In the Matter of the Petition of

MARSHFIELD CLERICAL/TECHNICAL
EMPLOYESS UNION, AFSCME, AFL-CIO

Case 143
No. 60918
INT/ARB - 9563
Dec. No. 30726-A

To Initiate Interest Arbitration
Between the Petitioner and

CITY OF MARSHFILELD

APPEARANCES:

Mr. Gerald Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union

Ruder Ware, by Mr. Dean R. Dietrich, appearing on behalf of the City

ARBITRATION AWARD

The Marshfield Clerical/Technical Employees Union, hereinafter the Union, and the City of Marshfield, hereinafter City or Employer, reached impasse in their bargaining for the 2002 - 2003 collective bargaining agreement. They submitted their final offers to the Wisconsin Employment Relations Commission and the Commission certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the captioned matter was held on February 26, 2004 in Marshfield, Wisconsin. The parties submitted post-hearing briefs and reply briefs that were received by June 3, 2004.

FINAL OFFER ISSUES IN DISPUTE:

Union

During the course of their bargaining the parties reached tentative agreement on several issues which are not in dispute before me. Additionally, their final offers contained the following proposals about which they both agreed:

1. Wages

   1/1/02 3% 1/1/03 3%

2. Create New Article 25 –Post Employment Health Plan

   "The City agrees to establish a Post Employment Health Plan (PEHP) in accordance with applicable sections of the Internal Revenue Service Code with the employee paying any administrative costs. Beginning on the first payroll date following the passage of the insurance change, the City will contribute $140.00 per year to a PEHP account for each full time (pro-rated for part-time) bargaining unit member as a health care contribution that is non-pensionable under the Wisconsin Retirement System."

3. The parties' proposals regarding modifications to the existing health insurance plan are the same with respect to the substantive aspects of the plan modifications. They have, however, proposed different language concerning implementation of these changes. Those differences will be discussed later.

   "Section 1. The City shall contribute to the cost of premiums for the hospital/surgical insurance program, the life insurance program, and the dental insurance program, in the following manner.

   A. The City will pay ninety percent (90%) of the cost of premiums toward the Security Health Plan deductible insurance plan provided by the City, including prescription drug and vision coverage. Employees will pay the difference of the premium, which will be deducted from their paycheck twice a month by the City.

      Effective upon implementation of award (effective on the first day of the month following ratification by both parties of the decision of an arbitrator) [1] the health plan will include an annual deductible, with a $250 per individual and a maximum family out-of- pocket expense of $750. In

[1] The bracketed language is contained in the Union's final offer whereas the rest of this quoted language is lifted form the City's proposal..

addition, there will be a co-pay on prescription drugs utilizing a $10 for generic and $20 for brand name drug benefit card."

There are two proposals upon which the parties were not able to reach agreement. They are as follows:

1. Wages

Union: "Effective the first day of the month following ratification by both parties or the decision of an arbitrator each wage rate shall be increased by twenty-four cents ($0.24) per hour."

Employer: "Effective with insurance change - $.14/hour lift"

2. Union Activity

Union: "Employees shall experience no loss of pay or benefits for time spent during normal working hours attending grievance sessions, hearing and bargaining sessions scheduled by the employer or scheduled mutually by the employer and the Union.

Employer: The Employer does not have a proposal matching the Union's or otherwise dealing with pay for employees engaging in Union activity during working hours.

BACKGROUND:

As can be seen in the parties final offers, this dispute centers on how much of a quid pro quo is required for accepting the agreed upon changes to the existing health insurance plan currently being provided to bargaining unit employees. The City has offered $.14 per hour whereas the Union is requesting $.24 per hour. Additionally, the City has offered, and the Union has accepted, as a part of the quid pro quo, a PEHP plan with the Employer contributing $140 per year per employee and the employees being responsible for the administrative costs of the plan.

There are six bargaining units with which the City negotiates. They are Police, Wastewater, Dispatch/Ordinance Enforcement Officers, Fire fighters, DPW and this bargaining unit. The City reached voluntary agreement with all of the other bargaining units except DPW

and this unit. The City proposed the same health insurance plan and PEHP plan in each of the six bargaining units, as well as a quid pro quo adjustment to wage rates in addition to the agreed upon across the board wage increases. The wage adjustment offered to each bargaining unit differed in amount, but was calculated utilizing the same methodology applied to each bargaining units' health insurance usage during 2000. The DPW bargaining unit was also in arbitration at the time of the hearing in this matter. The arbitrator in that case issued his decision adopting the City's final offer on May 7, 2004.

