IN THE MATTER OF THE ARBITRATION PROCEEDINGS

BETWEEN

CITY OF STURGEON BAY,

Employer,

and

ARBITRATOR'S AWARD
Case 83 No. 62086 INT/ARB-9883
Dec. No. ~~31080~~ correction:31079

CITY OF STURGEON BAY (DPW) EMPLOYEES, Local 1658, AFSCME, AFL-CIO,

Union.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Clifford B. Buelow, Esq.
William G. Bracken, Labor Relations Coordinator
Davis & Kuelthau, s.c.

For the Union: Neil Rainford, Staff Representative
AFSCME Council 40

I. BACKGROUND

This is a matter of final and binding interest arbitration for the purpose of resolving a bargaining impasse between the City of Sturgeon Bay ("City" or "Employer") and City of Sturgeon Bay (DPW) Employees, Local 1658, AFSCME, AFL-CIO ("Union"). The City is a municipal employer. The Union is the exclusive collective bargaining representative for all regular full-time and regular part-time employees of the City's Department of Public Works, excluding supervisory, managerial, and confidential employees.

The parties exchanged their initial proposals and bargained on matters to be included in a collective bargaining agreement. On February 6, 2003, the Union petitioned the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Labor Relations Act. On April 29, 2003, and June 23, 2004, a member of the Commission's staff conducted an investigation reflecting that the parties were deadlocked on their negotiations. By September 9, 2004, the parties submitted their final offers.

The parties have agreed upon a three-year agreement, a 3.0% wage increase on January 1, 2003, a 3.25% wage increase on January 1, 2004, and a 3.25% wage increase January 1, 2005, an increase in the employee health insurance contribution to 4.0% January 1, 2004, paid through a Section 125 plan, and the elimination of job posting seniority benefits for temporary employees. The issues in dispute are the structuring of the employer contribution to a Section 457 retirement account, the premium sharing arrangement for the last day of the agreement, and the COLA multiplier/wellness benefits.

A hearing was conducted on April 4, 2005. Upon receipt of the parties' briefs, the hearing was declared closed on June 1, 2005.

II. FINAL OFFERS

A. EMPLOYER

1. Three year agreement (change dates accordingly).

2. Wage rates

   a. 1/1/03 increase all rates by 3%

   b. Amend COLA rider to read as follows:

   > Effective January 1, 2004, the hourly rates shown above will be adjusted to reflect increases in the Consumer Price Index — NATIONAL for Urban Wage Earners and Clerical Workers, All Items, published by the United States Department of Labor, Bureau of Labor Statistics (CPI — W, 1982-84 = 100) as follows:
   >
   > Effective January 1, 2004, each 2003 hourly wage rate will be increased by 80% of the percent increase in the CPI-W from the October, 2003 index number over the October, 2002 number. In no event shall the increase granted effective January 1, 2004, be less than 3.25% nor more than 6% of the hourly wage rates in effect on December 31, 2003.

Effective January 1, 2005, the hourly rates shown above will be adjusted to reflect increases in the Consumer Price Index — NATIONAL for Urban Wage Earners and Clerical Workers, All Items, published by the United States Department of Labor, Bureau of Labor Statistics (CPI — W, 1982-84 = 100) as follows:

Effective January 1, 2005, each 2004 hourly wage rate will be increased by 80% of the percent increase in the CPI-W from the October, 2004 index number over the October, 2003 number. In no event shall the increase granted effective January 1, 2005, be less than 3.25% nor more than 6% of the hourly wage rates in effect on December 31, 2004.

The parties mutually agree that the reference in the above formula to 80% of the increase in the CPI is accepted by the parties as a percentage to be maintained during multi-year contracts and not as a percentage which will be altered upwards or downwards in future years. The purpose of the 80% formula is to protect employees against unanticipated increases in inflation while protecting the Employer against any upward bias the Consumer Price Index may have as an inaccurate indicator of actual inflation. The foregoing is not a waiver.

