) of the health insurance premium after the City pays the first $175.

2002 Wages: For all employees, the Union offers a 1.5% increase across the board effective January 1, 2002, and a 2.0% increase across the board effective July 1, 2002.

2003 Wages: For all employees, the Union offers a 1.5% increase across the board effective January 1, 2003; and a 2.0% increase across the board effective July 1, 2003.

Crew Leader Premium: The Union's final offer seeks to change the wage premium for the sewer and water crew leaders from $1.00 per hour to $2.00 per hour wage premium.

ARBITRAL CRITERIA

Section 111.70(4)(cm) MERA states in part:

> 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:

1. The lawful authority of the municipal employer.

2. Stipulations of the parties.

3. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

4. 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.

5. 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.

6. 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.

7. The average consumer prices for goods and services, commonly known as the cost of living.

8. 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.

1. 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.

POSITIONS OF THE PARTIES

City on Brief

In terms of the statutory criteria that are to be considered by arbitrators, the City argues that not all of the criteria are relevant to the determination of this matter; and that those criteria that are most relevant in the instant case are those pertaining to internal comparables, external comparables, and overall compensation.

In regard to the health insurance issue, the City argues that internal comparables are typically considered to be one of the most significant of all factors when the issue involved is one of benefits; that health insurance is the only benefit at issue here; that all other employees of the City, represented and unrepresented, pay 20% of the health insurance premium after the City pays the first $175 of the premium; that this 80/20 split for all other employees has been in effect for quite a few years; that no quid pro quo was provided for any bargaining unit or unrepresented employees for this split of the cost of health insurance; that the City's desire to have all employees receive the same health insurance benefit is entirely logical; and that for benefits, such as health insurance, consistency promotes labor harmony among all employees.

In terms of the *quid pro quo*, the City also argues that the premiums for health insurance increased 31% this year alone; that this increase is part of a trend of recent years; that there is every indication that sizeable cost increases will continue into the future; that due to the truly enormous increases in the cost of health insurance, it could be argued that the City need not offer any quid pro quo for the change the City seeks here; that, nonetheless, the City has offered a one time 45¢ per hour across the board increase for all affected employees; that this wage increase, which is to be added to the base rate of pay for all employees, will result in employees receiving a total of $29,761.57 in 2003; and that this wage augmentation will more than pay for the increase cost of $28,709.76 to Union employees for conversion to the 80/20 health insurance split.

The City argues that over the years Wisconsin arbitrators have established a test that should be used to determine whether a proposal to change the status quo should be accepted; that said test states that for a very persuasive basis for a change of the status quo, it is typically shown that a legitimate

problem exists which requires attention, that the disputed proposal reasonable addresses the problem, and that the proposed change is accompanied by an appropriate quid pro quo, citing City *Village of Fox Point (Public Works Department)*, Dec. No. 30337-A (Petrie, 2002); that, continuing to cite *Village of Fox Point,* the spiraling costs of providing health care insurance for its current employees is a mutual problem for the City and the Union, that the trend has been ongoing, foreseeable, anticipated, and open to bargaining by the parties during their periodic contract renewal negotiations, and that, in light of the mutuality of the underlying problem, the quid pro quo would normally be somewhat less than would be required to justify a traditional arms length proposal to eliminate or modify negotiated benefits or advantageous language.

The City argues that all three prongs of this test are met in the current case; that there is a legitimate problem that exists and requires attention; that health insurance costs have now increased to the point where the monthly premium equals or exceeds 50% of most employee's wages; that with no end to the increases in sight, the cost of providing such insurance is a serious issue; that the resolution of this issue must be shared by the City and the employees; that the City's proposal addresses the problem by asking the employees to pick up 10% more of the cost; and that, finally, the City has provided an appropriate *quid pro quo*.

In terms of the actual contribution rate, the City argues that because it pays the first $175 per month of the health insurance premium, it is in actuality paying 93.9% of the single premium and 91.6% of the family premium; that there are no deductibles or co-pays; that if the City's offer is accepted, the City would continue to pay the first $175 per month of the premium cost; that, in actuality, it would be paying 87.7% of the single premium and 83.1% of the family premium; that there would continue to be no deductibles or co-pays; and that dental coverage would also continue to be provided.

In regard to the comparables, the City asserts that for purposes of this arbitration, it accepts those communities chosen in a previous arbitration between these parties; that the communities are Altoona, Baraboo, Chippewa Falls, Menomonie, Plover, Sparta, and Tomah; that in Baraboo, Menomonie, and Sparta, co-pays or deductibles are required; that Baraboo and Tomah do not include dental coverage; that Sparta does include such coverage, but that plan includes a deductible; and that, when it is considered that there are no deductibles or co-pays under the City's health insurance plan and that the City has offered a *quid pro quo* of 45¢ per hour, the City's offer should be accepted.

