STATE OF WISCONSIN

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of the
Dispute Between the

City of Marinette Department of Public Works Employees Union, Local 260, AFSCME, AFL-CIO

and

City of Marinette

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WERC Case 94
INT/ARB 9993
Decision No. 30894-A

Appearances:

Mr. Dennis O'Brien, Rhinelander WI for the Union. Mr. John Haase, assisted by Ms. Kim Gasser, Godfrey & Kahn, S.C., Attorneys at Law, Green Bay, WI for the City.

Sworn Testimony was received from:

Mr. Douglas Oitzinger, Mayor, City of Marinette, Marinette, WI.

Background

Representatives of City of Marinette (hereinafter referred to as the "City" or the "Employer") and the Department of Public Works Union Local 260 (hereinafter referred to as the "Union" or the "Employees") exchanged proposals on issues to be included in a new collective bargaining agreement for the years 2003-04.

The Union represents all full time and regular employees in the Departments of Public Works, Parks, Cemetery, and Wastewater, excluding certain managerial, supervisory, clerical and office employees and Recreation Department employees. The Parties exchanged offers and met on several occasions and failed to reach an agreement. On September 2, 2003 the Union filed a petition with the Wisconsin Employment Relations Commission for final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 Wis. Stats. Investigator Laurie A. Millot, a member of the Commission's staff, conducted an investigation and then advised the Commission that an impasse existed. The parties submitted final offers to the Commission by March 19, 2004. On April 30, 2004, the Commission certified the parties' final offers and directed them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed June

1, 2004. He conducted a hearing on the matter on August 24, 2004 at Marinette City Hall, Marinette, Wisconsin. No transcript of the hearing was taken. Both parties had an opportunity to present exhibits and testimony and to outline their arguments in this dispute. They agreed to a schedule for submitting certain additional exhibits, and exchanging briefs and replies; the Union subsequently submitted a rejoinder to the Employer's reply brief which was followed by a response from the Employer.

The Issue(s)

Many issues arose in the process of negotiating this successor agreement, but were resolved in the bargaining process. Four issues remain in contention: wages, the Employer's contribution to a Health Reimbursement Account, the Employer's contribution to the dental plan, and the number of days of personal leave. Evidence and argument of the parties focused mainly on the wage and health insurance dispute, however. The Union proposes to raise wages 3.25% in each year. The Employer proposes to raise wages 1.5% in 2003 and 2.35% in 2004. The parties are in agreement to switch to a PPO health care plan in 2004 which has a single co-pay maximum of $500 and family maximum of $1500 for in network services and maximum payments of $900/$2500 for out of network services. The Union is also agreeable to having employees now pay 5% of the insurance premium; previously they had not contributed to it. The Union proposes employer contributions of $400/$1000 to each employee's Health Reimbursement Account to cover part of the co-pay costs while the Employer proposes to contribute $250/$500. Currently the Employer pays 45% of the family dental plan and 100% of the single plan. The Union proposes that the Employer pay 75% of each. Finally, the Union proposes to increase the personal leave days from 1 ½ to 2.

A related issue has factored in this dispute. This is the matter of what constitutes the appropriate external comparable group. The Union would use Rhinelander, Merrill, Antigo, and Two Rivers, Kaukana, and Sturgeon Bay (as would the Employer) as well as DePere, Menasha, and Shawano. The Employer would exclude Menasha and DePere but would not object to Shawano.

The Employer calculates the wage rate and benefit increases proposed by the parties in their final offers as follows:[1]

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[1] EX 5-10. The Arbitrator calculated the percentage changes.

	Union offer	%change	City offer	%change	difference (%)	
2002 salaries	$638,378					
fringes	270,685					
package	909,063					
2003 salaries	$660,045	3.4	$648,900	1.6	$11,145	1.8%
fringes	308,151	13.8	306,250	13.1	1,900	.7
package	968,197	6.5	955,151	5.1	13,045	1.4
2004 salaries	$683,189	3.5	$665,757	2.6	$17,432	.9
fringes	361,984	17.5	348,562	13.7	13,421	3.8
package	1,045,173	8.0	1,014,319	6.2	30,854	1.8
Two year difference					$43,900	

The Employer's calculations include a $11,967 ($4,426) employer cost of family (single) health insurance for 2003 and $14,303 ($5,355) cost of family (single) health insurance for 2004 which are blended rates assuming implementation of the PPO plan effective Sept. 1, 2004. The prior plan costs $14,273 ($5279) while the PPO plan costs $13,539 ($5,007). It includes the $500/250 Health Reimbursement Account payments for the Employer's offer and $400/1000 for the Union's offer.

The Statutory Criteria

The parties have directed their evidence and arguments to the statutory criteria of Sec. 111.70 (7) Wis. Stats. which directs the Arbitrator to consider and give weight to certain factors when making his decision. Those factors are:

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.

7. g. '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 under subd. 7r.

7. r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give weight to the following factors:

a. The lawful authority of the 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 settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding 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 proceeding with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally 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 employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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

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

Arguments of the Parties

The Union

The Union contends that there are two major issues in this dispute and then other, lesser issues. Of greatest significance is the very "low-ball" wage offer of the City in comparison to the Union's offer which is very similar to settlements among the comparables. The second major issue is the significant increase in health care costs shifted to employees; while the parties are agreed on the health care plan which involves large costs to employees, they disagree on the amount of employer contribution to the Health Reimbursement Account. The dental insurance offer of the Union proposes to increase the Employer's share of the premium for the family plan from 45% to 75% and reduce its contribution towards the single premium from 100% to 75%. It also proposes to increase by ½ day the amount of time for personal leave. Primarily, the Union asserts that its offer is more consistent with the pattern of other settlements of comparable employers, and begins to reverse the unit's employees' deteriorating compensation viz comparable employees.

There is a dispute over the composition of the comparables. The Union would use Rhinelander, Merrill, Antigo, Shawano, and Two Rivers (as would the Employer) as well as DePere, Kaukana, Menasha, and Sturgeon Bay. All are approximately within 100 miles, have populations between about 8000 and 2100, and are similar in other respects.

In examining the statutory criteria, the Union asserts that its offer is the most reasonable. There is no evidence that the "greatest weight" factor favors the Employer since there is no law or directive preventing the City from implementing the Union's offer. The City also cannot claim that its local economic conditions gives its offer preference. Marinette is a diversified economy and has followed national and regional economic trends, suffering no more that others during the economic slump and less than several of the comparables. High-paying manufacturing jobs comprise a significant part of the City's workforce placing it in a relatively good position in terms of income levels. Unit employees provide vital services to the City at reasonable costs. They have suffered a reduction in the workforce of one-third over the past eight years and are now facing a substantial cost increase for their health care. They have been treated poorly and as a consequence, morale is suffering, which is not in the interest of the public. With regard to the ability to pay for the Union's offer, there is no evidence that the City cannot pay; its unwillingness to pay is simply a matter of discretion on how to spend funds and tax. The City has simply decided it wants to freeze the levy and pay for the TIF district by cutting employee wages and benefits.