3. Amend Article 19, Section B to read as follows:

Premium Equivalent: Employer agrees to pay the full equivalent premium of the group health and dental plans for participating employees and their dependents. Effective January 1, 2004, premium equivalents for the above plans shall be contributed as follows, with the employee portion to be paid by payroll deduction:

	City	Employee
Single Person Coverage	96%	4%
Family Coverage	96%	4%

Effective January 1, 2004, or the first day of the second month following the date of the interest arbitration award, whichever is later, the Employer shall make available to the employees the City's plan under Section 125 of the Internal Revenue Code for allowable employee health insurance premium contributions, health care expenses, and dependent care expenses as outlined in the plan. The Employer shall pay the administrative costs of the plan.

Effective December 31, 2005, premium equivalents for the above plans shall be contributed as follows, with the employee portion to be paid by payroll deduction:

	City	Employee
Single Person Coverage	95%	5%
Family Coverage	95%	5%

4. Add new article, Section 457 Plan, to read as follows:

Effective January 1, 2004, the Employer will contribute $30 a month for each employee to a Section 457 plan selected by the City.

5. Amend Article 16, Section J to read as follows:

J) Wellness: Effective through December 31, 2004, Employees who are employed by the City and work the entire calendar year and use no sick leave during a calendar year shall receive two (2) paid days off within the next calendar year as a wellness benefit. Wellness days shall be scheduled off at the mutual agreement of the Employer and the employee.

Effective January 1, 2005, Employees who do not use any sick leave in the first six (6) months of a calendar year shall receive a wellness benefit consisting of one day off with pay. Said benefit must be used during the following six months. Employees who do not use any sick leave in the second six (6) months of a calendar year shall receive a wellness benefit consisting of one day off with pay. Said benefit must be used during the following six months. Any employee who uses sick leave during the first six (6) months of a calendar year shall not be eligible for wellness benefits during any part of the entire calendar year.

6. There are no tentative agreements.

It is the City's position that the last sentence of Article 22 (Seniority) paragraph B (promotions) is a permissive subject of bargaining and the City will delete same from the successor collective bargaining agreement:

"If no regular employee makes application for this job (any vacant union position) by signing the posting, it shall be given to the temporary employee applying (signing) who has the most seniority, subject to the right of Employer to determine whether the employee applying for said position has the proper qualifications to perform the job."

B. UNION

The following are proposed changes in the **2000-2002** collective bargaining agreement between the above mentioned parties for a successor agreement.

Some current language is provided for context.
~~Overstricken~~ language is proposed to be deleted.
Highlighted language is proposed as new language to be inserted with existing language.

All provisions of the 2000-2002 collective bargaining agreement shall to [sic] continue unchanged except for updating to reflect a new term, to correct errors and tentative agreements ratified by the Union membership and by the city council.

1) AGREEMENT

Three year agreement (change dates accordingly throughout).

2) ARTICLE 19 - INSURANCE

Amend Article 19, Section B to read as follows:

B. Premium Equivalent:

Premium equivalents for the above plans shall be contributed as follows:

	City	Employee
Single Person Coverage	100%	0%
Family Coverage	100%	0%

Effective January 1, 2004 employees shall pay toward the above plans by payroll deduction four percent (4%) of the combined health and

dental insurance premiums per month. All employee payments under this provision shall be sheltered by the use of the Section 125 Plan.

Effective January 1, 2004 or as soon as administratively possible after the interest arbitration is rendered, whichever is later, the Employer shall make available to the employees a plan under Section 125 of the Internal Revenue Code for employee expenses allowed by law for health insurance premium contributions, deductibles, copays, and other medical care expenses limited to $2,000 annually. The Employer shall administer the costs of the plan.

Effective January 1, 2004 the Employer shall contribute monthly an amount equal to sixty-five (65%) percent of the employee's health and dental insurance premium contribution to a Section 457 plan established on the employee's behalf.

3) <u>JOB CLASSIFICATION AND WAGE</u>

FIRST YEAR OF AGREEMENT:

Effective January 1, 2003 increase each rate on the wage schedule by three (3.0%) percent.

SUBSEQUENT YEARS OF THE AGREEMENT:

Effective the first day of 2004, each rate on the 2003 wage schedule shall be increased by a minimum of three and one quarter (3.25%) percent and a maximum of six (6.0%) percent based on the C.O.L.A. formula updated to reflect the CPI-W change from 10/02 to 10/03 and modified substituting 100% for the current references to 80% of the CPI-W as follows:

> Effective January 1, 2004 the hourly wage rates shown on Appendix "B" will be adjusted to reflect increases in the Consumer Price Index - NATIONAL for Urban Wage Earners and Clerical Workers, All Items, published by the United States Department of Labor, Bureau of Labor Statistics (CPI-W, 1982-84=100) as follows:
>
> > 1. Effective January 1, 2004, each 2003 hourly wage rate will be increased by ~~80%~~ 100% of the percent increase in the CPI-W from the October, 2003 index number over the October, 2002 number.

