BEFORE THE ARBITRATOR

In the Matter of the Petition of

CITY OF APPLETON

To Initiate Arbitration Between Said Petitioner and

APPLETON MUNICIPAL EMPLOYEES UNION, WASTEWATER/CENTRAL BUILDING MAINTENANCE DIVISIONS, LOCAL 73, AFSCME, AFL-CIO

Case 408
No. 60846
INT/ARB-9535
Dec. No. 30668-A

Appearances:

Davis & Kuelthau, S.C., Attorneys at Law, by Mr. William G. Bracken, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903-1278.

Mr. Richard C. Badger, Associate Director, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Madison, Wisconsin 53717-1903

ARBITRATION AWARD

The City of Appleton, hereinafter referred to as the City or Employer, and Appleton Municipal Employees Union, Wastewater/Central Building Maintenance Divisions, Local 73, AFSCME, AFL-CIO, hereinafter referred to as the Union, met on several occasions in collective bargaining in an effort to reach an accord on the terms of a successor agreement to their 2000-2001 collective bargaining agreement. Said agreement covers all employees of the Employer employed in its Waste Water Division and Central Building Maintenance Divisions, excluding craft, confidential, professional and supervisory employees. Failing to reach such an accord, a petition was filed with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties by July 3, 2003, issued an Order

wherein it determined that the parties were an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of seven arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC on August 3, 2003, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on November 11, 2002, at Appleton, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial and reply briefs were filed and exchanged, and received by January 14, 2004. The record was closed as of the latter date.

THE FINAL OFFERS:

The Union and Employer final offers are attached and identified as attachment "A" and "B," respectively.

BACKGROUND:

At the hearing in the instant case, both parties presented numerous exhibits in support of their positions. Representatives for each side presented, reviewed and explained the written evidence to the Arbitrator. In addition, the District presented two witnesses, Sandra Neisen, Human Resources Director, and Duane Leaf, Director of Utilities. Neisen testified with regard

to settlements with other City bargaining units and their bargaining history as well as the City's negotiations with the instant unit and its final offer. She testified that the adjustments in wage rates granted in the Water Department unit were for additional new duties due to technological changes and not for changes in insurance. Leaf testified to the Water Department settlement and the changes in technology at the new plant.

Rick Badger, Associate Director, testified on behalf of the Union. He explained his understanding of the settlement with the Water Department employees and that some of the wage adjustments in that settlement were for the changes in insurances.

The City of Appleton has 15 represented collective bargaining units and one unit of non-represented. Teamsters represent 10 of the units. AFSCME represents two units: the instant unit and the Water Department unit. The other three units are Fire, Police and Police Supervisory.

The 10 Teamsters units, together, negotiate what is akin to a master agreement covering common items like benefits, and the remaining issues, peculiar to each unit, are negotiated separately unit by unit.

The City and the Union met in negotiations over a period of one year, but were unable to resolve their differences voluntarily. The single issue that kept the parties apart was the amount of the quid pro quo for the agreed-upon insurance changes. The Union proposes a 25¢ per hour quid pro quo and the City 15¢. The parties agreed to a 3% wage increase for all employees in 2002 and 2003 plus wage adjustments for certain classifications. Said agreements are reflected in each of the parties' final offer. Additionally, the Union's final offer proposes a vacation improvement which was agreeable to the City as part of a voluntary settlement, but not in arbitration.

POSITIONS OF THE PARTIES:

The parties filed comprehensive, well-reasoned initial and reply briefs in support of their positions and cited numerous arbitration cases in support thereof. The following is not intended to be a detailed review of the parties' arguments, but, rather a brief general overview of their main arguments. The parties, however, should be assured that the Arbitrator has reviewed their briefs and cases cited therein in detail.

Union's Position

The Union acknowledges that the Arbitrator must "give 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," and to "give greater weight to economic conditions in the jurisdiction of the municipal employer."

It is the position of the Union that neither factor is relevant in this case because the Employer did not offer any evidence to demonstrate that it could not meet the Union's final offer because of any State law or directive or economic conditions of the City. As to the latter, the Union contends that the entire cost difference of the Union's offer is only $5,843.13 which is less than one hundredth of one percent of the overall budget. Further, it is argued, the City failed to show that the economy of Appleton is any poorer or significantly different from the proposed comparable communities.