DISCUSSION:

The arbitrator is constrained to apply the following statutory criteria established for the evaluation of the parties final offers in deciding which offer to select.

> 7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal Employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
> 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal Employer than to any of the factors specified in subd. 7r.
> 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
>
> a. The lawful authority of the municipal Employer.
>
> b. Stipulations of the parties.
>
> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
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> d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
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> e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
>
> f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

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

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact–finding, arbitration or otherwise between the parties, in the public service or in private employment.

The parties have focused their arguments on several of the criteria enumerated in section11.70 (4)(cm)7r. While there is record evidence of the economic conditions within the jurisdiction of this municipal employer no serious reliance has been placed upon that evidence by either party to this proceeding.

Union Activity:

The Union has proposed adding new language to the parties' collective bargaining agreement providing that

> "Employees shall experience no loss of pay or benefits for time spent during normal working hours attending grievance sessions, hearings and bargaining sessions scheduled by the employer or scheduled mutually by the Employer and the Union."

The Union argues that its proposal is "common and facilitative". It contends that the current language concerning time off for Union activity does not cover grievance handling or bargaining. It also contends that under its proposal grievance and bargaining sessions need not be scheduled during work hours, but when it suits both parties to do so employees will not be penalized by loss of wages. According to the Union, its language gives the parties grater latitude in scheduling. It gives as an example the hypothetical case a Union member who prefers to schedule a meeting outside regular business hours to avoid lost wages but can't because a manager may not be available after normal work hours and contends that situation would not arise under its proposed language. However, scheduling would still remain the decision of the City and the Union. The Union also notes that the internal comparables support its proposal in that the Dispatchers bargaining unit permits them to attend bargaining sessions

during work hours, and that is what the Union is seeking in this unit. It also notes that in the same bargaining unit the contract provides that dispatchers "shall not suffer a loss in wages or benefits for time spent at the arbitration hearing".

The City contends that the Union's proposed language is unnecessary. It argues that the Union has offered no quid pro quo for this new benefit or provided any evidence that the provision is needed. It asserts there is no evidence that there have problems in the past regarding payment of employees for doing Union business during work hours, thus there is no basis for the proposal.

The current language provides that the Union "will be allowed a total of thirty-two (32) hours off annually without pay for members to attend union conventions, conferences, schools and other union activity." While there is a notice requirement in the current language there is some protection for members engaging in Union activity during work hours, albeit very minimal (32hours). However, the testimony of Union witness Schueman was that in 2003 members attended mediation session(s) during work hours without loss of pay and that similarly in 2004 there was no loss of pay for Union member(s) attending grievance meeting(s). He testified in those cases the parties discussed how to work out the pay issue and were able to reach agreement.

Thus, while the contract does not require it the parties have, in the past, been able to conduct Union/Employer business during work hours without Union members loosing pay. Furthermore, the Union's proposal still requires mutual consent for Union members to being paid for meeting during work hours inasmuch its proposed language requiring pay only becomes operative when the Employer schedules the meeting during work hours or when the Employer and Union mutually agree to meet during work hours. However, left unaddressed by the Union's proposal is what happens in the case of hearings and/or meetings involving the parties that are scheduled by other parties requiring Union members participation, e.g. prohibited practice hearings, interest arbitration formal investigations, etc.

In the case of the internal comparables the Union asserts that the Dispatcher's contract affords protection similar to what it seeks. However, a close examination of the Dispatchers' contract language reveals that only the grievant "or other employee subpoenaed to attend the grievance hearings shall not suffer a loss in wages or benefits". That language is far less

expansive in that it only pertains to grievance arbitration hearings and requires that the employee be subpoenaed to attend. The Union also cited the Police bargaining unit contract as support for its proposal. However, that contract provides that business agents and Union representatives not just any employee can meet with on duty officers for a reasonable amount of time during the officers work shift. The language also permits members of the Union's bargaining team to attend bargaining sessions "at the discretion of the police chief or his designee". In the undersigned's opinion neither of these contracts provides support for the Union's proposal herein.