The City cites Arbitrator Weissberger's City of Princeton award for support that the loss of revenue sharing causes the "greater weight" factor to favor its offer.[2] However, in that case there was a loss of $50,000 revenues and a unit of 4.4 full time employees; in Marinette, the loss of $191,000 is out of a $10 million budget which includes over 100 employees. The difference in the offers is .0022% of the 2 year budget.[3] Marinette's fiscal condition compares favorably with the comparables except that it is the lowest in the growth of the municipal levy, growing 24% over the past 10 years vs. an 84% levy growth. Marinette's levy rate is lower than average, and dropped from $8.43 to $7.76 between 2002 and 2003. The mayor's testimony that the survey showed that people did not want to raise taxes is simply self-serving and of no value. There is no evidence that the City is uniquely distressed, and while these have been tough times for all levels of government in Wisconsin, Marinette employees have suffered their part through the loss of 12 positions,

[2] Dec. No. 30700-A (March 2004)

including 4 in 2004 which reduced wages by $200,000. The argument that the city cannot pay the employees' offer because it hasn't budgeted the money is to be rejected since if it were to be given merit, employers would simply only budget their own offers, as noted by Arbitrator Imes.[4]

Comparisons of the City's offer to unit employees with wages paid other employees' shows that it is clearly out of line. It offers 1.5% and 2.35% in 2003 and 2004, respectively, while the Union's offer is 3.25% each year. All of the comparables (excepts Sturgeon Bay which is not settled) have provided wage increases similar to the Union's offer, from a low of 2.75/2.75% in DePere to a high of 3.75% /2/2% in Rhinelander, and average 3.38% and 3.25%. The City may claim that Marinette is a wage leader, but the evidence shows that wages have fallen to average (Laborer) or less (Heavy Equipment Operator) and will remain there if the Union's offer prevails, and will be less than average if the City's offer is accepted.

The City's offer continues a precipitous decline in unit employees' relative wage position among the comparables. During the past 5 years the average comparable employee has had wage increases of about $2.50 (Laborer) to $2.75 (Heavy Equipment Operator). Under the Union's offer unit employees' wages will have risen just $1.95 ($2.06) but under the City's offer they will rise only $1.53 ($1.61). The Employer attempts to confuse the matter by including longevity, health, and dental coverage in comparisons. Even with longevity, the City's offer will result in wages falling to below average. Its package comparisons are of dubious value since it compares "apples and oranges, and is misleading when it includes the maximum reimbursement of co-payments and deductibles for Marinette. There is no evidence of whether or how often maximum reimbursement occurs.

There have been no internal settlements for comparison. All bargaining units have rejected the attempt by the City to sell its offer. The Police and the Fire units have proposed 6% and 6.15% wage increases over the two years in contrast to the City's lowball 3.85% offer. The City repeatedly in its brief has made the argument that its offer should be accepted based on the internal pattern. There is no internal pattern; all bargaining units have rejected the City's offer. All that exists are the conditions imposed by the City on its unrepresented employees. Arbitrators have consistently discounted unilaterally determined "settlements" of non-represented employees when

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[3] Union Reply brief, p. 16.
[4] City of Franklin, Dec. No. 19569-A (Nov. 1982).

making comparisons as not reflecting the "give and take" of bargaining.[5] The City's arguments about internal consistency is off the mark. First, all bargaining units are on board with the new health plan including a 5% employee premium payment; there are only small differences in offers for the HRA contribution of the City. Second, the notion that since the unrepresented employees will receive only a $250/500 HRA contribution, the "pattern" is established is wrong since all other groups are unsettled. Third, the City's argument that it always is consistent in its settlements with the various units is ridiculous; there has only been a uniform settlement in 3 of the past 14 years. Finally, the argument that the City can't administer different benefits is countered by the fact that it has already settled on a different plan with the water department employees.

The City's proposal for health care is also unreasonable. While the City in its brief repeatedly misstates the Union's position as being totally focused on the inadequate wage offer of the Employer, the City's bargaining units have really proposed a significant change in the status quo, assisting the City in controlling health care costs. They proposed the plan design change which increases out of pocket costs to employees, but resisted premium contributions. Eventually they also agreed to premium contributions, but proposed a new benefit, the Health Reimbursement Account, to soften the blow for the very large increases in the out of pocket costs. Other units did the same. It proposes that the City pay $400 /$1000 (single/family), similar to other units while the City has offered $250/$500. The City's health insurance premiums are not out of line with those of the comparables. Employees pay 0% of the premium in Sturgeon Bay while those in DePere pay 15% of the premium; in 3 cases they pay 10%, in 4 they pay 5%. The Employer payments for the family plan in 2004 range from $841 to $1337 while it is $1072 in Marinette. Similarly employer payments for the single plan in 2004 range from $298 to $464 while it is $396 in Marinette. The city contends that it could obtain the plan changes without a *quid pro quo* because the comparables supported such a plan of premium contributions; this is not the case, and so the Union created its own *quid pro quo* for the large loss to the employees with its offer for increased employer contributions to dental insurance as well as the small change in the number of personal leave days.

The Union has given up the indemnity plan for a PPO plan. It has given up the Employer's reimbursement for the $500/$1500 deductible under the prior plan. It has given up the reimbursement of half of the coinsurance ($200/500 of $400/1000) as well as *in vitro* fertilization coverage and it allows the City to change the carrier. Under the new plan, employees will have the

[5] for example, Arbitrators Johnson in Potosi School District, Dec. No. 19997-A, (April 1983), Kessler, in Webster School District, Dec. No. 23333-A, (Nov. 1986), and Malamud, in West Allis-West Milwaukee School District, Dec. No. 21700-A (Jan. 1985).

same $500/$1500 deductible and be exposed to as much as $400/$1000 in co-pays for out of network services. After subtracting the City's offer of HRA contributions, an employee will be exposed to as much as $650/$2000 in costs, which is $400/$1500 more than under the prior agreement—in addition to the new $250/$677 premium contribution. While the Employer may argue that employees will not have to make such payments if they stay in network, not all service providers (many oral surgeons, chiropractors, etc.) will join the network. Even in network, the City's offer raises out of pocket costs by as much as $250/$1000 ($500/$1500 partially offset by the $250/$500 contribution) while the Union's offer raises it $100/$500; considering the premium payments the Union's offer is clearly more reasonable. It has recognized a problem of rising health care costs, has made a reasonable proposal, and has proposed a reasonable *quid pro quo*. The City has erroneously attempted to raise its contribution to the HRA to be the *status quo* and contend that the Union's offer is trying to change it; but the differing offers are just that-- either is really a major concession by the Union.[6] The fact remains that under the prior plan employees were exposed to maximum out of pocket costs of $200/$500 (S/F) and now are exposed to $900/$2500 costs mitigated by only $250/$500 vs. $400/$1000 in HRA contributions. Additionally the Union has conceded payment of 5% of the premium, and will forgo 4th quarter carryover of deductibles and *in vitro* coverage. These are significant concessions.