2. In no event shall the increase granted effective January 1, 2004, be less than 3.25% nor more than 6.0% of the hourly wage rate in effect on December 31, 2003.

3. The parties mutually agree that the reference in the above formula to ~~80%~~ 100% of the increase in the CPI is accepted by the parties as a percentage to be maintained during the multi-year contracts and not as a percentage which will be altered upwards or downwards in future years. The purpose of the ~~80%~~ 100% formula is to protect employees against unanticipated increases in inflation while protecting the employer against any upward bias the Consumer Price Index may have as an inaccurate indicator of actual inflation. The foregoing is not a waiver.

Effective the first day of 2005, each rate on the 2004 wage schedule shall be increased by a minimum of three and one quarter (3.25%) percent and a maximum of six (6.0%) percent based on the C.O.L.A. formula updated to reflect the CPI-W change from 10/03 to 10/04 and modified substituting 100% for the current references to 80% of the CPI-W as follows:

Effective January 1, 2005 the hourly wage rates shown on Appendix "B" will be adjusted to reflect increases in the Consumer Price Index - NATIONAL for Urban Wage Earners and Clerical Workers, All Items, published by the United States Department of Labor, Bureau of Labor Statistics (CPI-W, 1982-84=100) as follows:

1. Effective January 1, 2005, each 2004 hourly wage rate will be increased by ~~80%~~ 100% of the percent increase in the CPI-W from the October, 2004 index number over the October, 2003 number.

2. In no event shall the increase granted effective January 1, 2005, be less than 3.25% nor more than 6.0% of the hourly wage rate in effect on December 31, 2004.

3. The parties mutually agree that the reference in the above formula to ~~80%~~ 100% of the increase in the CPI is accepted by the parties as a percentage to be maintained during the multi-year contracts and not as a percentage which will be altered upwards or downwards in future years. The purpose of the ~~80%~~ 100% formula is to protect employees against unanticipated increases in inflation

while protecting the employer against any upward bias the Consumer Price Index may have as an inaccurate indicator of actual inflation. The foregoing is not a waiver.

4) APPENDICES

Update and continue-all appendices to the Collective Bargaining Agreement.

5) The Union agrees to delete the last sentence of Article 22 Seniority paragraph B (promotions) from the successor collective bargaining agreement as indicated below:

~~"If no regular employee makes application for this job (any vacant union position) by signing the posting, it shall be given to the temporary employee (signing) who has the most seniority, subject to the right of the Employer to determine whether the employee applying for said position has the proper qualifications to perform the job."~~

III. STATUTORY CRITERIA

111.70(4)(cm)

. . .

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.

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

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

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

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

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

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

IV. POSITIONS OF THE PARTIES

A. THE UNION

The Union asserts that its proposal to require the City to contributed 65% of the health and dental insurance employee premium contribution to a 457 plan is the most equitable and permanent means of blunting some of the effects of employee concessions relating to health and dental benefits. Contending that it conceded $18,000 worth of health insurance benefits to the City, the Union says its offer is the more equitable offer because it redistributes the concessionary funds to those who made the concession. The Union argues that, in contrast, the City's offer effectively redistributes the concession of family supporting employees on the health plan to single and nonparticipating employees. Without its concession in the first instance, the Union claims there would be nothing to return and the Union must be recognized for its flexibility and be granted the upper hand in determining how to structure the return benefit.

The Union says its offer is preferable as it provides a permanent and self-governing solution to the funds distributed to the S-457 account in exchange for the substantial health insurance premium concession. On the other hand, the Union asserts that the $30 monthly amount proposed by the City would require renegotiation every contract cycle and it would likely be the cause of future disputes.