Furthermore, the evidence submitted by the Union relative to the external comparables makes it clear that when there is compensation afforded to employees it is only to those employees who are also Union representatives and then only upon authorization of the supervisor or other management representative. The Union's proposal in this case is not limited to compensating Union representatives. Rather, it calls for any "employee" attending a grievance meeting, hearing, or bargaining sessions to be compensated. Written in such broad terms it leaves open the question of which employees can attend. The language stating that the sessions must be mutually scheduled or scheduled by the employer does not address the question of who is to be compensated for attending other than to say any employee who attends. It doesn't say Union officer, Union representative, authorized by the Employer or attendees jointly agreed upon by the Union and City. There is no support for such an expansive proposal among the external comparables either.

Finally, in the undersigned's opinion, besides not having any support among the internal or external comparables, there is little practical benefit or effect to the Union's proposal for its members. And, the proposal certainly does not have such significant implications for either party that it can be outcome determinative of which final offer is selected. Thus, it has not weighted significantly in the undersigned determination of which offer to select.

Health Insurance:

The City makes several arguments in support of its proposed changes to the health insurance plan. It notes that with drastic increases in health insurance premiums employers nation-wide are revising their health insurance plans so that they can continue to offer their employees this valuable benefit at manageable prices. Here the Union has agreed to the changes of increasing the deductibles from $200/$400 to $250/ $750 for single and family coverage, respectfully, and from $5/$10 to $10/$20 drug co-pays for generic and brand name drugs respectively. The only unresolved health insurance issue is the amount of the quid pro quo. The City contends its offer of a $.14 per hour wage adjustment is calculated to fairly compensate employees for the changes to the health insurance plan based upon the usage in this bargaining unit, that the amount is reasonable and generous, and the same formula was used to calculate the quid pro quo offered to the other bargaining units that have voluntarily agreed to these health insurance plan changes.

The City also has proposed a second quid pro quo of a PEHP to which it will contribute $140 per year per employee with the employees being responsible for any administrative fees for the plan. [2] Taken together the City believes its quid pro quo more than make up for the changes to the health insurance plan.

The City also argues that the Union's quid pro quo proposal of a $.24 per hour wage adjustment is overreaching without justification or relation to this bargaining units' usage or the methodology used in calculating the quid pro quo in the other bargaining units. Furthermore, the City contends that the Union's quid pro quo is derived by dividing the amount of premium savings the employees will receive by the number of employees. It insists that the quid pro quo is designed to compensate employees for the additional costs they will incur not to compensate them for the money they will be saving. It also notes, that in addition to the $.24 per hour wage adjustment the Union seeks the PEPH plan being offered by the City as part of its quid pro quo, and it mistakenly utilizes the fees associated with it in order to achieve a larger quid pro quo. The City also argues that maintaining internal uniformity in the manner in which the quid pro quo was calculated is important and when coupled with the amount of the City's quid pro quo should be determinative of the outcome in this case.

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[2] There is a $30 administrative fee in addition to an annual actuarial risk fee of 0.5% of the daily net asset value in the Variable Annuity Investment.

The Union argues that the City is saving $.38 per hour averaged among the employees in this bargaining unit. It also contends "that a reduction in the City contribution to health insurance premiums is a measure of the additional cost of coverage that the employee is assuming". It concludes the cost shift to employees on average is $.264 per hour, and represents the City's savings in 2003 premiums and is a measure of what quid pro quo is warranted. It contends that neither the City's or Union's proposed quid pro quo is sufficient to offset the cost shift to employees. It also notes that after the PEHP plan administrative costs and fees are assessed to the employee the City's $140 annual contribution per employee is reduced to $109.45 or $.056 per hour. It also notes that even thought there is a tax benefit to the City and its employee because the City and employee do not have to pay social security or income taxes on PEHP contribution amounts the employee loses social security credit. Thus, it concludes the PEHP is cheaper for the City and less beneficial to the employee.

The Union contends that according to its calculations, when the City's proposed PEHP benefit and wage adjustment are taken together the employee receives $.14 plus $.0526 totaling $.1926 per hour in a quid pro quo. Whereas, when that amount is compared with the $.264 per hour cost shift to employees resulting from the insurance plan changes the employees would lose $.0714 per hour while under the Union's proposal the employee would gain $.0286 per hour. The Union argues that the City has provided no explanation for this loss and, thus, the Union believes that the City's proposed quid pro quo is inadequate.