The Union argues that of the remaining statutory factors the only relevant factors are interests and welfare of the public and the Employer's ability to pay, internal comparisons, external comparables, overall compensation and other collective bargaining factors.

Interest and welfare of the public and ability to pay factor favors the Union, it is argued, because the difference in packages is less than $6,000, the City is well off economically, and there is no evidence that the City cannot afford the Union's package. The Union contends the public is best served by an experienced and well-trained workforce. The Union points out that just a couple years ago Appleton Waste Water Treatment Plant won the national EPA award for large waste water treatment facilities. The workforce was cited as a key factor in the City being so honored. The public is well served by the employees in this unit and it is in the community's best interest to keep this workforce stable.

The Union asserts that when comparing the parties' offers to the external comparables, the external settlement pattern favors the Union's offer. The Union contends that the external pattern is higher than the 3% offered in this unit, especially in those settlements where insurance concessions were made. In light of same, the Union contends that the 15¢ per hour quid pro quo offered by the City is inadequate.

With respect to the overall compensation factor, the Union cites the fact that all other City units were offered the vacation improvements proposed by the Union herein who agreed to the insurance concessions. The City argues that vacation improvements were for voluntary settlements only. The Union argues that would make more sense if the Union had not agreed to the insurance changes. But here, the Union has agreed to the insurance changes. It has the same package as granted to the Water Department employees. Here, it is argued, the City is offering a reduced quid pro quo without the vacation benefit, and as such its offer is inadequate and therefore less reasonable than the Union's offer.

The Union argues that the "other factors" criterion is significant in this case and favors the Union. Here, the City, by not offering a vacation improvement, is not only punishing the

Union for exercising its Section 111.70, Wis. Stats., rights, but the fact that this bargaining unit will be forced to bargain for what was granted to other units is neither fair nor consistent with the City's claim that an internal settlement pattern exists. Another fact that did not present itself until the day of the hearing is that the City claims the 15¢ per hour quid pro quo does not go on the rate but is separately paid and not part of the wage rate. The Union argues that the City's final offer does not so state and cannot now be interpreted to somehow be a "hidden" payment.

Lastly, with respect to internal comparables, it is the Union's position that while the City claims there is an internal pattern of settlements there in fact is no consistent pattern. The Union argues that the 10 Teamsters units bargain as one for major issues such as insurance. Thus, for purposes of comparing units for the insurance issue, there is really only five units: Police, Fire, Water, Waste Water/CBM, and Teamsters. The Union contests whether the Teamster units can be considered as settled, but even if so, that would only make two settlements out of five (the other being Fire) bargaining units. This, it is argued, is not a solid settlement pattern. The Union asserts that of the give bargaining units, Water has 3% cap, Police pay nothing, Teamsters pay flat dollar amounts, and Fire (according to the City) has agreed to pay flat dollar amounts. According to the Union, there is no consistent established pattern. It is the Union's position that the Water Department is the prime internal comparable for the unit herein, the Waste Water and Central Building Maintenance employees. As utility employees, they share common interests, common skill sets, and common supervisors.

While providing greater overall compensation than the Union's final offer, the Water Department settlement, it is claimed, most closely reflects the Union's offer. Both offers provide identical insurance changes and identical vacation improvements. The Union therefore requests that the Arbitrator utilize the Water settlement as the benchmark for the Waste Water/CBM

award. The Union notes that water received 3% across-the-board increases in 2002 and a 3.5% across-the-board increase in 2003 plus significant wage adjustments in 2002. It is the Union's position that a part of the adjustments was for accepting the insurance concessions in 2003. In comparing the two, the Union argues that the water settlement included an additional .5%, the wage adjustments, and vacation improvements. In determining the quid pro quo for the Waste Water/CBM employees, the Union submits that it is noteworthy that the City's offer neglects the vacation improvements and offers far less than what was offered to the water plant employees.

Based on all of the above reasons, the Union claims that internal comparability favors the Union's offer.

The Union argues that in light of the foregoing factors, the record supports the Union's final offer as more reasonable than the City's final offer.

Employer's Position

Internal Comparables

The Employer contends that arbitrators have long recognized the significance of following the internal settlement pattern. Once the internal settlement pattern has been established, arbitrators rely on it as the best indicator for where the settlement should be for the one bargaining unit that has not accepted the voluntary settlement pattern established.