The Union's offer for the dental premium is very reasonable. While those on the single plan would now pay 25% of the premium, those on the family plan would pay 25% instead of 55%. The City would be paying the same percent for both each as is the case among the comparables. Comparable employers pay on average 52% of dental premiums; some pay 0%, some pay 100%. Four would be paying more that Marinette under the Union's offer, and five less. The Union's offer is identical to the other city units.

The Union's offer for the personal leave is also very reasonable, if one were to compare this unit's benefits with similar employees. It is within the range of comparables and less than that given to the City's water department employees. The proposal has little cost, and is part of a reasonable *quid pro quo* for the significant health concession. The City has argued that in both the case of the increased dental payments by the City and the increased personal leave the Union has failed to offer a *quid pro quo*. This argument is misplaced. As noted by Arbitrator Petrie, such increases are like proposals for wage increases and entail the normal give and take of the bargaining process and not like the establishment of a new benefit or the elimination of an existing one which would entail

[6] Union Reply Brief, p. 5.

the requirements for making *status quo* changes.[7] The Union proposes an improvement of these two benefits in consideration of its significant concession on health care while the City absurdly makes a wage offer which is not even in the range of the comparables. The health insurance premium payment alone will cost an employee on the family plan $677 per year which, if the Union's offer prevails, is only mitigated by $224 through the improvements in dental and personal leave.

The Union also addressed the merits of the two offers with regard to cost of living. Its offer addresses the significant decline of unit employees' wages which have occurred over the past five years. While living costs vary between individuals and over time, the Union notes that many arbitrators believe that this factor can be appropriately weighed when analyzing offers in comparisons with other settlements on the theory that this factor was considered and subsumed in those agreements.[8] The Undersigned has made similar conclusions, particularly as time goes by and the number of voluntary settlements increase.[9]

Finally, the Union also addressed the merits of the two offers with regard to overall compensation. In this regard, it asserts that unit employees' benefits are in the range of other, comparable employees but that the City is continuing its trend of cutting employees, cutting their wages relative to others, giving them no credit for assisting in reducing health care costs and instead significantly raising the employees' costs.

The Union cautioned the Arbitrator to carefully examine the Employer's costing data. The City credits itself with $700/$2000 contributions to health care costs (plus the premium) which overstates actual costs since there is no evidence that employees actually had such reimbursement of their deductibles and co-pays. The City may or may not pay the premium plus the full reimbursement for its employees so to compare premium plus maximum reimbursement with the comparables' employer contributions is misleading. Interestingly it gives itself the $2000 extra credit to show that Marinette pays more for health care than the comparables, but ignores it in the base costs to show a significant increase when it includes its contribution in the subsequent year to show a huge increase in health care costs.[10] Additionally, in Marinette County and Kaukana there are two plans with differing employer contributions; the City in its data chose the lower values to make it appear that the comparables pay less than the City of Marinette. In its costing it also

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[7] Town of Menasha, Dec. No. 30170-A (Oct. 2002).
[8] Arbitrator McAlpin, in City of Oak Creek, Dec. No. 30398-A (May, 2003), and Vernon, in Potosi School District, Dec. No. 29384-A (March, 1999).
[9] Arbitrator Tyson in Forest County, Dec. No. 2552-A, (Nov. 1999)

neglects inclusion of the wastewater employees. If the Employer were really to show true costs, it would include the $200,000 reduction in its costs by laying off 4 DPW employees. Finally, it contends that total costing is inappropriate the parties have never bargained on that basis.

In sum, the Union's offer is more reasonable. It has made significant concessions in health benefits to help resolve the issue of increasing costs, only to be offered an incredibly lowball wage offer. It has proposed modest increases in dental and personal leave benefits in compensation for its concessions, and has made a wage proposal which is very similar what the comparables have negotiated.

The Employer

The Employer has argued that the Union's offer would put undue pressure on the City's already stressed budget which faces a shortfall in revenues, particularly state shared revenues, and increased costs of health care benefits. Health care costs for unit employees have risen dramatically and is out of line with comparable employees. Its list of comparables includes cities which are more appropriate that those included by the Union. The Union's proposals for increased employer contributions for dental insurance and for an increase in the amount of personal leave are significant changes in the *status quo* for which the Union has provided neither a compelling need nor an adequate *quid pro quo.* While the City's wage offer is admittedly below the comparables, under the City's offer the city employees' wages and benefits package will remain above average, whether one uses either the Employer's comparable pool or the Union's. The Employer's offer is consistent among its bargaining units and maintains the internal pattern of settlements while the Union's offer attempts too much at this time of fiscal duress for the City.

The City of Marinette is facing stagnating revenues and has experienced a decline in population of .4% over the past four years. In 2003 its health care premiums increased 26% and had to consolidate some positions in order to balance the budget. In 2004 it suffered the loss of $191,000 in shared revenues, had increased loan payments of $131,000, and again had health care costs increase of 19.27%. It faced a deficit of nearly $1 million. The mayor surveyed the community regarding what approach to take in dealing with the matter and the result was that layoffs were the preferred choice. To balance the budget a number of employees were laid off (4 from the DPW), $270,000 was transferred from fire hydrant funds, non-union employees were moved to the new health insurance program and had to pay 5% of the premium, various fees were raised, and surplus

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[10] Union Reply Brief, p. 3.

funds were dipped into. The City simply cannot afford the Union's proposed increase in personal days, dental insurance premiums, high HRA contributions, delayed implementation of the new health care plan and its savings, and wage increases above what the City has offered.

The prior Blue cross/Blue Shield Co-Pay $500 plan had an annual front end deductible of $1500 with an additional co-pay of 20% on the next $5000. The City reimbursed the entire amount of the deductible and half of the co-pay so employees paid at most $500 and none of the premium. The City's costs have spiraled dramatically to $5126 for the single plan and $13,967 for the family plan, with employee contributions of only $200 or $500 at most.[11] Health expenditures have risen from 12% of personnel costs in 2000 to 18% in 2004. In response the City has moved non-bargaining employees to the new PPO plan and required a 5% employee premium contribution. This saved $56,000. Each employee was also given a health reimbursement account, as is offered to Local 260 employees, to offset some of the higher deductible and co-pay costs. Still, the City will be paying $13,362 ($5006) for employees choosing the family (single) plan including the $500 ($250) reimbursement. The parties' offers differ by $500 ($150) per family (single) employee; the Union's offer will cost the City an additional $7,600 annually.

In addition to the higher cost of the HRA, the Union proposes that the City's contribution to the family dental plan rise from 45% to 75% while the single plan contribution falls from the current 100% to 75%. The Union's offer will cost the City an additional $2,780 annually. There also is a Union proposal for the additional leave time which adds costs. Finally, the Union proposes that wages rise across the board by 3.25% each year while the City's proposal is for a 1.5% adjustment in 2003 and 2.35% in 2004. The Union's offer will cost the City an additional $ 11,145 in 2003 and $17,451 in 2004. The costs of these Union proposals will place unjustifiable pressures on the City's fragile budget.