In terms of the on-call pay issue, the City argues that the increase sought by the Union amounts to 33%; that on-call pay was increased from $25 per week to $75 per week in the parties' most recent collective bargaining agreement; that the additional amount sought by the Union would result in on-call pay being increased by $300 from December 31, 1998, to January 1, 2002; that the external comparables do not favor the Union's proposal; that Altoona, Baraboo, Portage and Sparta do not have on-call pay and/or work; that in Menomonie and Tomah, an employee is paid for four hours for each day assigned to stand-by duty; that is it difficult to compare the various on-call/standby requirements in the comparable communities; that more that half of those communities pay no additional premium for employees who are on-call; that others pay four hours at straight time for

each day of stand-by duty; that it is not known how often such employees are required to be on stand-by duty; that, thus, any direct comparison is impossible; that the status quo does provide employees with $75 per week even though an employee may not be required to work at all during that time; that if the employee is required to work, standard wage rates or overtime if applicable are paid; and that, in light of these facts, the City's final offer to maintain the status quo of $75 per week for on-call pay is certainly reasonable.

In terms of wages, the City argues that internal comparables are not a major factor in determining wages; that the City has three bargaining units in addition to the Union: police, police supervisors, and firefighters; that these units make poor comparables due to the very different nature of the duties and schedules; that in establishing wage increases for these employees, the City must not look to street/utility/clerical employees for wage comparisons, but to other protective services bargaining units; that in 2002 and 2003, the City's unrepresented personnel received a 3% across the board increase; that the City's wage offer herein does not compare favorably with the increases given to unrepresented employees; that any attempt to use this comparison in the instant proceeding would be wholly inappropriate; that some of these employees are managerial, supervisory or confidential positions; that these employees are salaried; that they are not eligible for overtime; that for unrepresented employees who are eligible for overtime, it is paid only when the employee has actually worked in excess of 40 hours per week; that this is much different from the situation for the Union employees who receive overtime whenever they have more than eight paid hours in a day, even though they may not have actually worked for a full eight hours; that this difference carries with it a substantial economic impact; that the City paid 747.75 hours of overtime to Union employees in 2002 with the total overtime compensation being $16,542.59; that unrepresented employees do not receive any type of longevity premium; that 67% of the employees in this unit receive longevity pay, with 56% of those employees receiving either a three or four per cent premium due to longevity; and that given the significant impact that overtime and longevity have on an individual's total earnings, the comparison of wage increases between the Union and unrepresented employees is simply inapposite.

In terms of external comparables, the City does not deny that its wage offer, standing alone, does not compare favorably to the wage increases in comparable communities; that one cannot isolate this single item in determining whether the City's offer should be accepted; that the overtime provisions of the comparables are not as favorable as those herein; that 75% of the overtime paid by the City is incurred even though the employee has not actually worked more than 40 hours per week; that as a result, the average employee's wage is actually $0.21 per hour greater than the stated wage rate; that the City's longevity pay premium is substantially greater than all but two of the comparables; that the importance of this fact cannot be ignored; that employees who receive the greatest longevity are also those at the upper end of the wage scale, thus magnifying the increase not only in the base wage rate, but also overtime and contributions to the Wisconsin Retirement System; that the City compares favorably with the external comparables in sick leave; that, unlike all but one of the comparables, Union employees enjoy an unlimited secondary bank of sick leave upon which they can draw for extended illness; that, in addition, Union employees who are eligible to receive a retirement, disability retirement or death benefits under the Wisconsin Retirement system, will be paid 50% of their accumulated sick leave in cash, and the remaining 50% will be used to continue

health and dental coverage; that, thus, no accumulated sick leave is lost; and that this is virtually untrue of all the external comparables.
The City argues one cannot discount the 45¢ per hour across the board increase offered by the City as a quid pro quo; that less than a normal quid pro quo is necessary in resolving health insurance issues due to the unforseen and significant increase in health insurance costs, citing *Waukesha County*, Decision No. 30468-A (Dichter, 5/12/03); that in that case, the arbitrator found that the City's offer of a 35¢ per hour across the board increase not only met the "less than normal" standard, but also the typically higher standard; and that, thus, the arbitrator herein can and should consider the City's offer of a 45¢ per hour increase not only as a *quid pro quo* for the health insurance change sought by the City, but also a part of the wage package.

