In the Matter of the Petition of

LOCAL 180, AFSCME, AFL-CIO

Case 46
No. 63168
INT/ARB – 10100
Decision No. 31083-A

To Initiate Interest Arbitration
Between the Petitioner and

CITY OF TOMAH

APPEARANCES:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union

Mubarack & Radcliffe, S.C., by Ms. Penny Precour-Berry, appearing on behalf of the City

ARBITRATION AWARD

Local 180, AFSCME, AFL-CIO, hereinafter the Union, and the City of Tomah, hereinafter City or Employer, reached impasse in their bargaining for the 2004 - 2005 collective bargaining agreement. The Union filed the subject interest arbitration petition on January 4, 2004. The Wisconsin Employment Relations Commission's staff investigator conducted an investigation of the petition on March 17, 2004, and by September 13, 2004 the parties had submitted their final offers to the investigator. The Commission certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the captioned matter was held on November 29, 2004, in Tomah, Wisconsin. The parties submitted post-hearing briefs and reply briefs that were received by January 5, 2005.

BACKGROUND:

This dispute is concerned with the terms of the parties 2004-2005 collective bargaining agreement in the bargaining unit of "all regular full-time and regular part-time employees of the City of Tomah Water and Sewer Department, Public Works Department, Parks and recreation Department, the Library department and the custodial, maintenance and clerical employees at the Tomah City Hall". The parties did not enter into a stipulation of agreed upon items at the time of submission of their final offers, but their offers are identical on several items and therefore have been treated as though they were stipulated items. The items that remain in dispute are concerned with wages, changes in employee health insurance benefits and the effective date of any changes to health insurance benefits.

FINAL OFFER ISSUES IN DISPUTE:

1. Wages	Effective 1/1/04	Effective 1/1/05
Union's Offer:	2.5% ATB	2.5% ATB
City's Offer:	2.0% ATB	2.5% ATB

2. Health Insurance Changes and Effective Dates

City's Offer: "Employees utilizing coverage through the City shall contribute the following amounts toward the monthly health insurance premiums:

January 1, 2004 through December 31, 2004

Single coverage: $25.00 per month

Family coverage: $55.00 per month

January 1,2005 through December 31, 2005

Single coverage: $35.00 per month

Family coverage: $85.00 per month

Union's Offer:

Effective upon the date of the award, the premium contributions for full-time employees shall be:

Single coverage: $10.00 per month

Family coverage: $25.00 per month

DISCUSSION:

In determining which offer to select the arbitrator is required to apply the following statutory criteria established for the evaluation of the parties final offers.

> 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
>
> e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
>
> f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
>
> g. The average consumer prices for goods and services, commonly known as the cost of living.

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

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

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

The parties in this case have focused their arguments on several of the criteria enumerated in section11.70 (4)(cm)7r. It is clear from the parties' arguments that the "greatest weight" and "greater weight" factors are not in issue in this case, and therefore they will not be discussed.

Comparables:

Arguments:

Both parties argue that their offer finds support among the external comparables, but they do not agree upon which communities should comprise the pool of comparables to be utilized. The City argues that a 1985 interest arbitration award of Arbitrator Kessler involving this bargaining unit established the comparable communities that are to be looked to when comparing wage and benefit increase and contractual provisions in existence in comparable communities in Wisconsin. In his decision Kessler concluded those communities were Sparta, Mauston, Onalaska, Viroqua, Black River Falls, Mondovi, Prairie du Chien, West Salem, and Monroe County. The City asserts that it has no objection to the undersigned's use of those comparables in this case, and in fact argues there is no reason to deviate from their usage. It contends that the Union's attempt to expand the group of comparables to include the cities of Richland Center, Baraboo and Reedsburg, and eliminate Monroe County is driven solely by a comparison of the employees' health insurance benefits in those communities. Their health insurance benefits provide support for the Union's final offer in this case. It notes that both Baraboo and Richland Center do not require any employee monetary contribution toward the cost of their health insurance benefits. It also insists that the Union is proposing the

elimination of Monroe County from the pool of comparables because employee wages there are noticeably lower than those in this bargaining unit. Thus, the City requests that the undersigned deny the Union's attempt at comparable shopping and adhere to the previously established list of comparables.