The Employer cites Arbitrator Weisberger's recent award that recognized a decrease in state aids coupled with local economic difficulties to be considered part of the "greater weight factor."[12] She concluded that in such circumstances the employer did not need to show an inability to pay. Mayor Oitzinger testified as to the fiscal stress of the City. The City's shared revenues, which are around 42% of city revenues, increased a mere 1% in 2002 and 2003 and then were reduced $191,017 or nearly 4% in 2004. The city is less wealthy than many other cities, and already is highly taxed, so further reductions in aids will necessitate significant cuts in essential services. Moreover, the city already will have to cut basic services without the added costs of the Union's offer because it may

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[11] assuming that the City pays the maximum reimbursements of $700 and $2000.

still have nearly $300,000 of the $1 million shortfall to cover. The City has slashed capital outlays to less than a quarter of requests, pushing necessary projects further into the future. Four DPW positions have been eliminated, there are numerous (14.5 more) unfilled positions in other units, and several fees have been increased in an attempt to balance the budget. The City argues that arbitrators are more receptive to an employer's low offer based on ability to pay when it has done all it can in other areas in addition to personnel cost containment or reductions.[13] The dollars to meet the Union's offer just are not in the budget.

The City's list of proposed comparables are more appropriate than the Union's. While there have been two awards involving the City Employees Union, a clear determination of the set was not made. These decisions and others involving other units were examined by the City and several cities appear to be appropriate for inclusion and have been included by the Union. DePere and Menasha, however, should not be since they really are in another labor market (Fox River Valley/Green Bay) which is growing very rapidly in both population and income. Antigo, Kaukana, Merrill, Rhinelander, Sturgeon Bay, Two Rivers, and Marinette County are appropriate and are included in the Union's pool. The Union also proposes to use Shawano, which at hearing was agreeable to the City, though DePere and Menasha are not.

The City pays much more for health care than the average comparable, and the Union's offer will only widen that gap. In 2003 the City's monthly premium under the "old" plan was $997 while the comparables' average was $934. The City paid the full premium plus reimbursed the deductible and half of the co-pay while the comparables on average paid 95% of the premium. Thus Marinette paid premiums of $112 per month more per employee on the family plan plus up to $2000 per year, for a total of $3165 more per year. Under the new family plan employees would pay 5% of the premium plus at most out of pocket costs of $1500 ($2500 out of network) of which $500 is reimbursed if used, or rolled into the next year. All bargaining units have agreed to the plan, though they have differing offers for employer contributions to the ERA. Under the new plan, the City will still be paying more than comparable employers. Premiums for Marinette's family plan were $1128 per month while the comparables average $1064, almost 95% paid by those employers. Employees in the comparables have been paying towards their health care for many years, and the notion that Marinette employees should have a *quid pro quo* for now finally making a premium contribution "is unfathomable."[14] Arbitrators have agreed that when there is

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[12] City of Princeton—Electric Utility, Dec. No. 30700-A (March, 2004)
[13] Arbitrators Vernon in Sheboygan Water Utility, Dec. No. 21723-A (March 1985) and Malamud in City of Beloit-Bus Drivers, Dec.No. 22374-A (Nov. 1985).
[14] Employer Brief, p. 26.

complete support among external comparables of a proposed change, a *quid pro quo* isn't necessary.[15] In its reply brief the Employer cites Arbitrator Petrie's recent award for the Marinette police unit in which he opined that in cases such as this where a change is proposed in the *status quo* directed at resolving a mutual problem, a reduced *quid pro quo* or none at all is required.[16] He went on to indicate the *status quo* health plan was negotiated at a time where it could not reasonably anticipate the doubling of the premium, and therefore due to the nature and mutuality of the problem the City is not required to provide a significant *quid pro quo* for acceptance of the PPO plan with 5% employee contribution. To the contrary, since it is the Union which is seeking more beyond the 5% employees' contribution (which is supported by the comparables), it should be the one which offers other concessions—but it doesn't.[17]

The Union's demand for higher employer contributions to the HRA is unreasonable. While there are higher potential out of pocket expenses for employees than under the old plan (by $500), employees may not reach those amounts. They also can reduce their exposure by using network providers. The City will reimburse a third of the employees' expenses (in network). Under the City's offer it will still be paying $616 more annually per employee as its share of premiums than will other employers plus $500 for the ERA, or $1116 more per year. Under the Union's offer it will pay $1616 more. None of the other employers pay into an HRA. Arbitrator Petrie found that such an addition beyond the basic 5% plan was not supported by the comparables in the recent Marinette Police case. The Union's contention that the City is not distinguishable from other employers in facing high health care costs is untrue; it pays up to $3000 more per employee on the family plan.[18] In 2004 Marinette employees who use the network will pay $677 in premiums and up to $1500 deductibles (less $500) or $1677 per year under the City's offer while employees in the comparables will pay $699 in premiums, $450 in deductibles, and $369 in co-pays or $1518 per year. Under the Union's offer Marinette employees would only pay $1177 indicating that the Employer's offer is better supported.

Internal comparables also clearly support the Employer's offer for the ERA. The Employer noted that many arbitrators consider internal consistency, particularly for benefits, to be very important.[19] Non-bargaining employees are enrolled in the new plan and have HRA accounts with employer

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[15] Arbitrator Krinsky in White<u>fish Bay School District</u>, Dec. No. 27513-A (July 1993)
[16] <u>City of Marinette (Police),</u> Dec. No. 30872-A (Nov., 2004)
[17] Employer Reply Brief, p. 11.
[18] Employer Reply Brief, pp. 9-10
[19] Arbitrators Rice in <u>Walworth County Handicapped Education Board</u>, Dec. No. 27422-A (May, 1993), Raymond McAlpin, in <u>City of Oshkosh,</u> Dec. Nos. 28284-A and 28285-A, (Dec. 1995), and Nielson, in <u>Dane County</u>, Dec. No. 25576-A (Feb. 1989)

contribution of $250 and $400, consistent with the employer's offer. Moreover, they are paying 5% of the insurance premium. Acceptance of the Union's self-centered and unreasonable offer will only encourage other units to seek arbitration in search of a better deal. Internal comparables also support other aspect of the City's offer. The City has had a policy of internal consistency of its wage and benefit adjustments which should not be disturbed in this case. The Union is seeking the largest wage increase of all the units. It also seeks higher dental and personal leave benefits than provided other unit employees including those pending arbitration.

The Union has proposed significant changes in the *status quo* relationship. It seeks to increase the percent of dental insurance to be paid by the City as well as additional personal leave time. In order to win such changes in arbitration, to proponent must present a compelling need for the *status quo* change and offer sufficient *quid pro quo*. [20] Neither has been clearly and convincingly demonstrated in the instant case. Currently the City is paying dental premiums, both single and family, which are significantly greater than what the comparable employers pay. Its payments for the family plan is almost twice as much. Even the Union's comparable employers only pay 52%[21] of the family premium, which is much closer to what the City pays (45%) than to what the Union proposes (75%). Other City employees receive the same dental coverage as is included in the Employer's offer. Arbitrator Petrie found that the offer for increased family contributions by the Employer made by the Police unit was not supported by the comparables. Further, one would expect that if the Union proposed to expand two fringe benefits that it would show restraint in other parts of its offer, but it has done the opposite by proposing higher HRA contributions and wage increases greater than what the City was able to budget.