In terms of the external comparables in regard to the crew leader wage premium, most of the external comparables cited by the Union have multiple classifications of employees resulting in multiple wage rates; that the City has only two classification: crew leader and worker; that given this difference in organizational structure between the City and the external comparables, it is virtually impossible to determine what the actual premium for the crew leader is; that the actual agreements of the external comparables reveal that while there is often a difference of more than $1.00 between the crew leader/foreman and the lowest paid worker, there is more often than not a less than $1.00 difference between the crew leader/foreman and the other skilled workers in the department; and that, given these facts, the City's offer is more reasonable than that of the Union.

Finally, in terms of the cost of the entire package, the City asserts that its final offer results in an 8.73312% overall increase in 2002 and a 12.84156% increase in 2003; that the Union's final offer results in a 11.21650% overall increase in 2002 and a 14.80932% overall increase in 2003; that the cost of living increases experienced over these years is significantly less than either the Union or the City's final offers; that very few employees in the private sector are receiving anything close to a double digit increase in compensation; and that, therefore, the City submits that its proposal should be adopted by the arbitrator.

Union on Brief

The Union argues that under all the statutory criteria, its final offer is the more reasonable and should be selected by the arbitrator; that the City has not presented any evidence that it cannot meet the Union's offer because of statutory or regulatory limitations; that, therefore, factor 7 of the arbitral criteria does not have a bearing in the present arbitration; that, indeed, the City is in excellent financial health; that the economic conditions of the municipal City is the factor to be given greater weight under subsection 7g; that the higher per capital equalized value and per capita personal income of the City, as compared to all of the Union's comparables, indicates that Onalaska has comparably better economic conditions than comparable municipalities; and that the City's favorable economic condition supports the Union's final offer which realistically reflects the compensation provided in comparable communities.

In terms of the other factors to be considered, the Union argues that external comparables are the most important consideration in this case; that the Union's comparables should be adopted by the

arbitrator; that the parties have gone to arbitration once before; that in that arbitration, Arbitrator Kessler addressed determination of comparable communities; that the Award was issued in 1991, more than 10 years ago; that given Onalaska's growth, the comparables utilized by the parties may be less comparable now than they were 12 years ago; that, nonetheless, the Union utilized the comparisons which have been used at that time, which included Baraboo, Chippewa Falls, Menomonie, Sparta and Tomah; that Arbitrator Kessler identified Altoona and Plover as possible comparison communities; that, therefore, the Union obtained comparisons from these communities as well; that the comparison to Plover should not be given the same weight as other comparables because employees are unrepresented; that the Union has added the City of La Crosse and the County of La Crosse because, although they are larger communities, they are in proximity to Onalaska and part of the same labor market; and that, regardless of the comparables utilized, the Union's offer is more reasonable under the statutory criteria.

In terms of health insurance, the Union argues that its proposal is supported by the statutory criteria; that the external comparisons strongly favor the Union's final offer; that the City participates in the state health insurance plan; that the state plan is utilized by Baraboo, Sparta, and Tomah; that under the state plan, an employer cannot pay more than 105% of the least costly plan; that all other employers under the state plan pay the full amount which the plan allows the employer to pay; that only the City requires an additional employee payment; that under the status quo, taking into consideration that the City pays the first $175 of the premium, the City will pay 92% of the premium in 2002 and 91.6% of the premium in 2003; that of the remaining comparables, Altoona pays 100% and Menomonie pays 95% of the premium; and that Chippewa Falls pays 100% of the single premium and 80% of the family premium.

Looking at internal comparables, the Union argues that the 20% premium was unilaterally established without collective bargaining for the unrepresented employees and the newly represented firefighters and police supervisors; that the police unit agreed to the 80/20 split above the initial $175 contribution in 1988; that the police received one additional day of vacation during each vacation week; that, even more significantly, the police received a split 3.1% and 4.5% increase in 1988 for a lift in excess of 7.6% and a split increase of 2.4% and 2.4% in 1989, for an additional 4.8% lift, a total over the two year contract of more than 12.4%; that since 1987, both the City and the Union have agreed to retain the current contributions without regard to the police bargaining unit or other unrepresented employees; and that the internal comparisons in this care are not persuasive because, first, they are not collectively bargained, second, because for 15 years the City and Union have not maintained a pattern between the police and Union units, and third, because the wage increase and vacation improvement which the police unit received in 1988 belies any claim the City might have that its proposal to the Union is in any way supported by the bargaining history in the police unit.