With respect to its insurance proposal, the Employer argues that of the 15 City bargaining units, 13 units representing 558 employees, or 86%, accepted the concept of a flat dollar amount contribution toward the health insurance program. The only exception is the police unit, but they did not receive any additional pay beyond the 3% across-the-board raise all other employees received for adopting the dual choice health plan.

The Employer argues that while the Union relies on the water plant settlement as support for its offer, said employees only received a 10¢ per hour quid pro quo while here they are offered 15¢ and the Union is asking 25¢. The 25¢ figure, it is claimed, has no support among internal comparables. Further, the water plant unit settled early when economic conditions were more favorable and before the settlement pattern that now exists. There are only eight employees in the water plant unit.

Further, the Employer argues that the vacation improvement sought by the Union should not impact the insurance issue or the package because it was offered to other units as a quid pro quo for reaching a voluntary settlement. Additionally, the Union's final offer on vacation modification is retroactive to January 1, 2003, which makes it unreasonable on its face. The Employer argues that trying to figure out how to implement vacation back to 2003 creates administrative problems and many unanswered questions regarding same. Also, it is argued, that all of the Teamster internal settlements started the vacation enhancement effective January 1, 2004, not 2003. There is no support for the earlier date except for the Water Department. But, the Employer argues, the Water Department employees also implemented the insurance changes on January 1, 2003.

Lastly, the Union claims that the Water Department employees in fact received more than a 10¢ quid pro quo because they also received wage adjustments. The Employer contends, however, that the wage adjustments were not part of the quid pro quo but were necessitated by the additional or expanded duties based on the new technology at the Water Department.

The Employer cites numerous arbitration cases in support of the significance of internal settlement patterns. Here, the internal pattern is settled with the plans agreed to by the parties in this case and for the 15¢ per hour quid pro quo offered by the City. Further, it is argued, the 15¢

fairly compensates employees for the changes in the City's health insurance plan. Citing City Exhibit 21, the Employer argues that the 15¢ more than covers the additional premiums with a net gain of $42 for the option 1 plan while the Union's offer of 25¢ would result in an excessive net gain of $310. According to the Employer, there is simply no justification for the Union's proposal.

Interest and Welfare of the Public

This factor, it is argued, favors the City's offer because, for reasons already stated, it promotes equity among all City employees. The City claims it has carefully crafted its final offer to match a settlement pattern record with all City employees to keep all employees relatively comparable. It is argued that the Union deviates from the pattern that can only lead to "whipsawing" by the other units in the future.

External Comparables

The City argues that while internal comparables should be given the most weight, its offer compares favorably against the external comparables as well.

In this regard, the Employer asserts that its offer in wages is competitive with its appropriate external comparables and is the same offer as the Union's. Thus, the City's offer can be selected knowing that it compares favorably with other wages in the area.

It is also the City's position that its offer compares favorably with the external settlement pattern. It argues that the City and Union's 3% in 2002 is in line with the prevailing settlement rate of 2.2% to 3.75% and the City's 2003 offer of 3% plus 15¢ or another .75% is near the top of the settlement range of 2.5% - 4% while the Union's offer exceeds the prevailing settlement pattern.

With respect to employee contributions to health insurance, the Employer contends that when expressed as a percentage in 2003, the average among external comparable communities is to require employees to pay 5% of the family premium and 4% of the single premium. Converting the flat dollar amounts to a percentage, the City's offer amounts to a 4% employee contribution for either single or family and the Union's a 3% contribution. Thus, it is argued, the City's offer is the more reasonable one of the two.

Lastly, the Employer argues that its vacation schedule is competitive with the comparables and, therefore, there is no reason to adopt the Union's vacation schedule. It is argued that the Union has not sustained its burden of proof that a change is needed or has it offered a quid pro quo for the proposed vacation improvement. The Employer cites City Exhibit 30 in arguing that when viewing the total annual days off due to vacation and holidays, the City of Appleton emerges at or near the top in every category.

Cost of Living

The Employer argues that since the Union did not provide any cost figures for the parties' packages, the City's costing must be accepted.

The Employer notes that the CPI-U in 2002 was 1.6% while the average wage increase offered, including wage adjustments, was 3.81%. In 2003, the CPI-U was 2.4% while the employees' wages increased from 3.8% - 6.2%. Comparing total package increases, the City's offer in 2002 amounts to 5.2% and 6.9% in 2003. The Union's offer is the same as the City's 2002 and 7.25% in 2003.