According to the Union, its offer is the more permanent offer because it resolves the question of how much of the concession is returned prospectively. In addition, the Union claims its offer is fairer because it ties the insurance concession, made in the form of a self-governing percentage, to the return of the concession, which is also expressed as a self-governing percentage. It is the position of the Union that the City's offer attempts to have it both ways, insisting on a percentage for the Union's concession and a flat rate for the return on the concession.

The Union argues that the City's structuring of the S-457 contribution is deeply offensive to the bargaining unit employees, because it handsomely rewards with a substantial payout those who do not concede anything because they do not take health and dental insurance benefits.

The Union objects to the City's attempt to bargain 2006 benefits on the very last day of the 2005 agreement. The Union asserts that this is an attempt to modify the status quo of the parties for the 2006 agreement while ducking responsibility for the effects of the change. According to the Union, arbitrators have rejected such attempts to sneak in proposals on the last day of an agreement.

It is the Union's position that its COLA proposal is supported by the internal bargaining units with a COLA. The Union states that this is a benefit the City has granted comparable employees and with which the City has demonstrated its comfort level for over a decade. With respect to the wellness benefit, the Union says it is conceding an improvement in the wellness benefits that is also enjoyed by a majority of the internally comparable bargaining units in order to secure the COLA arrangement.

The Union concludes that its offer is more reasonable than the City. It declares that the City is attempting to seek to win through arbitration what it could not reasonably have expected to achieve at the bargaining table.

B. THE CITY

The City stresses the critical need for the City and the Union to control health costs. The City strongly believes that a quid pro quo is not necessary for an agreement requiring employees to contribute a percentage of the health insurance premiums. Even if a quid pro quo were required, the City points out that it has offered a Section 125 plan to allow employees to make their premium contributions with before-tax dollars. The Section 125 plan would also allow employees to pay medical and dependent care expenses with before-tax dollars.

In addition, the City points out that it has offered to make a $30 monthly payment to all employees that will be deposited in a Section 457 plan account. The City notes that its proposal permits employees to receive their payment tax free in an account whose earnings will continue to grow tax free. According to the City, the Union's proposal that the city pay 65% of the employee's insurance contribution to the 457 plan account would have the net effect of returning more tax-free dollars to the employees than they will contribute on a net tax basis in perpetuity until the Union agrees otherwise. The City declares that the Union's proposal is not cost sharing—every dollar and more is returned to the employees under the Union's offer.

The City does not believe the Union's proposed change in the existing cost of living adjustment clause is warranted since the Union has not proven any hardship caused by the existing 80% arrangement. The City says the Union has shown no need for the change, and it has not offered the City any quid pro quo for the proposed change in the COLA formula.

The City argues that its wellness program proposal is a liberalization of the existing policy and reflects the pattern that is found internally. According to the City, this proposal illustrates the reasonableness of its final offer.

V. FINDINGS OF FACT

A. State Law or Directive (Factor Given the Greatest Weight)

In order for this factor to come into play, employers must show that selection of a final offer would significantly effect the employer's ability to meet State-imposed restrictions. *See Manitowoc School Dist.*, Dec. No. 29491-A (Weisberger 1999). No state law or directive lawfully issued by a state legislative or administrative officer, body or agency placing limitations on expenditures that may be made or revenues that may be collected by a municipal employer is at issue here. Neither party argues that this criterion is relevant here.

This factor favors neither party.

B. Economic Conditions in the Jurisdiction of the Municipal Employer (Factor Given Greater Weight)

This factor relates to the issue of the municipal employer's ability to pay. Ability to pay is not at issue in this proceeding. The evidence shows that the City's bond rating is A2—the second highest rating attainable for a small city. The City's financial reports confirm the City's financial wellbeing. For the year ending December 31, 2003, the fund balance of the City's General fund grew by $550,847 as a result of reductions in staffing, reductions in expenditures, and increases in revenue. The City has shifted certain costs through the use of user fees. These fees include a Hydrant Rental Fee and a Solid Waste Fee administered through the Sturgeon Bay Utilities Commission.

This factor indicates that the City has the financial ability to fund either offer.

C. The Lawful Authority of the Employer

There is no contention that the City lacks the lawful authority to implement either offer.

D. Stipulations of the Parties

While the parties were in agreement on many of the facts, there were no stipulations with respect to the issues in dispute. They have, however, reached agreement on a number of issues not in dispute here.

E. The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet these Costs

This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of ap-

propriate municipal services. There is no contention that the Village lacks the financial ability to pay either offer.