The Union on the other hand, while agreeing that Arbitrator Kessler found the above listed communities as comparable in his award, neither party in that case submitted evidence as to Mondovi and the City did not provide any evidence in this proceeding regarding Mondovi. The Union notes that at the time of the Kessler award Mondovi did not have a union contract but one does exist now. Therefore, it argues Mondovi should be included as a comparable in this case. The Union also argues that while arbitrator Kessler found West Salem to be a comparable that bargaining unit is no longer unionized, has no say in the determination of their wages, hours and fringe benefits, and thus should not be considered a comparable. The Union cites arbitrator Kerkman's award in Washburn School District (Support Staff) Dec. No. 24278-A as standing for the proposition that it has long been established that only "organized" employers should be considered among the pool of comparable employers to be examined. It also contends that Monroe County should not be included among the comparables to be examined because counties "have different funding mechanisms, financial conditions, etc." And, it also insists that the cities of Baraboo, Reedsburg, and Richland Center should be included among the comparables to be examined just as it did in the case before arbitrator Kessler. It argues that in that case Kessler concluded those cities should not be included because they were not in the DIHLR Western Wisconsin Service Delivery Area. However, it does not believe that should be a reason for excluding those communities from the list of comparables, and the statistics show that they fall within a reasonable range of those cited as being comparable to Tomah. It also notes that Mondovi was included and is 82 miles from Tomah whereas Baraboo is 59 miles form Tomah, Reedsburg 50 miles and Richland Center 56 miles. It also contends that the demographic data for those three communities more closely resembles that for Tomah than some of the other communities deemed comparable by arbitrator Kessler. Last, the Union asserts that its list of comparables is the more appropriate because it is more expansive and therefore will generate a more accurate picture of what is happening in other comparable communities.

Analysis:

The only arbitration award in evidence involving this employer is that involving the City and its city employees bargaining unit issued by arbitrator Kessler in 1985. In his award Kessler concluded that the list of external comparables he would utilize in evaluating the parties' offers in that case would be those communities with a population of between 2500 and 10,000 located within the Western Wisconsin Service Area identified by the Wisconsin Department of Industry, Labor and Human Relations Department. The Communities that fit that description were Tomah, Sparta, Mauston, Onalaska, Viroqua, Black River Falls, Mondovi, Prairie du Chien and West Salem. Also, both parties had asked in that case that Monroe County be included in the list of comparables and so Kessler included the County. Now the Union comes before the undersigned and requests that three communities be added to the list of comparables established in the Kessler award as well as asking that two communities previously included be dropped from the list. The two previous comparables the Union now seeks to have dropped are Monroe County, which it asked to have included in the 1985 case and West Salem which it now believes should be dropped because the comparable bargaining unit there is no longer represented.

Looking first to the two previously established comparables I would note that things can change over time such that the basis for inclusion no longer exists. That is apparently the case with West Salem where the comparable bargaining unit no longer has union representation (is not organized). It has been commonly accepted among interest arbitrators in Wisconsin over the years that non-represented employees should not be included in a listing of external comparable communities' bargaining units to be examined when evaluating and comparing the parties final offers in an interest arbitration proceeding. Arbitrator Kerkman in Washburn School District (Support Staff) Dec. No. 24278-A stated "the weight of authority is persuasive that only organized districts should be considered in making the comparisons of the comparables." Thus, the Union correctly argues that because the West Salem bargaining unit that was included in the list of comparables in 1985, but is no longer organized, should not be included in the list for this proceeding. Consequently, I will not consider it as an external comparable in my deliberation concerning which final offer to select.

Regarding the Union's proposed dropping of Monroe County from the list of comparables to be utilized in this proceeding the undersigned would note the Union requested its inclusion in 1985 in the arbitration before arbitrator Kessler. However, there has been no evidence submitted in this proceeding to establish that the factors which the Union now argues distinguish Monroe County from Tomah are different today from what existed at the time of the arbitration case before arbitrator Kessler. Thus, I do not find any persuasive reason to now exclude the County from the list of comparables particularly when the Union requested Monroe County be included in the list of comparables when it argued its case before arbitrator Kessler and apparently nothing has changed. Consequently, I will consider Monroe County to be included in the list of comparables to be utilized in evaluating the parties' final offers as compared to settlements in external comparable bargaining units.

Turning to the Union's proposed additions to the list of comparables, the undersigned has examined the demographic data supplied by the Union. I would first note that under arbitrator Kessler's analysis he only included communities with a population between 2500 and 10,000 which do not seem unreasonable as population parameters. The populations of Baraboo, Reedsburg, and Richland Center are 11,011, 8329, and 5162. Obviously, Baraboo's populations falls outside those parameters, whereas Reedsburg and Richland Center fall within them and also are geographically closer to Tomah than Mondovi that was included by Kessler in the earlier list. It is also the case that both are closer in population size to Tomah than is Mondovi. Mondovi has a population of only 2677, which is significantly smaller than Tomah at 8532. Also, when looking at the other demographic data supplied by the Union it becomes even more obvious that Mondovi should not be included in the list. Additionally, I am persuaded that merely because a community was included or not in the Western Wisconsin Service Area identified by the Wisconsin Department of Industry, Labor and Human Relations Department in 1985 is not controlling today. Thus, I believe that both Reedsburg and Richland Center should be included in the list of comparables, but also that Mondovi should be dropped. In looking at a Wisconsin highway map there may also be other communities that are equally as geographically proximate to Tomah that would qualify to be included in such a list, but there is no record evidence on that point.