The Union has argued for a much higher wage offer than is offered by the City. In doing so it conveniently presents misleading data. It excludes lucrative longevity benefits of Marinette employees when making wage comparisons with the comparables and doesn't consider other costs, particularly health care. While acknowledging that the increase proposed by the City falls short of increases among the comparables, its salary structure inclusive of longevity and above average health insurance premiums will maintain Marinette City employees' ranking as second of eight while the Union's offer will "catapult" them to the top.[22] Moreover, since the City's proposal for 2004 will not be implemented due to the arbitration, its offer for wages and its premium payments for the current plan result in a percent increase in wages and health benefits for a laborer just under

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[20] Arbitrators Schiavoni in Columbia County, Dec.No. 28983-A (Sept. 1997), and Malamud, in D.C. Everest Area School District, Dec. No. 24678-A, (Feb. 1988).

[21] In its Reply Brief (p. 14) the Employer indicates the comparables pay 67.75% but Marinette still pays "head and shoulders more" because of the high premium.

the average increase for the comparables and an hourly wage and health benefit which is virtually tied for the top. The Union's offer is nearly .4% more and will result in an hourly wage and health benefit $ .44 above second place Kaukana. If the Union's comparable pool were used, a top Laborer in Marinette would receive the third highest wage and health benefit in 2003 under either offer and would increase their earnings differential over the comparables' average in 2004.

Using the Employer's comparable pool, the City's Top Laborer would rank 4th in wages and first in health care costs per hour under either offer. It would rank first in dental costs under the Union's offer and second under the Employer's offer. For all three costs, Marinette would also rank first under the Union's offer and second under the Employer's offer. On an hourly basis they would be paid $1.20 higher than average under the Employer's offer and $1.84 higher than average under the Union's offer. Using the Union's comparable pool, the City's Top Laborer would rank 6th in wages and first in health care costs per hour under either offer. It would rank first in dental costs under the Union's offer and third under the Employer's offer. For all three costs, Marinette would again also rank first under the Union's offer and third under the Employer's offer. On an hourly basis they would be paid $2.24 higher than average under the Employer's offer and $2.89 higher than average under the Union's offer. The Union's offer cannot be supported. Arbitrator Petrie found that the Police Union's offer for wages and the HRA could not be supported by the internal and external comparables and that offer included a lower wage (6%) increase than that which is proposed (6.5%) by the Public Works union.

The Union's offer for the additional personal leave time also cannot be supported. There is no documentation of need. None of the other units except the water utility employees have 2 personal leave days. The Public Works Department's companion local would seemingly be a more appropriate internal comparison. There is no evidence, given the above, of any *quid pro quo* for its proposed *status quo* change.

In sum, the Union is seeking too much. It seeks a higher HRA contribution by the Employer. It seeks status quo changes increasing personal leave and dental benefit for which it has not provided evidence of need or a *quid pro quo*. It seeks wage increases which, when added to the health and dental benefits are considerably more than the Employer's offer which is sufficient in comparison to employees in other cities. And it seeks wages and benefits increases beyond what is provided other Marinette employees. By receiving benefits which vary from other units, the Union's offer would raise not only bookkeeping issues but would invariably lead to "whipsawing" among city

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[22] Employer Brief, p. 41.

unions. Finally, it would result in additional, significant budget cuts to the City which is experiencing financial stress from its loss of shared revenues. The City's offer "is an economic necessity right now."[23]

Discussion and Opinion

The Statute requires the Arbitrator to consider the aforementioned criteria in making an award. The criteria cited by the Parties as pertinent to this decision are the "greater weight" factor (7g), as well as the interests and welfare of the public and the ability to pay (c.), internal and external (e. and d.) comparisons, cost of living (g.), and such other things (j.) including the issue of status quo changes. Each of these will considered below as the issues of this dispute have been considered by the Arbitrator. These issues include to what extent, if any, state aid reductions limit acceptance of the Union's offer, how the parties' offers compare with external and internal comparables, and what constitutes the external comparables which in part establish that pattern. First, the Arbitrator is will address the matter the "greater weight factor". The external comparables are in dispute in this matter, which will then be discussed to determine what he considers to be the comparables. He then will compare wages and benefits of these as well as discuss internal comparisons, following a discussion of other factors.

The Employer's contention that budget difficulties resulting from reduced state aides make the "greater weight factor" favor its offer is noted, though not found to be determinative by the Arbitrator, given the modest difference between the offers (calculated as ".0022% of the municipal budget" by the Union), the lower relative growth rate in its tax levy over the decade and the recent reduction in the levy. The City does not have an inability to pay for the Union's offer, though it may have difficulty. The difference in the offers calculated by the Employer is nearly $44,000. Mayor Oitzinger testified that the City faced a deficit of nearly $1 million due to a lower tax revenues related to economic stagnation, a loss of $191,000 in shared revenues (which are 42% of total revenues), increased loan payments of $131,000, and health care cost increases of 26% and 19%. It also must be noted that the City has made a choice to reduce the levy and to borrow to support TIF economic development efforts as well. The Arbitrator recognizes that most Wisconsin municipalities, and for that matter most governments in the U.S., have financial difficulties which continue from the 2001 recession but also from choices made about tax policies and rapidly escalating health care costs. Marinette appears to have lagged in income growth, as noted below. He also notes that its population has declined 1.4% over the 1992-02 period; the other comparables

[23] Employer Reply Brief, p. 16.

have grown with the exception of Two Rivers (-4.2%) and Merrill (0%) according to the DOR. Were the City relatively prosperous it would seemingly have attracted or at least maintained its population. Still, the City has made an effort to deal with its deficit beyond placing the burden on these employees; it has significantly reduced and deferred capital outlays, reduced services and laid off workers and left positions unfilled, transferred from fire hydrant funds, raised various fees and licenses, and surplus funds were dipped into. It can further use reserve funds to finance the Union's offer, though there may still be a deficit of nearly $300,000 according to testimony of the Mayor.

<u>External comparables</u>
The Union would use Rhinelander, Merrill, Antigo, Shawano, and Two Rivers (as would the Employer) as well as DePere, Kaukauna, Menasha, and Sturgeon Bay as appropriate comparables. While Marinette County was on both lists it was not included in both parties' analysis, is considerably larger and not a municipality. All are approximately within 100 miles, have populations between about 8000 and 21,000, and are similar in other respects. The Employer contends that DePere and Menasha are in a different labor market (Green Bay-Fox River Valley) which is much more rapidly growing in employment, income, and property valuation. The parties have cited interest arbitration awards indicating the basis for comparisons in order to judge which parties' offer to accept. Similarity of size and character and proximity are generally employed in that determination. What weight to accord these varies among arbitrators and circumstances. Established use of comparables by the parties or findings of prior arbitrators carries great weight.