The public has an interest in keeping the Village in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the Village. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

F. Comparison of Wages, Hours and Conditions of Employment

1. Introduction

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience.

2. External Comparables

a. Introduction

One of the most important aids in determining which offer is more reasonable is an analysis of the compensation paid similar employees by other, comparable employers. Arbitrators have also given great weight to settlements between an employer and its other employees. See, e.g., *Rock Village (Deputy Sheriffs' Ass'n)*, Dec. No. 20600-A (Grenig 1984).

In the previous interest arbitration between the parties, the Arbitrator declined to establish an external comparability group. The Union's proposed external comparables are the DPW bargaining units in the following communities:

Algoma	Marinette
Kaukauna	Oconto
Kimberly	Oconto Falls
Kewaunee	Shawano
Little Chute	Two Rivers

The Union proposes the following external comparables of other employees in comparable communities:

Door County Highway	Door County Sheriff's Dept.
Door County Social Services	Gibraltar Public Schools
Door County Courthouse	Sturgeon Bay Public Schools (Support Staff)
Door County EMT	

Sturgeon Bay Public Schools (Teaching Associates)
Sevastopol Public Schools ESP
Sevastopol Public Schools Bus Drivers
Southern Door Public Schools

The City proposes the following comparable communities:

Algoma
Kewaunee
Oconto

Given the issues before the Arbitrator, it is unnecessary to determine whose list of comparables is the more appropriate. An examination of the City's comparables shows that employees in its external comparables pay 5.0% toward the single premium and 8.0% toward the family premium. The Union's proposed comparables show a definite trend in government employers' requiring employees to pay a portion of the insurance premium. The average family premium in the Union's comparables is 9.0%.

Studies show that in the private sector employees contribute 16.0% for single coverage and 28.0% for family coverage. Because the City's family premium is 25% higher than the national average, the actual dollar contribution by employees under either offer is substantially lower than the national average.

The evidence shows that the City's wages compare favorably with the comparables. Its wage rate exceeds the average of the comparables selected by the City. The settlement offers of the Union and the City are above the prevailing settlement pattern.

This factor favors the City.

3. Internal Comparables

a. Introduction

Generally, internal comparables have been given great weight with respect to basic fringe benefits. *Rio Community School Dist. (Educational Support Team)*, Dec. No. 30092-A (2001 Torosian); *Winnebago Village*, Dec. No. 26494-A (Vernon 1991). Significant equity considerations arise when one unit seeks to be treated more favorably than others. Ordinarily, employers try to have uniformity of fringe benefits for all their bargaining units because it avoids attempts by bargaining units to whipsaw their employers into providing benefits that were given to other bargaining units for a very special reason. *Village of Grafton*, Dec. No. 51947 (Rice 1995).

Compensation of nonunionized employees is of little persuasion in an interest arbitration. An employer can utiliaterally make changes for nonunionized employees, while an employer must bargain those changes for unionized employees. See *Columbia County (Professionals*), Dec. No. 28987-A (Krinsky 1997).

b. Analysis

The Union offers the firefighters, police, and utility units as comparable. The City would exclude the utility bargaining unit on the basis that the utilities has its own commission that manages the utility's business. The Union suggests there is extremely close collaboration between the City and the Utilities Commission in a number of critical areas, including collective bargaining, which is fostered by an interlocking Utilities Commission-City Council structure.

On July 8, 2005, Arbitrator Eich determined that the City's offer to the Police Officer's Union was more reasonable than the Union's offer. The City's offer is similar to the one here, including an increase in contributions to 5.0% on the last day of the contract. The offer also provides that the city would contributed $30 per month to a Section 457 Plan on behalf of all members of the bargaining unit, regardless of whether they are enrolled in the City's health/dental insurance program.

The City's settlement with the City's firefighters provided for a $30 a month contribution to a Section 457 retirement savings account, the existing COLA multiplier of 100%, continuation of the wellness program, and an increased funeral leave benefit. The City of Sturgeon Bay Utilities Commission settled with a contribution of 65% of the monthly health and dental premium to a Section 457 retirement savings account, 10% employee insurance contribution, no COLA wage bargaining, no wellness benefit, a sick leave benefit increase, and an added week of vacation at 30 years.