Because the City seeks to change the status quo with respect to employee's contributions to health insurance, the Union argues that the City bears the burden of establishing good cause for the change and providing a *quid pro quo*, citing *Northeast Wisconsin Vocation, Technical and Adult Education District*, Decision No 25689-A (Nielson, 1989); that the City has failed to provide any significant justification for the change; that the employees represented by the Union are covered by the same

health insurance plans as other employees; that the only result of the City's offer is to transfer expense from the City to employees who are already more poorly compensated than their counterparts; that the *quid pro quo* offered by the City will prove to be inadequate over time; that, as the City acknowledges, the additional 10% contribution toward the health insurance premium is projected to increase over time; that the one-time 45¢ increase, while it will remain, will not increase over time; that the City cannot reasonably claim that the 45¢ increase it proposed in 2003 is over and above the increase to which employees would otherwise be entitled; that unrepresented employees received 3% increases in both 2002 and 2003 for a total life of above 6% over the two year period; that the police unit received a split increase of 2% in both January and July 2002 and January 2003, and a 3% in July 2003, for an overall life of more than 9% over the two year period; that the increase the City proposes for Union employees, exclusive of the alleged *quid pro quo*, provides a lift of just over 4% over the two year period; that it could be expected that these employees would receive an increase somewhere between the 6% lift provided to unrepresented employees and the more than 9% lift provided to police, even without a *quid pro quo*; that the alleged *quid pro quo* equates to a 3% increase; that, therefore, the overall lift the City proposes, including the *quid pro quo*, is 7% over the two year period; that this is no more than could be expected without a *quid pro quo*; and that the *quid pro quo*, when measured against internal comparables, is illusory.

In terms of external comparables, the Union argues that it again appears that, realistically, the City has not provided any *quid pro quo* for its proposed reduction in the health insurance benefit; that the average increase among the comparables in 2002 ranged between 3% and 7%; that in 2003, the average increases ranged between 3% and 5%; that the average for each year is in excess of 3.5%, or a 7% lift; that, in reality, the City's wage proposal is no more comparable if the alleged *quid pro quo* is considered part of a regular wage increase; that, otherwise, it is substandard; that the City's wage increase exclusive of the *quid pro quo* is far below that proposed by any other comparable community; that the City cannot claim that it has provided a *quid pro quo* for the proposed reduction in its percentage of contribution to the health premium; that the Union's proposal to maintain the current cost sharing formula for health insurance is more reasonable in light of external comparables; and that, additionally, the City has failed to provide any justification or adequate *quid pro quo* for the proposed changes.

In comparing the two wage proposals, the Union argues that its proposal is the more reasonable; that the Union's proposed wage increase is completely in keeping with those provided for City workers in comparable communities; that the City proposal for a $0.23 increase in 2002 is the lowest among the City's comparables with the highest of the City's comparables providing an increase more than three times the proposed City offer; that although the City claims that 75% of the overtime incurred results from employees who have worked less that 40 hours in a week, the claim should be disregarded because it is not based on any review of records; that the Union's proposed split increase with a 3.5% lift per year and a 2.5% increase in cost per year, is completely in line with the comparables; that it is more than warranted given the lag in City wages and ample City resources; that it is the more reasonable of the two proposals; and that the Union's proposal is strongly supported by external comparables.

In terms of the crew leader pay increase, the Union argues its proposal is the more reasonable under

the statutory criteria; that the Union's proposed rates are comparable in virtually all of the Union's proposed comparables; that its proposal is also more comparable to internal comparison to the pay rate provided to the street foreman; that the Union's proposal for crew leader pay is the more reasonable under the statutory criteria; that in regard to the on-call pay issue, the Union argues it proposed increase in on-call pay is the more reasonable; and that it is supported by a majority of the comparables with similar on-call duty.

For the foregoing reasons, the Union requests the arbitrator find its offer the more reasonable under the statutory criteria and select its final offer for inclusion in a successor collective bargaining agreement.

City on Reply Brief

The City asserts that language regarding vacations in the 1988-89 collective bargaining agreement for the police unit was simply a clarification that a week of vacation was identical to a week of work under the work schedule; that this has been the practice under the 1987 contract as well; and that, thus, no actual additional day was ever granted.

Union on Reply Brief

The Union asserts that the City of Altoona does have an on-call provision; that at least three of the comparable communities provide more generous on-call pay for less hours of on-call duty; that the bottom line is that the comparables which have on-call duty compensate for the duty at above the rate proposed by the Union; that, contrary to the implication of the City's brief, payouts of sick leave are found in virtually all comparable contracts; that the City mistakenly bases its increase calculations by comparing increases, including health insurance and roll-ups, to a base; that the City does not provide a calculation of the base used for comparison; that it appears that the base does not include roll-ups or health insurance, but rather only includes hourly wages; that the difference in the base is simply the difference in wage rate without roll-ups and without increases in health insurance; that, no doubt, if the base included health insurance and roll-ups, the percentage increase would be far lower; that the City's calculation of the percentage increases in the total package are completely inaccurate and should be discounted completely; and that, regardless of the arbitrator's determination with respect to the additional vacation day, it is undisputed that the police received a two year increase of 12.4% in 1988-89; that this is more than twice what the City proposes here for a greater concession, given the parties' language in the predecessor agreement; and that, in summary, the Union's final offer should be selected for inclusion in the party's successor collective bargaining agreement under the statutory criteria.