The Undersigned notes that prior awards have not established definitively which cities are comparables of Marinette. Arbitrator Oestreicher used Kaukana, Sturgeon Bay, and Two Rivers, but wished to expand the list. In 1994 Arbitrator Mickelstetter considered DePere and Allouez but suggested the comparisons were only for that award. Arbitrator Kerkman included DePere, Menasha, and Marinette County in a 1980 award. Monfils in 1981 did not make clear which units of government he used.

The parties in this case agree on the use of Rhinelander, Merrill, Antigo, Shawano, Sturgeon Bay, Kaukauna, and Two Rivers and will be used by the Undersigned. Rhinelander is the most distant and smallest (116 miles and 7,735 population, according to the Union). Kaukauna and Two Rivers are modestly larger than Marinette while the others are somewhat smaller. DePere is almost twice as large (though less distant than most others) while Menasha is 35% larger. The Union's data show that DePere has nearly three times the valuation of Marinette while Menasha is almost double (Brief, p. 10). Marinette's valuation is in the middle of the remaining cities. DePere, Menasha, and Kaukauna populations grew fairly well since 2000 while the other cities were stable or declined somewhat. Menasha and Merrill have quite high levy rates while DePere's levy is about half of the others. While Marinette has one of the lowest per capita valuations, DePere, Rhinelander, and Sturgeon Bay's per capita valuations are significantly greater ($38,426 vs. $59,277 to $68,762). Menasha and DePere have nearly twice the local tax levy of Marinette and most of the other cities. Finally, the average Adjusted Gross Income of DePere is 65% greater than Marinette while Menasha is about 20+% greater. Three of the other cities have lower average AGI and four have higher; these average about $1000 more than Marinette. The Arbitrator is inclined to agree with the Employer that DePere, and to some degree Menasha are not comparable employers. Kaukauna would similarly appear to be in the labor market area of DePere and Menasha, but has been mutually included in the group of comparables to Marinette by the parties, was used by both in making wage and benefit comparisons, and therefore will be used in this case.

<u>External Comparisons</u>

The parties dispute whether Marinette employees are highly paid with reference to external comparable and the impact of the respective final offers on their relative positions. They use different comparable pools. All are agreed that the wage offer of the Employer is low compared to increases provided employees of comparables. When benefits are included, the Employer's "package" is somewhat closer in 2004. The Undersigned has determined that the comparable pool should include those listed below, and has provided a comparison of wages for the General Laborer and Heavy Equipment Operator. It shows that in 2002, the Marinette General Laborer was paid $ .38 or 2.5% more than the average Laborer of the remaining seven comparables, being ranked 3 of 8. Under either offer the scheduled wage of Marinette Laborers will be 4th of 8 in 2003 and 2004, $ .12 under average under the Employer's offer and $ .30 above average under the Union's offer. With longevity, Marinette Laborers will be 3rd of 8 and $ .66 above average under the Union's offer and 4th and $ .23 above under the Employer's offer. Under the Employer's offer the Marinette Laborers wage with longevity will be 1.4% above average while under the Union's offer it will be 4% above, or about equidistant from the 2.5% above in 2002. Consideration of the fact that the AGI per return (2002) in Marinette trailed the comparables (5th of 8) it would appear that while the wage increase offered by the Employer is low and out of line with the comparables, the wage level is reasonable by this comparison.

<u>Wages: General Laborer</u>

	Max. Schedule			Max. w/Longevity*			AGI/return
municipality	2002	2003	2004	2003	2004		2002
Antigo	$14.16	$14.72	$15.57	$14.78	$15.57		26690

Kaukauna	18.15	18.69	19.25	18.92	19.48		37573
Merrill	15.26	15.57	16.20	16.04	16.52		31329
Rhinelander	15.11	15.68	16.31	15.91	16.54		28766
Shawano**	12.48	12.85	13.24	12.85	13.24		28515
Sturgeon Bay	16.86	17.36	17.89	17.55	18.07		31806
Two Rivers	15.64	16.39	17.05	16.39	17.05		33261
AVE	15.38	15.89	16.50	16.06	16.64		31134
Marinette-Un	15.76	16.27	16.80	16.76	17.30		30270
-Employer		16.00	16.38	16.48	16.87		

* 20 years or max.

** Not settled; 2003, 2004 wage assumes a 3% increase

Maximum wages for the Heavy Equipment Operator in Marinette ranked 4th of 8 in 2002 and will be 4th in 2003 and 2004 under either party's offer. The same is true when comparing the maximum with longevity. While the schedule provided wages which were slightly below average in 2002, by 2004 Marinette wages fall significantly below under the Employer's offer and remain slightly below under the Union's offer; however, with longevity, the Employer's offer results in a wage $ .17 below while the Union's offer results in a wage $ .28 above. Again, the wage increase offered by the City is out of the norm though the wage level is somewhat reasonable in light of the City's relative income level.

<u>Wages</u>: <u>Heavy Equip. Operator</u>

		Max		Max. w/Longevity		% change	
municipality	2002	2003	2004	2003	2004	2003	2004
Antigo	$15.28	$15.78	$16.32	$15.78	$16.32	3.25	2.75+$.10
Kaukauna	19.35	19.93	20.53	20.16	20.76	3	3
Merrill	16.11	16.45	17.12	16.77	17.44	2/2	2/2
Rhinelander	16.15	16.76	17.10	16.99	17.43	3.75	2/2
Shawano	15.87	16.35	16.84	16.35	16.84	2/2	3
Sturgeon Bay	17.14	17.65	18.18	17.84	18.37	n/s	n/s
Two Rivers	17.26	17.96	18.69	17.96	18.69	2/2	2/2
AVE	16.74	17.27	17.83	17.41	17.98		
Marinette-Un	16.67	17.21	17.77	17.70	18.26	3.25	3.25
-Employer		16.92	17.32	17.41	17.81	1.5	2.35

There of course is the matter of the health insurance. The City maintains that it has paid an excessive amount and has done so for years. The Union contends that the city's contribution and increase is in the normal range and since its wage offer is *sub par*, its offer should be accepted by the Undersigned. The evidence indicates that the City did pay an above average amount (approximately 7%), though not excessive as argued in the Employer's brief.

Monthly Health Insurance premium, 2003

		Employer		Employee		total premium	
	ER %	2003 S	2003 F	2003 S	2003 F	2003 S	2003 F
Antigo	90	$ 374	$ 851	$ 42	$ 95	$ 415	$ 946
Kaukana	95	284	826	15	43	299	869
Merrill	97.5	444	888	12	24	456	912
Rhinelander	94	363	1173	55	80	418	1253
Shawano	90	283	801	31	89	314	890
Sturgeon Bay	100	414	926	0	0	414	926
Two Rivers	95	418	1053	22	55	440	1109
average		369	931	25	55	394	986
Marinette	100	368	997	0	0	368	997

UX 7

Monthly Health Insurance premium, 2004

		Employer		Employee		total premium	
	ER %	2004 S	2004 F	2004 S	2004 F	2004 S	2004 F
Antigo	90%	$ 424	$ 948	$ 47	$ 105	$ 471	$ 1054
Kaukana	95	300	869	16	46	316	914
Merrill	97.4	462	924	24	48	486	972
Rhinelander	90	444	1337	49	149	493	1480
Shawano	90	298	844	33	94	331	937
Sturgeon Bay	100	464	1037	0	0	464	1037
Two Rivers	95	522	1313	27	69	549	1383
average		416	1039	28	73	444	1111
Marinette	95	396	1072	21	56	417	1128
Marinette-Un*	95	396+33	1072+83	21	56	417	1128
-Employer**	95	396+21	1072+42	21	56	417	1128