The City's firefighters and the City's police officers have COLA multipliers of 100%. The City of Sturgeon Bay Utilities employees have no COLA. The Union has had an 80% COLA multiplier in its contract with the City since 1994.

The contract between the Operating Engineers and Sturgeon Bay Utilities Commission provides for a 65% contribution to a 457 plan. However, the Commission's employees contribute 10% to their health insurance. Traditionally, public-owned utilities, because of their different revenue structure, have not been compared with other City employees. *City of Marshfield (Clerical/Technical)*, Dec. No. 50726-A (Yaeger 2004); *City of Marshfield (City Employees)*, Dec. No. 30638-A (Dichter 2004). In *City of Sturgeon Bay (Police Department*), Dec. No. 31080 (Eich 2005), Arbitrator Eich rejected the police union's argument that the Sturgeon Bay Utilities Commission was an appropriate internal comparable:

> There was no evidence in this case that the City, either administratively or through the Common Council, has ever had, or attempted to exercise any authority or control of the Utilities Commission's personnel practices—whether dealing with employment, labor relations, health insurance or any of the myriad other aspects of the employer/employee relationship. The City has had no input into negotiations or contract provisions pertaining to

> health insurance—or any labor other employer-employee issues, for that matter—with respect to the Utilities Commission's employees. In my opinion, these considerations, coupled with the fact that Utilities Commission activities are funded not by City taxes, but by Commission-imposed user fees, renders any comparison between Sturgeon Bay police officers and the Utilities Commission's employees inappropriate in an interest arbitration. There is simply no basis for comparison. [Footnotes omitted.]

This factor favors the City's offer.

G. Changes in the Cost of Living

The governing statute requires an arbitrator to consider "the average consumer prices for goods and services, commonly known as the cost of living." While a number of arbitration awards suggest that changes in the cost of living are best measured by comparisons of settlement patterns, such settlements, do not reflect "the average consumer prices for goods and services." Despite its shortcomings, the Consumer Price Index ("CPI") is the customary standard for measuring changes in the "cost of living." Settlement patterns may be based on a number of factors in addition to changes in the "average consumer prices for good and services."

The CPI increased by 1.6% in 2002, 2.3% in 2003, and 2.7% in 2004. The wage increases provided by both parties' offers is greater than the CPI. However, because the wage offers from which one can make relevant comparisons to the CPI are not in dispute, the CPI is not a relevant factor in the current dispute.

H. Overall Compensation Presently Received by the Employees

In addition to their salaries, employees represented by the Union receive a number of other benefits. While there are some differences in benefits received by employees in comparable municipalities, it appears that persons employed by the City generally receive benefits equivalent to those received by employees in the comparable municipalities.

The Union's offer is marginally less expensive than the City's offer—at least in the near term.

I. Changes During the Pendency of the Arbitration Proceedings

During the pendency of the Arbitration proceedings, Arbitrator William Eich rendered his interest arbitration decision involving a dispute between the City and the Union representing its police officers. Arbitrator Eich adopted the City's final offer.

J. Other Factors

This criterion recognizes that collective bargaining is not isolated from those factors comprising the economic environment in which bargaining takes place. See, e.g., *Madison Schools*, Dec. No. 19133 (Fleischli 1982). There is no evidence that the Village has had to or will have to reduce or eliminate any services, that it will have to engage in long term borrowing, or that it will have to raise taxes if either offer is accepted.

Good economic conditions mean that the financial situation is such that a more costly offer may be accepted and that it will not be automatically excluded because the economy cannot afford it. *Northcentral Technical College (Clerical Support Staff)*, Dec. No. 29303-B (Engmann 1998). See also *Iowa Village (Courthouse and Social Services)*, Dec. No. 29393-A (Torosian 1999) (conclusion that employer's economic condition is strong does not automatically mean that higher of two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer).

VI. ANALYSIS

A. Introduction

The central question in this dispute is whether employees should receive a percentage of their contribution to the health and dental plans in a supplemental retirement savings account or whether employees will receive $30 per month in a retirement account. In addition, it must determined whether the employee premium contribution will be increased by 1.0% to 5.0% on the last day of the collective bargaining agreement. Finally, it must be determined whether the COLA multiplier will be increased from 80% to 100% of the CPI and whether the wellness benefits will be restructured from an annual to a semi-annual basis.