DISCUSSION

Introduction

There are five specific contract changes that separate the parties: on-call pay rate, health insurance contribution rate, wages for 2002, wages for 2003, and crew leaders' premium pay. In making a determination in this matter, two preliminary issues will need to be addressed: the determination of the external comparable pool, which relates directly to factor §111.70(4)(cm)7r(d), and an analysis of the *quid pro quo* offered by the City for its proposed change in health insurance contributions rates. Once those two processes are complete, the statutory criterion can be reviewed to determine which impact the final decision in this matter.

But there is no doubt that the issue driving this arbitration is the City's proposal to change the contribution rate employees make to the health insurance premium. Settle that issue, and the rest of the issues would have settled as well. But that issue was not settled, and the case basically boils down to the epic battles between internal and external comparables, between status quo and *quid pro quo*. with the City arguing that its internal comparables of an 80/20 split on the health insurance premium after the first $175 is paid by the City and its *quid pro quo* of a 45¢ an hour across the board increase in 2003 should prevail, while the Union argues that the external comparables, which weigh heavily against the 80/20 split after the first $175 is paid by the City, and the status quo which has been present a long time should be favored.[1] And since the City's *quid pro quo* to secure this change is a one-time wage adjustment in the second year of the contract, the issue of wages becomes intertwined with the insurance issue. Indeed, these are the two issues that will determine this case. The on-call pay and crew leader premium pay, while not unimportant, will have only minor influence on this case if the decision on the health insurance and wages is clear.

Comparable Pool

[1]From here on, I will refer to the health insurance dispute as one between a 90/10 split and an 80/20 split with the understanding that this split kicks in only after the City has paid the first $175.

In the previous case between these two parties, Arbitrator Kessler stated that Altoona, a suburb of Eau Claire, and Plover, a suburb of Steven Point, were similar to Onalaska, which is a suburb of La Crosse, but he limited his decision to picking one of the lists of comparables submitted by the parties. Both parties submitted Chippewa Falls, Sparta and Tomah. While the other two Union comparables, Menomonie and Baraboo, were geographically distant, Arbitrator Kessler found that they were close to Onalaska in population. The city of Portage, which appeared on the City's list of comparables, was similar to the Union's inclusion of Baraboo, according to Arbitrator Kessler. And two other cities on the City's list, Platteville and Prairie du Chien, while not unacceptable or unrepresentative, according to Arbitrator Kessler, were slightly farther away and likely to be more influenced by Dubuque, Iowa. Arbitrator Kessler found a slight preference for the Union's list.[2]

At hearing in this matter, the City proposed a comparable pool consisting of the cities of Beaver Dam, Chippewa Falls, De Pere and Whitewater. The Union proposed a comparable pool consisting of all of the comparables proposed by both parties and suggested by the arbitrator in the previous case: the cities of Altoona, Baraboo, Chippewa Falls, Menomonie, Platteville, Portage, Prairie du Chien, Sparta and Tomah, and the village of Plover. In addition, the Union proposed the inclusion of the City of La Crosse and the County of La Crosse to the list of comparables "because, although they are larger communities, they are in proximity to Onalaska and part of the same labor market."[3]

On Brief, the City states that, for purposes of this arbitration, the City accepts those communities set forth in the previous arbitration between these parties: the cities of Altoona, Baraboo, Chippewa Falls, Menomonie, Sparta, and Tomah, and the village of Plover.[4]

In this case, it now appears that the parties agree on seven comparables: the cities of Altoona, Baraboo, Chippewa Falls, Menomonie, Sparta and Tomah, and the village of Plover. It appears Arbitrator Kessler would have been open to the inclusion of the city of Portage, which appeared on the City's list in 1991, but does not appear on its list in this matter. It can even been read that he was not opposed to the inclusion of the cities of Platteville and Prairie du Chien if the parties had both included them.

But neither the City of La Crosse nor the County of La Crosse was presented to Arbitrator Kessler. The Union offers them here, with one sentence of support. And while they are in proximity to Onalaska and part of the same labor market, as argued by the Union, they are so different is size and scope that they are excluded from the comparable pool in this matter. And as the City has abandoned it choices of the cities of Beaver Dam, De Pere and Whitewater, they also are excluded

---

[2]*The City of Onalaska and Service Employees International Union, AFL-CIO, Local 150*, Case 26, No. 044079, INT/ARB-5687 (Kessler, 5/5/91). Note that no Decision Number is included in the Award.