UX7

*including Employer ERA payment of $250/500 toward employee copays;

**including Employer ERA payment of $400/1000 toward employee copays

Marinette also reimbursed employees for deductibles and copays up to $2000 while comparable employers provided no reimbursement; the Employer has included that amount as its payment for purposes of making comparisons, but there has not been evidence as to how much actually was reimbursed. Nevertheless, one would presume a fair amount of the $500 front end deductible was reimbursed as would some amount of copayments, so the City's actual costs would likely have been well over $1000 and could be up to $2000 more per employee on the family plan than what was contributed by comparable employers. Prior to the “new” plan Marinette employees paid no premiums which as seen above is quite unusual, in addition to a maximum exposure of $500 per year in deductibles and copays which was also quite low (EX 36). Under the Employer’s offer the City will pay 7% more than comparable employers for the family plan inclusive of the $500 ERA payment (if an employee does not use the full $500 towards copays, the funds remain in the employee’s account). Under the Union’s offer the City will pay 11% more.

The undersigned recognizes that the Union has made significant concessions in this bargain to this point in recognition of the high cost of health care experienced recently which should not go unappreciated by the City. It is agreeable to paying 5% of the premium, forgoing some benefits of the plan, and exposing employees to potentially more costs of copays. While the Marinette employees may pay considerably more with the new plan and with the lower Employer reimbursement of co-pays, the fact remains that the City’s payment for health insurance will remain more than 7% above average among the comparables while the City appears to be somewhat below average in income. By this comparison the City’s offer would again appear to be reasonable. There is the hope and possibility that the new co-pay structure will affect claims experienced by the City in a positive way so that future premium rate increases moderate *vis a vis* comparable employers, which would allow for better unit employee wage increases.

The Union proposes to change the City’s percentage contribution to the dental plan, lowering it for the single plan from 100% to 75% but raising it from 45% to 75% for the family plan. Unfortunately even though unit employees are roughly split between the single and family plans, it is not a “wash” since the costs of the Union’s offer is about $2800/yr. or 28% more than the Employer’s offer which is the *status quo*. As seen below, comparable employers in most cases contribute less if at all—if there is a dental plan. Of the five comparables with a dental plan, employers contribute an average of $9.52(S) and $27.34(F). For the seven comparables, employers contribute an average of $6.61(S) and $19.52(F) while Marinette currently pays $42.91(S) and $59.53(F). The average employer contribution by the two comparable employers is $23.16 (S) and $68.34(F). In any comparison, the Employer’s offer is reasonable.

Dental Insurance, 2004

	Premium (mo.) single	Premium (mo.) family	Employer payment single	Employer payment family	Employer % single	Employer % family
Antigo	No	plan	No	plan	No	plan
Kaukana	No	plan	No	plan	No	plan
Merrill	$23.90	$71.66	$ 0	$ 0	0	0
Rhinelander	$18.18	$54.73	$16.36	$49.26	90	90
Shawano	$29.90	$82.47	$ 0	$ 0	0	0
Sturgeon Bay	$29.90	$87.42	$29.96	$87.42	100	100
Two Rivers	$29.96	$81.82	$ 0	$ 0	0	0
Ave. (5 with)	$26.37	$75.62	$9.52	$27.34		
Ave. (7)			$6.61	$19.52		
Marinette	$42.91	$132.29				
-Employer			$42.91	$59.53	100	45
-Union			$32.18	$99.21	75	75

Source: EX 50 and UX 8

The Union's proposal calls for an increase in personal leave from 1 ½ to 2 days while the City proposes the *status quo*. Currently Marinette employees have 9 holidays and 11.5 total days (1 floating holiday and 1 ½ personal leave) while the comparables average 10.4 days (UX11 and EX 62). Nine holidays appears to be average, though personal leave is exceptional. Currently Marinette employees receive 3 weeks vacation after 7 years and 5 weeks after 20 years, which means they qualify in somewhat less time than average for 3 or 5 weeks vacation, though it takes somewhat more time (15 years) to earn 4 weeks. The evidence based on the comparables would appear to favor the City's offer.

Internal Comparisons

The Employer's reply brief attached the Police unit award of Arbitrator Petrie. It contends that this award in favor of the City indicates that the City's offer, which was identical to its offer in the instant case, was selected over the Union's offer. The Police Union's offer was similar to the offer of Local 260, and therefore the City should prevail in this case as well. In a rejoinder to the City's reply brief the Union expressed dismay that the City added this evidence on the belief that these would be disregarded. However, it recognizes that the since the substance of the Employer's reply brief was its commentary on Arbitrator Petrie's award, disregarding it would deny the Employer a reply. To this rejoinder, the Union attached Arbitrator Petrie's award in the Firefighters case in which the Union's offer was chosen over the City's offer, again, being the same as in the instant case. The City responded to the rejoinder on the issue of these awards; while the Union wanted to exclude these, it stated that it did not, and that when filed, these awards were public records for citation as would be any other award. The Arbitrator's understanding was that while the Union wanted these awards excluded, the Employer did not, and that the arbitrator could consider these, but that he would assess each case on its own merits, recognizing that the union in each case had some differences in offers and each may have had different external reference groups which may make the City's offer more acceptable in some cases than in others.

The Employer initially asserted that the internal pattern favors its offer since the non-represented employees essentially were given wage increases and a health insurance package which is the same as offered this and other bargaining units. The Undersigned would agree with the Union that there is no "internal pattern" when only one unit's terms and conditions have been determined. He notes here and has noted elsewhere that where these terms are unilaterally imposed by an employer, little insight is gained as to what may constitute a reasonable collective bargaining settlement. The Employer in its reply brief added that during pendency of this award Arbitrator Petrie accepted the City's offer in resolving the Police contract dispute. That offer has the same wage, health premium, and employer HRA contributions as proposed in this case, though the Union's offer had a lower wage increase (3%/3%) but higher ERA contributions ($500/$1250). The same can be said of the City's offer to the Firefighters though in that case the Union's offer was chosen. The Firefighter's offer also had a lower wage increase (3.3%/2.85%) but higher ERA contributions, considering that all Firefighters were on the family plan ($350/$1100). In the Firefighters case the first year wage increase was backloaded to Dec. 31, 2003 which Arbitrator Petrie found to "save" more than the increased HRA and dental premium contributions, given that he found the pattern of wage increases consistent with the Union's offer. The internal "pattern" therefore consists of Employer imposed conditions for non-bargaining employees, one unit receiving wages and health and dental benefits as proposed by the City, and one unit with essentially 0%/6% higher wages, $350/$1100 in employer HRA contributions, and 75%/75% dental contributions.