During the 2003-2005 negotiations, the parties agreed that employees would pay 4.0% of the health and dental insurance premiums. In previous negotiations the parties agreed to switch health insurance carriers. The parties also agreed that the City could self-fund the health insurance plan through the WPPI Benefit Plan Trust saving over $100,000 a year in health insurance premiums. The differences in the parties can be described as follows:

1. *Health/Dental Insurance.* The City proposes increase the 4.0% employee contribution to 5.0% effective the last day of the contract. The Union opposes the 5.0% increase.

2. *Section 125 Plan.* The City proposes establishing a Section 125 plan so employees can pay all insurance contributions with pretax dollars.

3. *Section 457 Plan Contribution*. The City proposes contributing $30 per month for each employee to a Section 457 plan. The Union proposes that the City contributed 65% of each employee's health and dental insurance premium to a 457 plan.

4. *Cost of Living Clause (COLA).* The Union proposes changing the existing 80% figure for determining the cost of living allowance to 100%, retaining the same overall wage increase range of 3.25% to 6.0%. The City proposes maintaining the status quo with respect to COLA.

5. *Wellness*. The City proposes liberalizing the existing wellness program to provide that a employee who does not use any sick leave in the first six months of the calendar year shall receive one wellness day and another wellness day in the second six months if the employee does not use any sick leave in the second six months.

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (See, e.g., *D.C. Everest Area School Dist. (Paraprofessionals),* Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. Realistically, if the parties reached a negotiated settlement, the final resolution would probably be the result of compromise and the outcome would be contract provisions somewhere between the two final offers here.

The arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed to that offer, by applying the statutory criteria. In this case, there is no question regarding the ability of the Employer to pay either offer. In terms of the final offers, the total cost differences over the life of the contract are slight. Under both proposals, the employees net out ahead during the life of the contract after the tax effects are taken into account.

B. Discussion

Both parties recognize the critical need to control health costs. Prior to the contract at issue here, the City paid 100% of the single and family health and dental insurance programs. Both parties have agreed that employees shall contributed 4.0% of the single and family health and dental insurance premium effective January 1, 2004. Some arbitrators have not favored changes made on the last day of a contract. *See, e.g., Dane County (Law Enforcement),* Dec. No. 29033-A (Ostreicher 1997) (since cost of additional salary steps will not be felt during contract period, that unquantified cost should not be a factor in arbitration proceeding). Others have had no objection to awarding an employer's offer requiring a 5.0% employee contribution on the last day of the contract or implementation of the arbitration award, whichever was earlier. *City of Oak Creek,* Dec. No. 30398-A (McAlplin 2003).

In *City of Sturgeon Bay (Police Department)*, Dec. No. 31080 (Eich 2005), Arbitrator Eich responded to the police union's objection to the City's proposal to increase the employee contribution to 5.0% on the last day of the contract as follows:

> [T]he City's proposal for a 5% employee contribution finds support in external comparables and various other criteria, if only modest support in the internal comparables; and it may well have been accepted as reasonable on its merits at the [sic] with a much earlier starting date. As a result, I do not consider this to be a situation similar to that in *Dane County (Law Enforcement*), *supra*, where, as Arbitrator Oestreicher indicated, there was no evidence in the record with respect to the costs of the wage increase the Association had proposed to take effect on the contract's closing day—they were wholly speculative. Here, as is discussed [in] more detail below, there is evidence supporting the present-day appropriateness of a five-percent employee premium contribution.

An increase of the employee contribution from 4.0% to 5.0%—whether early in the contract period or at the end—favorably compares with the external comparables and the internal comparables. Given the internal comparables and the external comparables, the City's proposal regarding health insurance premiums is more reasonable than the Union's.

With respect to the parties' proposals the City proposes a contribution of $30 per month per employee to each employee's 457 account. The Union proposes that 65% of an employee's contribution be deposited in the employee's 457 account. The Union's approach would be an on-going and ever-increasing payment that would effectively negate savings resulting from employee health insurance contributions. The City's proposal is consistent with the contribution agreed to by the City's firefighters and awarded in the interest arbitration involving the City's police. Although the Sturgeon Bay Utilities Commission agreed to a payment of 65% of an employee's health insurance premium to a 457 account, the Utilities Commission is not an internal comparable. More importantly, the Operating Engineers agreed with the Commission that employees would contribute 10% to health insurance premiums.