[3]Union Brief at pages 7-8.

[4]City Brief at page 9, Footnote 1.

from the comparable pool in this matter.

Therefore I will include in the comparable pool for this matter the seven entities that appear on both party's lists: the cities of Altoona, Baraboo, Chippewa Falls, Menomonie, Sparta and Tomah, and the village of Plover. As Plover is not represented for purposes of collective bargaining, and as neither party presented much if any information about Plover, its use as a comparable is extremely limited. If a secondary pool is needed, it would be made up of the cities of Platteville, Portage, and Prairie du Chien, all of which have appeared on one side's list at one time or the other, but not at the same time.

Standard for change of the *status quo*

As the Union argued in this matter:

> It is commonly accepted that the proponent of a change in the *status quo* bears the burden of showing both the change is necessary, and that some *quid pro quo* has been offered to the other party for the change.[5]

And as argued by the City, the proponent of change must establish:

> . . .a very persuasive basis for such change, typically by showing that (1) a legitimate problem exists which requires attention, (2) that the disputed proposal reasonably addresses the problem; and (3) that the proposed change is accompanied by an appropriate *quid pro quo*.[6]

That quickly and clearly summarizes the legal standard that needs to be applied in this matter.

Does a legitimate problem exist?

The escalation of the cost of health insurance premiums is one of the major problems, if not the major problem, facing municipal employers and labor organizations in Wisconsin today. I do not need to footnote this – it is common knowledge consistent with my experience as an arbitrator, and I believe a review of the interest arbitration awards of the past few years would bear that out. So it almost goes without saying that, with limited budgets caused by cutbacks in state aid and decreases in other revenues, a municipal employer can easily show that it has a legitimate problem of paying the increased and skyrocketing cost of health insurance premiums. So does a legitimate problem exist in terms of the cost of health insurance premiums? Yes, it does, so the City meets

---

[5]*Northeast Wisconsin Vocational, Technical and Adult Education District*, Decision No. 25689-A (Nielson, 1989). See also, *Sheboygan County*, Decision No. 27585-A (Petrie, 1994) at page 11; and *Wisconsin Indianhead Technical College*, Decision No. 29510-A (Malamud, 2/3/00).

[6]*Village of Fox Point (Public Words Department)*, Decision No. 30337-A (Petrie, 2002).

criteria number one.

The City also argues that it is bad for employee harmony to have bargaining units with different insurance agreements. And, in theory, the City is correct, but it offered no testimony or evidence to show that the current difference in the health insurance premium contribution with the City paying 90% for the Union and 80% for the other bargaining units and unrepresented employees is causing any significant problems in its labor force. So is this a legitimate problem? In theory, yes.

Does the disputed proposal reasonable address the problem?

To address the problem of increased insurance premium costs, municipal employers respond in one of two ways or a combination of the two ways: cost sharing and/or cost reduction. Cost sharing provides the municipal employer with some financial relief with the employees paying a bigger share of the health insurance premium, either through increased percentage or dollar amount contribution, caps on employer contributions or other cost sharing devises. Cost reduction is accomplished by incorporating higher deductibles, increasing co-pays, and decreasing benefits. Labor organizations tend to resist cost sharing because it lowers every employee's take-home pay. They resist cost reduction because it lessens coverage or places the additional costs on those employees who may be least able to pay it.

To address the problem of different employees contributing to their health insurance premium at different levels, municipal employers attempt to make the contribution rate consistent between employees. For labor organizations whose employees are contributing less, they again resist change in this area as it takes money out of their members pockets.

In this case, the City has chosen to respond to its health care cost crisis and to the inconsistency in employee contribution rates by attempting to negotiate and now arbitrate a change in the cost sharing by decreasing the City's contribution rate from 90% to 80%, which increases the employee's contribution rate from 10% to 20%. Once accomplished, this will bring this bargaining unit in line with the other bargaining units and the unrepresented employees, and it will give the City an immediate 8.7% cost savings, while increasing the employees' contribution by 50%.[7]

Is this a reasonable approach to solving the problems mentioned above? One way to determine if an approach to solving a problem is reasonable is to look at what other people similarly situated are doing to resolve, deal with, and/or live with the problem. In the case of a labor arbitration, that means a review of the comparables.

Internal Comparables

[7]This seems counter intuitive because if the City's share goes from 90% to 80%, one might think that the City saves 1/9 or 11.1%, but this is skewed by the City's contribution of the first $175 of the insurance premium.