The City argues that since its total package offer is well above the CPI, it guarantees that the employees will not suffer a reduction in spending power and will actually gain in very real terms.

Overall Compensation

As argued above, the City contends that its overall total package cost is the most reasonable when compared to other internal settlements and the cost-of-living factor. The Union only compares wages, but, the Employer argues, employee benefits must also be accounted for. The City of Appleton, it is claimed, provides its employees with an enviable list of benefits. Under the total compensation factor, the package cost is the most meaningful. The Employer submits that this criteria clearly favors its offer.

Greatest Weight

This criterion requires the Arbitrator to give greatest weight to any contributions or expenditures faced by the City. In this case, the State of Wisconsin places expenditure restraints on municipalities. To qualify for a payment, a municipality's net general fund budget increase for 2004 compared to 2003 must be less than 3.7%. Appleton faced a reduction in State-shared revenue and expenditure restraint of $1.1 million; a reduction of State transportation aids of $240,000; reduction in interest increase of $500,000; decrease in other City revenue of $600,000, plus increases in health insurance and WRS.

It is argued that the economic times as reflected above do not support the Union's offer and, therefore, the City's offer should be determined to be the most reasonable.

Greater Weight

The Employer argues that for 2002, 2003 and the duration of this contract, the local conditions have been characterized by high unemployment and generally a recessionary environment. Coupled with this are high taxes. Further, the State has cut back shared revenues

to cities like Appleton resulting in financial sacrifices to spare the public a tax increase they simply cannot afford at this time.

Based on the ample total package offered, the City argues that the local economic conditions favor its final offer.

For all of the reasons discussed above, the City requests that the Arbitrator select its offer as the most reasonable when measured against the statutory criterion.

DISCUSSION:

Criteria

Section 111.70(4)(cm)7 of the Wisconsin Statutes directs the Arbitrator to give weight to the following arbitral criteria:

> 7. "Factors 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.
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> 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 the greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
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> 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:
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> a. The lawful authority of the municipal employer.
>
> b. Stipulations of the parties.

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

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of 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 comparable communities.

f. 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 in private employment in the same community and 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 proceeding.

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 public service or in private employment.

In applying the above criteria to the evidence presented, the Arbitrator must select the offer that is the most reasonable. The final offer of the parties places them apart on two issues: (1) sufficiency of the quid pro quo for the parties' agreed-upon insurance changes and (2) a

vacation improvement. [1] Of the two, clearly, the most significant issue and the one that kept the parties from reaching a voluntary agreement is the quid pro quo issue.

The Employer in its final offer proposes a 15¢ per hour quid pro quo, the Union a 25¢ quid pro quo.

In applying the statutory criteria, the Arbitrator, of course, must give greatest weight to ". . . limitations on expenditures that may be made or revenues that may be collected by a municipal employer" and greater weight to the "economic conditions" of the municipal employer.

The Arbitrator has reviewed the evidence presented by the Employer regarding the City's budget (Employer Exhibit 38) and the economy (Employer Exhibit 43). There is no question the City faces limitations and revenue problems. Nor can anyone seriously dispute the economic situation and budgetary problems faced by the State and its impact on municipalities and the citizens of the State. However, notwithstanding same, the Arbitrator is mindful that the total difference between the parties is less than $6,000. The amount of dollars involved is so little when compared to the City's budget that the Arbitrator can only conclude that the criteria of greatest weight and greater weight is not such that it dictates that an otherwise reasonable Union offer must be rejected. In other words, given the City's revenue and expenditure limitation and its economic condition, it is still easily able to meet the additional $6,000 cost of the Union's offer, if such offer is deemed more reasonable by application of the other statutory criteria.

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[1] Effective January 1, 2003, the Union provides employees with six years of service two weeks and two days of vacation. Employees with 26 years or more of service receive five weeks plus one day after 26 years, two days after 27 years, three days after 28 years, 4 days after 29 years and 6 weeks after 30 years. (Presently, employees with six years of service receive two weeks and employees with 26 years of service receive five weeks of vacation.)

Remaining Criteria

Of the remaining criteria, the Arbitrator concludes that in this case the internal comparable criterion is most important for two reasons.