Both the City's proposal and the Union's proposal to establish 457 accounts provide employees with a new and valuable fringe benefit. While the City proposes funding the benefit by a fixed amount for all employees, if the Union desires to increase this contribution in the future it is free to propose an increase during negotiations. On the other hand, the Union's proposal would result in an annual increase in the contribution without the necessity of additional bargaining. In the long term, the Union's offer negates any savings derived from employee premium contributions. The Union's claim that the City's proposal is inequitable is not persuasive. The City's flat dollar proposal is similar in concept to the insurance nonenrollment incentive currently provided employees who do not take insurance. In *City of Sturgeon Bay (Police Department)*, Dec. No. 31080

(Eich 2005), Arbitrator Eich wrote as follows about identical offer by the City to the police union:

> I see neither unfairness nor inequity in either the concept, or the result, of making a monthly deposit on behalf of all employees in the unit, whether or not they participate in the city's plan. It is, as the City suggests, analogous to traditional wage-increase trade-offs where the employer is seeking greater employee participation in a benefit plan; and I do not believe the City's offer is subject to rejection on the basis argued by the Union. [Footnote omitted.]

With respect to the Union's claim that its offer of a 65% Section 457 payback is preferred "because it provides a permanent and self-governing solution to the funds distributed to the Section 457 account in exchange for the substantial health insurance premium concession," Arbitrator Eich wrote that he had been "given no reason not to believe that, should the Union desire to increase this contribution in the future, it will be free to propose such a change in the next round of negotiations.

In selecting the City's proposal regarding employer contributions to Section 457 accounts of police officers, Arbitrator Eich wrote:

> The City's 457 Plan proposal, with its employee tax benefits, operates to lessen the effect of the employee's insurance premium contributions, both now and over time; and while, because of its "newness," the precise extent of that lessening is yet to be determined, it is nonetheless a tangible benefit—one going beyond the usual (taxable) wage trade-off for increased employee contributions to their benefit packages. Another aspect of this "newness "deserves comment. The City makes the worthwhile point that "because this is a new fringe benefit not found among comparables, the City urges the Arbitrator to move slowly in funding it." . . . I think that is good advice, and I believe, too, that, given the fact that the tax and other advantages inherent in the proposal redound to the employees' benefit (although . . . the precise extent of that benefit over time cannot now be calculated), the $30 contribution level proposed by the City is reasonable. That level will, of course, remain subject to bargaining in the future. [Footnote omitted.]

Arbitrator Eich concluded that the City's Section 457 proposal constituted an adequate quid pro quo for the Union's agreement to a 4.0% premium contribution, and the City's related proposal to increase the contribution to 5.0% on the last day of the contract.

Arbitrator Eich's reasoning is persuasive. The City's proposal is consistent with the internal comparables and does not result in an ever-increasing contribution in the long

term. Accordingly, it is concluded that the City's proposal with respect to contributions to a 457 account is more reasonable than the Union's.

The Union's proposal to increase the COLA clause from 80% to 100% finds support in the internal comparables. The City's police and firefighters have had 100% COLA in their contracts. (The Utilities Commission, a comparable relied upon by the Union does not have a COLA provision.) The COLA provision is not found in the City's or the Union's external comparables.

Although the Union's proposal is a change in the status quo, it demonstrates neither a compelling need for a change nor proposes an adequate quid pro quo for the change in a contract provision that has been in the parties' agreement since 1994. *See Ripon School Dist.*, Dec. No. 20103-A (Petrie 1983) (arbitrator has no unqualified charge to review basis for past negotiated settlements of the parties). The City's proposal to maintain the status quo with respect to the COLA clause is more reasonable than the Union's.

The Employer's proposal to improve the wellness benefit is not outcome determinative.

VII. AWARD

Having considered the applicable statutory criteria, all the relevant evidence and the arguments of the parties, it is concluded that the City's final offer is more reasonable than the Union's final offer. The parties are directed to incorporate into their collective bargaining agreements the City's final offer.

Executed at Delafield, Wisconsin, this twenty-fifth day of July, 2005.

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Jay E. Grenig