To begin with the internal comparables, all unrepresented employees have an 80/20 split in their health insurance premium, as is to be expected since the City determines the standard it wants and is able to impose it upon unrepresented employees. The police bargaining unit agreed to the 80/20 split in 1988. It is disputed whether they received an extra day of vacation per week of vacation as part of a *quid pro quo* for accepting the 80/20 split. They did receive a raise with a bump of over 12% over the two years of the contract. It is also unclear from the record what part of this raise, if any, was considered part or all of the *quid pro quo* for the 80/20 split. Nor is it clear in the record what the standard wage raise was among the comparables in 1988, where this unit stood in relationship to its comparables in regard to salary, and whether this unit had any argument for catch-up pay.

The record is also unclear as to when the supervisory police unit came into existence. The record suggests that the firefighters unit is relatively new, perhaps working on its first contract. In any case, both of these units agreed to the 80/20 split on health insurance. And that makes good sense for each unit when looking at the internal comparables. The police supervisory unit, faced with a police unit that voluntarily agreed to a 80/20 split years before, would be hard pressed to argue it should be compared to the city unit and its 90/10 split. The same is even more true of the firefighter unit, which had two protective units at the 80/20 split and only the city unit at 90/10.

But in terms of the City's argument that it is bad for employee harmony to have bargaining units with different insurance agreements, let's be clear about what is in dispute here. This is not a case where the bargaining unit in arbitration has a different carrier which provides more efficient or economical service than the carrier covering the other bargaining units and the unrepresented employees, causing resentment among the other employees and forcing the Municipal Employer to deal with and pay different carriers for its health insurance coverage. Nor is this a case where the bargaining unit in arbitration has a different policy which provides better or broader coverage than that provided to the other bargaining units and the unrepresented employees, causing envy among the other employees and making the servicing of the plan difficult for the employer. Finally, it is not the case of the bargaining unit in arbitration having a different set of deductibles or co-pays which, again, would cause jealously among the other employees and make servicing of the plan complicated.

The insurance plan, according to the record, is the same for all employees, with one carrier and one plan and the same benefits for everyone. The difference, in this case, is the cost to each bargaining unit member. This is strictly a financial issue. The insurance coverage itself is not impacted by who pays for it. Just as the employees in the different bargaining units receive wage rates different than those in other bargaining units, here we have employees making different contributions to the insurance plan. This is not to say that this is a minor issue, for it is not, but some of the sting of this issue to the Employer should be relieved when the Employer and the bargaining unit look at the total packages of the internal comparables in bargaining or, in arbitration, the arbitrator does so. I assume that employees who receive a greater share of insurance contribution will receive a lesser share of salary increase. I think I am in the norm in that position.

So does the City's proposal address the alleged but unverified problem of employee harmony? In

terms of the internal comparables, the City's proposal is consistent with what all of its other employees have, and finding for the City would bring all its employees to the same financial contribution for health insurance. This should solve any harmony problems the City may be experiencing by the difference in employee contributions to the health insurance premium, though the manner it which it is implemented may cause other harmony problems, as will be discussed below. But from an internal comparable point of view, the problem of employee harmony is addressed by the City's proposal.

Does this proposal address the problem of rising health insurance premium costs? Even if the City's position is chosen in this proceeding, those cost increases will continue until . . . who know? But solving that problem will not and probably can not be accomplished at the local level. All that will be done here is to change the ratio by which the City and the Union share the costs of the insurance premium. The City will save 8.7% of its insurance costs, and the employees contributions will increase 50%. Thus, the problem of skyrocketing insurance premiums costs is impacted but a little by passing the cost on to the bargaining unit employees.

External Comparables

In terms of the external comparables, the City's proposal does not appear to be a reasonable approach to solving its problems. Only one of the comparables, Chippewa Falls, has a 80/20 split, and for family only; the single coverage is 100% paid by the employer.[8] Menomonie has a 95/5 split, Altoona pays 100% and the other three, Baraboo, Sparta and Tomah, pay 105% of the least costly plan in the County qualified under the Wisconsin Public Employees Group Health Insurance.[9] The City will find little support among the external comparables for its proposed change in health insurance contributions; indeed, the external comparables strongly support the Union's proposal.

Quid pro quo

For its *quid pro quo* to change the insurance contribution from a 90/10 split to an 80/20 split, the City offers a one time increase of 45¢ per hour on each employee's base pay for 2003. The City argues that for the bargaining unit of 28 employees who work 2080 hours per year, this is an increase of $26,208 for the entire bargaining unit. Overtime, longevity and WRS add $3554 to the increase for a total increase of $29,762.[10] Since the bargaining units increased cost in health insurance is $28,710, the City argues that the bargaining unit gains a savings of $1052 or $38 an employee.