In its reply brief wherein it responds to the City's claim that the Union has used inaccurate numbers regarding the number of employees participating in the single and family plans, the Union asserts that the City premium savings and resulting cost shift to employees is the equivalent of $.19 per hour per employee. The Union notes that the calculation stated in its initial brief was based upon 2003 rates, but if the same calculation is done using 2001 rates the savings to the City is $.195 per hour. Thus, even using the revised figures it concludes that the City's quid pro quo is inadequate.

The Union also contends that the City's costing for the health insurance plan changes is faulty. It bases its costing on plan usage in each bargaining unit, but fails to use the base year 2001 in its calculations. It argues that the City's costing method differs from that used for determining premiums, which is all participants under each plan, and ignores the purpose of

insurance of spreading the risk over a wider base. Also, even thought the City claims it used the same costing method in other bargaining units it failed to illustrate in detail that costing to verify its assertions. It also notes that the City's costing ignores the fact that in 2003 an employee that paid no deductible in 2000 might end up paying the whole deductible. Thus, the City's calculations do not account for the probability of use which insurance companies' use in determining premium. The Union concludes that its quid pro quo should be favored over the City's because its calculation most closely matches the savings the City will enjoy and that will grow with time.

The undersigned believes that the Union's contention that the City incorrectly used 2000 as the base year in its calculations is misplaced. It ignores that the parties collective bargaining agreement provides in Article 27 that August 1, 2001 was the date specified for reopening the contract to bargain a successor agreement to the one expiring on December 31, 2001. That same article also provides that the first bargaining session for the successor agreement occurs on or about the following September 1st. In order to utilize the methodology employed by the City in calculating the value of its wage adjustment quid pro quo (the prior year's employee insurance plan usage) necessarily meant that the City had to use 2000 as it as base year for that purpose if there was any hope of reaching voluntary agreement for a successor contract by the December 31, 2001 expiration date. Also. The other bargaining units were also a part of the City's bargaining approach to health insurance changes and there is no record evidence showing that they were treated differently in this regard. Thus, in light of the methodology employed by the City, which I agree has some flaws, using 2000 as the measuring year was not an unreasonable decision on the City's part. Obviously, the other four bargaining units that settled voluntarily didn't deem it a concern sufficient to preclude them form reaching a voluntary agreement on the wage adjustment quid pro quo.

An ancillary issue related to the health insurance plan changes is the effective date of those changes. The Union charges that the City's language provides that the plan changes will become effective upon implementation of the award whereas its proposal provides for the changes to become effective on the first day of the month following the decision of the arbitrator. The Union contends that its implementation language is definite whereas the City's language is indefinite and raises the question that if the plan changes are implemented in the middle of the

month would there be a blended premium and, if so, then the rates charged would be different from the rates in evidence in this proceeding. The City counters that this is a non-issue. While the City agrees that the implementation language in each final offer is different the meaning and intent are the same. It says it has no intention of implementing the new plan in the middle of the month so there is no concern about blended rates. It assures the Union and the arbitrator that the new plan will be implemented "as soon as practicable after the Arbitrator's award and that implementation will occur at the beginning of the month".

Implementation of the insurance plan changes resulting in additional cost to employees has already been delayed by more than 30 months from when they first could have taken effect. Additionally, the City has stated it will implement those changes effective the first of the month following the undersigned's award and not mid-month. Under these circumstances, the undersigned concurs with the City that this is a non-issue and should have no impact upon my decision as to which final offer to select.

Unlike the Union Activity proposal, clearly, the issue that is determinative of which final offer is selected turns on the sufficiency of the quid pro quo for the insurance plan changes. Arbitrator Torosian discussed the question of what constitutes a sufficient quid pro quo in Oconto Unified School District, Dec. No. 30295-A (10/02),

> ... There is no set answer as to what constitutes a sufficient quid pro quo. It is, in the opinion of the Arbitrator, directly related, inversely, to the need for the change. Thus, the quid pro quo need not be of equivalent value or generate an equivalent cost savings as the change sought. Generally, greater the need, lesser the quid pro quo.