<u>Cost of living.</u> The Union has provided data on the Consumer Price index for five years ending in December 2003, and contended that unit employees have received subpar wage increases which have fallen relative to the cost of living and other employees. This CPI data indicates increases in the CPI at an annual rate in the range of 2% in 2002 and 2003. The CPI-W for North central States CPI-W data show increases of about the same. On its face, the cost of living factor favors neither offer when applied to the wage increases. The City's offer (by its costing), on the other hand, provides for about a 5% increase in 2003 and 6% in 2004 in the total package (vs. the Union's offer of about 6.5% and 7.9%). This would tend to favor the City's offer. The Union argued,

however, that the consideration of cost of living is “embedded” in external bargains which have with one exception been concluded. The Undersigned has generally given weight to this factor inversely proportional to the time which has lapsed and the number of other settlements and would also in this case accord it less weight than the above comparisons.

Other factors. The parties have argued the matter of changes in the *status quo* and requirements for *quid pro quo* to accompany such changes. There is a significant change in the health care provision that employees will now pay 5% of the premium. The Union has argued that since the Employer has not given a *quid pro quo* for this change, it is entitled to one in the form of increased contributions by the City towards the family dental plan and increased personal leave. Arbitral authority and practice would indicate that a moving party must present a compelling case for its proposal, that the proposals are needed as a remedy or have intrinsic merit, and that it generally would need to offer an adequate *quid pro quo*, unless its offer has clear support such as among the comparables[24] In cases where a proposal addresses a mutual problem not anticipated or previously bargained or where conditions giving rise to the provision have substantially changed arbitrators have required no or little *quid pro quo*.[25]

In the instant case the evidence is clear that the proposal for 5% employee contribution in the face of nearly 50% increases in the health insurance premium over two or three years is a response to an unanticipated and significant mutual problem which the Union has recognized and accepted. Further there is fairly clear support among the comparables for Marinette employees to pay towards the premium as seen above. Six of the seven comparables have been paying an average of more than 5% toward the premium. While this is not as much as eleven of twelve as hypothetically illustrated by Arbitrator Vernon, it is sufficient in this case to conclude that little by way of *quid pro quo* is required.

The Employer has argued that the Union’s proposals for increased dental contributions and personal leave are *status quo* changes for which the Union has provided not *quid pro quo*. The Union has responded that these are just proposals modifying existing benefits which is part of the give and take process of bargaining, deserved for significant concessions to now contribute to the health care premium. Even granting this point of view, it is still clear from the discussion above that these proposals for increased employer paid dental premiums and personal leave are not supported by the comparables.

[24] see for example, ArbitratorsVernon in Elkhart Lake and Bloomer School District (Dec. No. 43193-A and 24342-A), and Nielson in Manitowoc Public Schools, (Dec. No. 26263-A), as well as those cited above by the Union and City.

[25] See for example Arbitrator Petrie, in Algoma School District (Dec. No. 46716), Nov. 1992).

Conclusion

The Undersigned has considered the issues, evidence, and arguments with reference to the parties' offers in light of the statutory criteria. The "greater weight" factors does not compel an award in favor of the Employer, though the Arbitrator has evaluated the parties' wage and benefit proposals *vis a vis* the comparables. He has found that wage and benefits levels under consideration (health, dental, and leave) in Marinette to be somewhat above average while the economic conditions at this time are not.

The Undersigned has found the cities of Rhinelander, Merrill, Antigo, Shawano, Sturgeon Bay, Kaukauna, and Two Rivers to be generally appropriate for comparisons. In examination of wage proposals it is clear that the Union's proposed increases mirrors more closely the pattern of the external comparables, though the package costs slightly favor the City's offer in 2004. Wage level comparisons would seem to favor the Union's offer though when longevity pay is considered, wages will be closer to the average of the comparables under the City's offer. Prior to 2004 the City's contribution to employees' health insurance has been much above average while the employees' contributions have been much below. Under the Employer's offer the City will continue to pay the third highest amount of the eight comparables for the family plan or about $900 more per year. It pays more for dental insurance than most any of the comparables and would continue to do so under the Employer's offer. Finally, the Employer's proposal for personal leave, the *status quo* will result in Marinette employees continuing to have somewhat more leave than other employees while the Union's proposal increases a benefit apparently not available to others. Internal settlements do not provide a clear and useful pattern in this case. The cost of living factor applied to wages yields mixed conclusions though *in toto* the Employer's package costs may be closer to increases in the CPI.

Award

Having carefully considered all of the evidence and argument of the Parties set forth above as well as the arbitral criteria provided under Section 111.70 Wisc. Stats., it is the decision of the Undersigned that:

> The final offer of the City of Marinette is to be incorporated into the 2003-04 Collective Bargaining Agreement with the Marinette City Employees Union.

Dated this 27th day of May, 2005.

_______________.
Richard Tyson,
Arbitrator

RECEIVED
JUL - 5 2006
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MARINETTE
FINAL OFFER
December 4, 2003

The City of Marinette, as and for its final offer for a 2003-04 contract with Wisconsin Council 40 AFSCME, AFL-CIO (Department of Public Works) proposes that all terms of the 2000-02 contract be renewed except as modified by the signed stipulations, if any, of the parties and the attached proposals.

Respectfully Submitted,

GODFREY & KAHN, S.C.

John A. Haase

Mailing Address:
P. O. Box 13067
Green Bay, WI 54307-3067
920/432-9300

1. **Article 19 – Hospitalization Plan - Insurance.** Eliminate the current language and replace it with the following:

Health Insurance:
The Employer shall maintain the current Blue Cross/Blue Shield health insurance plan through December 31, 2003. The current level reimbursements for out-of-pocket expense such as deductible and co-pay will remain in place through December 31, 2003. Effective January 1, 2004, the Employer shall provide the Blue Cross/Blue Shield PPO health insurance plan. The PPO will include all covered procedures and benefits contained in the current plan, except the artificial insemination coverage and the 4th quarter carryover feature of the current plan.

The Blue Cross/Blue Shield PPO shall have an employee co-pay of 0% in-network and 20% out-of-network, with a deductible of $500 single, $1,500 family. The maximum annual employee out-of-pocket expense for single plan participants shall be $500 in network and $900 out of network; for family plan participants the maximum out of pocket expenses will be $1,500 in-network and $2,500 out-of-network. The employees shall be responsible for the cost of all deductibles and co-pays. The lifetime maximum shall be $2,000,000.

The City will pay 95% of the cost of the health insurance premium and the employees shall be responsible for 5% of the total monthly premium.

The City shall have the right to change insurance plans upon providing the Union with 60 days' notice of its intent to change, provided the new plan provides equal or better benefits.

2. **Health Reimbursement Account ("HRA").** The City will fund a health reimbursement account for each full-time employee enrolled in the City's health insurance plan, in the following amounts: $250 per year for single plan participants and $500 per year for family plan participants.

3. **Appendix A – Wages.** Provide for the following across-the-board increases:

- Effective 1/1/03 → 1.5%
- Effective 1/1/04 → 2.35%

4. **Term of Agreement.** The term of the agreement shall be 1/03/04-12/31/04.

5. **All Tentative Agreements.**

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