---

[8]As the City's in this case is seeking an 80/20 split only after it pays the first $175, a straight 80/20 as in Chippewa Falls is more costly to the employees and, therefore, supports the City's position.

[9]No information is available in the record regarding the employer contribution to health insurance premiums in the Village of Plover.

[10]Dollar amounts are rounded so amounts may not add up exactly.

There are several problems with this argument, the first being that single and family coverage members are treated the same, though they are impacted differently by the City's proposal. Just looking at the wage increase, each employee receives a 45¢ an hour increase. Multiply that times 2080 hours per year and each employee gets a yearly wage increase of $936. Add on the roll-ups and that amount increases to $1063. But for the 24 employees on the family plan, their health insurance premium increases $95 per month for a year total of $1141, a loss of $78. For the four employees with single coverage, however, they receive the same total wage increase of $1063, but their health insurance increases only $28 a month for a year total of $332, a gain of $738.

So for 24 of the employees, the *quid pro quo* does not cover the loss they experience from the change in the insurance split. As insurance premiums are going to increase at a higher rate than wage rates, they will continue to fall behind where they are now. Is the *quid pro quo* appropriate for the change that the City wants the arbitrator to impose on the Union? Even if it was to this point, there is another major problem because the City also argues that its *quid pro quo* should be used to bolster its admittedly low wage offer. Our direction turns to the wages.

Wages

The City proposes a 2.0% increase for 2002 and a 1.5% increase in 2003, a cost and lift of 3.5% over the two years. The City gave its unrepresented employees a 3% increase in each of the two years, a cost and lift of 6.0% cost over the same two years. The police bargaining unit received 2% increases in January 2002, July 2002, and January 2003; and a 3% increase in July 2003. This amounts to a 6.5% cost and a 9.0% lift over the two years. The internal comparables which the City argues should control the health insurance premium issue should not control wages, according to the City, because these employees have different external comparables to which they are compared. And yet, it seems the City might create another harmony issue if, requiring the Union to pay the same contribution for health insurance premiums as the other employees, it then offers these employees a significantly lesser pay raise.

So what do the external comparables say for this bargaining unit? In 2002, the lowest wage increase in the agreed upon external comparables was 3% in Altoona, Baraboo and Chippewa Falls. Sparta had a 4% increase, Menomonie had a 5% increase, while Tomah had a 3% and 2% split for a 4% cost and 5% lift. In 2003, the numbers were similar, with Altoona, Baraboo and Chippewa Falls having a 3% increase, Menomonie a 5% increase, and both Sparta and Tomah with splits of 3% and 2% for a 4% cost and 5% lift. For both years for these units, the cost range and the lift range is 6.0% to 10.0%.

The City's offer to the Union in this matter is far below both the internal and external comparables. The Union's wage offer, on the other hand, is a split of 1.5% and 2.0% in each of the two years, a 5.0% cost and a 7.0% lift. It is right in the ball park.

Summary

The parties agree that neither the factor given greatest weight nor the factor given greater weight are at issue in this matter, and I concur. Of the remaining factors to be considered, the parties agree that the internal and external comparables are involved in this case. The City also argues that the overall compensation is an issue in this case; however, there was not enough information to make any informed decision regarding this in regard to either internal and external comparables.

In terms of the *quid pro quo*, even if it were adequate for the change in the insurance split, the City would lose on its wage offer. Even if the City could be persuasive that the Union should receive less in wages than the unrepresented and other represented employees because the City contributes more to Union's insurance premium, the external comparables blow that argument away because, not only do all the external employers pay a greater percentage of the health insurance premium than the City,[11] but all of the other external employers offered pay raises at least 1.5% over the City's pay raises for the two years of the contract.

So while the City was able to show that a legitimate problem exists which requires attention, and even though its proposal reasonably addresses the problem of employee harmony over a discrepancy in the amount contributed to insurance premiums, it does not address the problem of health insurance costs in general or the harmony problem of requiring employees to contribute the same percentage to insurance but not giving them the same percentage wage increase. Nor is the proposed change accompanied by an appropriate *quid pro quo*, for employees with family health insurance coverage lose out right away while employees with single coverage make a gain. And in terms of the other two issues, even if they favored the City, it would not be enough to sway the overall decision to it.

For these reasons, based upon the foregoing facts and discussion, the Arbitrator issues the following

AWARD

> That the final offer of the Union shall be incorporated into the collective bargaining agreement between the parties.

Dated at Madison, Wisconsin, this 10th day of October, 2003.

By _____
James W. Engmann, Arbitrator

[11]Except for one instance: Chippewa Falls family plan which has an 80/20 split.