First, as stated by the undersigned in prior cases, [2]

> . . . arbitrators have almost uniformly recognized the importance of internal comparability, especially when it comes to benefits such as health insurance, holidays, vacations, longevity pay, etc. [6] At the core of the issue is the concern of fairness and the impact on the morale of employees who work for the same employer but not treated the same. [7] Thus, unless there is good reason to deviate, the uniformity of benefits among employees of the same employer, internal comparables, clearly outweighs external comparables."

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[6] Other arbitrators have stated the same but differently. Arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91), stated:

> . . . Internal comparables historically in municipal units have been given great weight when it comes to basic fringe benefits. There is great uniformity in contribution levels and in the specific benefits, particularly in health insurance. Significant equity considerations arise when one unit seeks to be treated more favorably than others.

Arbitrator Malamud in Greendale School District, Dec. No. 25499-A (1/89), stated:

> Consistency in the level of benefits among employee groups is a widely accepted tenet in labor relations.
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> . . .
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> The Employer demand for consistency in benefits as expressed through its final offer is accorded great weight by this Arbitrator.

Arbitrator Nielsen in Dane County (Sheriff's Department), Dec. No. 25576-B (2/89), stated:

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[2] City of Wausau (Support/Technical), Dec. No. 29533-A (11/99); Oconto Unified School District, Dec. No. 30295-A (10/02); City of Cudahy (Fire Department), Case 92, No. 60108, MIA-2406 (4/03).

> In the area of insurance benefits, a uniform internal pattern is particularly persuasive. . . . Unless the benefit is demonstrably substandard, and not made up for in some other component of the compensation package, external comparables will not generally have great weight in disputes over the features of an insurance plan.

Arbitrator Kessler stated in Columbia County (Health Care), Dec. No. 28960-A (8/97):

> Particularly in the administration of health insurance benefits, a government should be treating all of its employees the same.

[7] City of Wausau (Support/Technical), Decision No. 29533-A, p. 29, Torosian (11/99).

Second, the other criteria do not convincingly favor one offer over the other. Again, with the parties only $6,000 apart and a vacation improvement that is equal to what other units settled for, the stipulations of the parties, external comparables,[3] the cost-of-living, overall compensation and other factors normally or traditionally taken into consideration in collective bargaining or arbitration[4] criteria, is not strong enough to alter the offer found otherwise more reasonable. Further, the interest and welfare of the public is served equally well with either offer.

Clearly, how the final offers of the parties compare with other settlements of City units is the most important criterion if there is a pattern of internal settlements that has developed.

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[3] The parties agree that the appropriate external comparables consist of Fond du Lac, Green Bay, Metropolitan Sewerage District Heart of the Valley, Manitowoc, Neenah-Menasha, Oshkosh, and Sheboygan.

[4] Neither party relied on the lawful authority of the Employer, private sector comparisons or changes during the pendency of the arbitration proceeding criteria in support of their positions.

The Employer argues that there is a clearly established pattern, while the Union claims otherwise and takes the position that its traditional comparable is the Water Department unit and not the other City units. Given the parties' positions, the determining factor in this case is whether there is an internal pattern of settlements and if so whether the pattern applies to this unit.

With respect to the pattern issue, the record establishes that a pattern of internal settlements has indeed developed regarding the insurance quid pro quo.

There are 15 bargaining units in the City of Appleton. At the time of the hearing in this matter, 11 [5] of the units had settled for the exact same contribution, a flat amount of $15 single and $25 family, proposed by the Employer in its final offer to the Union in this case. It is true as argued by the Union that four of the units [6] had not yet settled their entire contract, but, importantly, they had reached a tentative agreement on the insurance issue, including the quid pro quo. City Hall, DPW and Transit had also resolved the wage issue at 3%. Additionally, the police supervisors unit accepted the same insurance concept, but agreed to a higher flat amount, $20 single, $50 family, in exchange for a new 1% step on their schedule. [7]

The Union, however, argues that an internal pattern does not exist because in reality there are only five bargaining units and only two have agreed to the City's insurance offer. The Union reasons that the Teamsters truly comprise one overall bargaining unit because the City and

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[5] City Hall, Inspections, Community Service Officers, Electrical Maintenance, Engineer Aides/Clerical DPW, Park and Recreations, Parking, Health Department Sanitation, DPW, and Fire.

[6] City Hall, DPW, Transit and Fire.