Other arbitrators have also addressed the issue of the sufficiency of the quid pro quo being offered for proposed changes in the health insurance plan provided for in the parties' collective bargaining agreement. These arbitrators have engaged in an analysis of the adequacy and reasonableness of the proffered quid pro quo and not surprisingly have found it to be adequate and reasonable in one circumstance and yet not so in another. Their conclusions are clearly based upon the unique facts of each case and thus no general rule regarding what constitutes a sufficient quid quo pro has emerged. Thus, the analysis in this case will necessarily be driven by the unique circumstances surrounding this bargain.

The Union has argued that the City's methodology used in calculating the

value of its proposed wage adjustment and PEHP plan quid pro quo is flawed. While clearly other methodologies could have been employed by the City in deriving its quid pro quo for the insurance plan changes it proposed, and the undersigned agrees there are flaws in the methodology utilized, bottom line four of six other City bargaining units voluntarily accepted the City's proposal based upon utilization of same methodology.[3] Additionally, the City's final offer was selected by arbitrator Dichter in the DPW bargaining unit arbitration involving this same Union. The undersigned believes that internal comparability in matters of a fringe benefit as significant as health insurance should, aside from the greatest weight and greater weight factors, receive paramount consideration.

Other arbitrators have concluded similarly. See arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91); arbitrator Malamud in Greendale School District, Dec. No. 25499-A(1/89); arbitrator Nielsen in Dane County (Sheriff's Department), Dec. No. 25576-B (2/89); arbitrator Kessler in Columbia County (Health Care), Dec. No. 28960-A (8/97); and arbitrator Torosian in City of Wausau (Support/Technical), Decision No. 29533-A, (11/99). And arbitrator Dichter said as much in his recent decision involving the Union and City in the DPW bargaining unit arbitration.

> "Therefore, based primarily on the internal comparables, the Arbitrator adopts the proposal of the employer."

Thus, unless there is some basis for distinguishing the factors which drove the voluntary settlements in the other City bargaining units and arbitrator Dichter's award in the DPW unit from those present in this bargain, such that internal comparability is not the paramount consideration, the outcomes should be the same. There has been no such evidence presented in this case.

The thrust of the Union's arguments have been that the City's quid pro quo is insufficient to compensate employees for the increased costs to them of the insurance plan changes, not that the impact of those changes upon them is significantly different from their impact on employees in the other bargaining units that have already implicitly agreed to the methodology employed by the City to derive the value of the quid pro quo being offered. Also. there is no record evidence that the methodology employed was utilized to merely provide a starting point from which to

[3] The Union has asserted that there is no proof that the same methodology was used with the other bargaining units, but it has offered no proof in support of that claim.

begin bargaining about the amount of the wage adjustment. Nor that the final wage adjustment(s) agreed to in the other bargaining units differed from the amount of the adjustment generated by the methodology utilized by the Employer. Finally, the fact that the City's wage adjustment quid pro quo reimburses this unit's employees for $.1926 per hour, approximately 73% of the alleged cost shift to them, does not seem unreasonable or insufficient under the circumstances of this case.

The Union also argued that the Marshfield Water and Electric Utility should be considered as one of the internal comparables. The City disagrees arguing that the entity is governed by a separate board and that board is not the governing body that decides the level of wages and fringe benefits for this bargaining unit. It also notes that the utility has not been found to be an internal comparable in prior arbitrations when the issue has been raised. In the most recent arbitration involving the DPW unit and the same health insurance issue arbitrator Dichter concluded that it was not an appropriate internal comparable. I find nothing in Dichter's analysis to take issue with and therefore also find that the Marshfield Water and Electric utility is not currently an appropriate internal comparable for this bargaining unit. If facts change in the future then obviously the issue would need to be re-examined.

Neither in its initial or reply briefs does the Union argue that there is support for its wage adjustment quid pro quo proposal among the external comparables and, therefore, the undersigned sees no need to address the question of external comparability regarding this issue.

Based upon the evidence, testimony, and argument presented, and application of the statutory criteria contained in Section 111.70 (4) (cm) that are to be utilized in determining which offer to select to the facts of this dispute, the undersigned enters the following

AWARD

The City's final offer is selected and shall be incorporated into the parties' 2002-2003 collective bargaining agreement.

Entered this 17th day of July 2004.

Thomas L. Yaeger
Arbitrator