[7] Also, the 173 non-represented employees are required to make a similar, but not exact, flat dollar amount contribution.

Teamsters bargain a "Master Agreement" for major issues, such as insurance, for all 10 units. Therefore, the Union argues, the City cannot claim credit for settling agreements with 10 different Teamster units. According to the Union, the City actually bargains with only the Police, Fire, Water, Waste/CBM, and Teamster units. Of these, only the Fire and Teamsters have agreed to the City's proposal. It is the Union's position that two out of five bargaining units is not a solid settlement pattern.

Practically speaking, the Union is correct in its claim that on major issues the Teamsters negotiate as one for all the units, but this ignores the fact that regardless of how the insurance issue is negotiated the result in this case is that of the 502 represented employees (including this unit), 385 (or 76%) have accepted what the City is proposing to the Union in this case. Thus, there is a pattern that is commonly shared by a great majority of the employees.

The Union argues that the Wastewater/CBM is more aligned with the Water Department unit – the other unit in the Water Utility – than with the other City units. The Arbitrator agrees that with certain issues, including wages, this may very well be true. Further, the Arbitrator does not disagree with prior arbitrators who found external comparables to be more meaningful than internal comparables for certain issues in the Water Department. But, each case must be decided on its own facts and circumstances. Here, the issue of insurance is one that crosses unit lines and, as such, uniformity among employees City-wide is the most persuasive consideration. As discussed above, this is so because of the concern of fairness and the impact on the morale of other City employees if they are not treated the same. Here, there is no good reason to deviate from the internal comparables. The Water Department settled in January 2002 for what the

Union now proposes - a 3% contribution with caps of $25 single and $50 family. However, since that time, in 2003, most of the units (employees) have settled for the flat dollar caps offered by the City that has now become the pattern. [8]

Second, and importantly, there are only eight employees in the Water Department unit. There are 385 represented employees already under the City's proposal. Given the clearly-established internal pattern among City employees, there is no justification to deviate from same on the basis that the comparable group for this unit should be the eight Water Utility employees and not the 385 City-wide employees.

There remains the vacation issue. The Union is proposing the same vacation improvement offered the other City units that voluntarily settled. The City claims the vacation improvement was strictly as an incentive, a quid pro quo, to reach a voluntary settlement. It argues that since the Union did not settle voluntarily, it should be willing to pay the price for going to arbitration.

The Arbitrator firmly believes agreements voluntarily arrived at are preferable over those arrived at through arbitration. The Arbitrator, therefore, understands the Employer's attempt to induce a voluntary settlement through incentives. However, if a voluntary settlement is not attained and the parties engage in the arbitration process, the Arbitrator must decide the reasonableness of the issues submitted by applying the statutory criteria.

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[8] The Union claims Water Department employees were given wage adjustments in addition to the .5% increase as a quid pro quo for the insurance change and, therefore, its 25¢ quid pro quo is comparable. The Employer argues that the wage adjustments were for expanded job duties and that the quid pro quo of ½ percent equaled an average 10¢ per hour increase. It is evident to the Arbitrator from the evidence submitted that the main reason for the wage adjustments were changes in job duties as a result of technological changes. It may be, however, that the size of the adjustment may have been influenced, or interpreted, as an incentive for the insurance changes.

Here, regardless of the reason for granting the vacation improvements to other City units, the City by so doing has established an internal pattern. The Union's offer is consistent with the pattern; the City's is not. Under the circumstances of this case, a quid pro quo is not required. For said reason, the Arbitrator finds the Union's offer more reasonable than the City's on this issue.

Conclusion

Of the two issues presented, the insurance issue relating to the appropriate quid pro quo for the agreed-upon insurance changes is, by far, the more important of the two. Thus, even though the Arbitrator favors the Union's final offer on the vacation issue, the Employer's offer on the insurance issue [9] compels the Arbitrator to select the Employer's final offer as the more reasonable.

AWARD

Based upon the statutory factors listed above and the record established in this proceeding, including the testimony, exhibits and arguments of the parties, and for the reasons discussed above, the Arbitrator selects the final offer of the Employer and directs that it be incorporated into the parties' collective bargaining agreement for 2002 and 2003.

Dated at Madison, Wisconsin, this 15th day of March, 2004.

Herman Torosian, Arbitrator

[9] The 15¢ per hour quid pro quo is to be added to the base wage rates.