Also, in terms of population size alone I believe it appropriate to drop Onalaska from the list of comparable communities to be utilized in this case. It now has a population of 15,547, outside the Kessler parameters and almost twice the size of Tomah. At the time of its inclusion it had a population of 9249. And, as with Mondovi the other demographic data supports such a conclusion.

Thus, in this case the undersigned will utilize the following list of external comparables when analyzing the parties' final offers:

Back River Falls, Mauston, Monroe County, Prairie du Chien, Reedsburg, Richland Center, Sparta, and Viroqua

Wages:

Arguments:

The Union acknowledges that the wages for these employees are generally higher than the average of the comparables, but argues that does not mean these employees should receive a lower wage increase. It believes this is particularly so in light of the City's proposed change in the status quo in health insurance. It also asserts that the City's reliance on the internal settlement with its police officer bargaining unit is misplaced and argues that it does not establish a pattern. It notes that like in the Marathon County, Dec. No. 27036 (Imes) such a finding would be the equivalent of "the tail wagging the dog". Tomah has eleven police officers whereas there are 37.5 full-time equivalent positions in this bargaining unit. It also argues that the wage increase of 2% offered by the City and accepted by the police bargaining unit generates more money for police officers than employees in this bargaining unit because of the higher wages received by police officers and also because police officers receive more overtime.

In addressing the City's proposal to add an additional paid holiday the Union agrees that there is some cost to a holiday in terms of lost productivity, but disagrees that it is an additional financial benefit to the employees or an additional financial cost to the City. It contends that the Employees' yearly income will be the same whether there is an additional holiday or not. The Union claims that even with these disparities the City's exhibits show that some employees will take home less pay in 2004 because of the small wage increase and the increase in their insurance premium costs.

The City argues that its proposal to increase wages, provide an additional holiday, and health insurance changes must be considered as a whole rather than examined separately. It contends that its employees current wages are superior in most and competitive in all classifications compared with other area municipal and private employers. And despite that fact the City claims that it requires far less of its employees in terms of their contribution toward the cost of their health insurance as compared with the same municipal and private employers. Thus, it concludes its offer maintains the existing superior and competitive wages while at the same time brining the employee health insurance contributions closer to its external comparables.

The City points out that as with the police unit it has offered an additional holiday for each employee. While the Union argues this does not amount to extra dollars in the pockets of employees it is another eight-hour paid vacation day. And the dollar benefit to employees should not be ignored.

The City also argues that the net impact of its final offer is a 2.24% total benefit increase which is significantly closer to the 2004 CPI increase of 2.1% than the Union's final offer net impact which equates to a 4.39% total benefit increase. The same analysis for the 2005 shows that the net impact of the City's final offer is 4.27% whereas the Union's is 5.87%. Thus, the Union's final offer in 2005, which does not increase employee contributions toward the health insurance premiums, results in a total benefit increase to employees of almost three times the CPI increase in 2004. Since 2001 the City has absorbed all of the significant pay and health insurance premium increases, and the public interest warrants that these employees begin to share in the cost of the rapidly rising health insurance premiums. That sharing includes less of a wage increase in 2004.

The City insists that the comparable data show that its employees are paid very well. It argues that is particularly true when comparing its wages to those of its closest comparables - Sparta and Monroe County, as well as private employers. Even the wage data for Baraboo, Reedsburg, and Richland Center show that the City is competitive in its starting wages and superior after five years of employment. It is also the case that the other comparable communities either have to play catch-up to Tomah in terms of wages or already had employee health insurance premium contribution rates in place that are higher than what the City's offer proposes. Regardless of which offer is selected the City

wage rates in ten of sixteen positions will be higher than the average of the Kessler comparables.

The City concludes that its 2% wage increase in 2004 takes into account the small health insurance contribution that will be required of employees. But, it also recognizes the substantial increase in health insurance premiums over the last several years, most of which has been/will be absorbed by the City, which is a significant benefit increase to employees in and of itself. More importantly, it also seeks to make the wage increase consistent with the wage increase agreed upon by the police union and provided to the unrepresented employees.

Analysis:

The undersigned is persuaded that each party's final offer on wages in 2004 is less than the wage increases among the external comparables. The comparable wage increases for 2004 were as follows: Back River Falls 3.5%, Mauston 3.5%, Monroe County 2%-2% split increase, Prairie du Chien 2%-2% slit increase, Reedsburg 3%/2.75% Water/DPW Clerical, Richland Center 3%, Sparta 4%, and Viroqua 3%. Thus the average 2004 wage increase among the comparables was 3.5%. Of the four comparables for which there is settlement data available for 2005 the average wage increase among them is in excess of 3%.

Clearly, the external comparable wage increases are larger than either the City or Union final offers in this case. The City offer is about 1 ½% below the average of the comparables whereas the Union's offer is 1% below. However, the Union's first year offer of 2.5% is closer to the average of the comparables than the City's. Both party's second year wage offers are identical – 2.5% increase effective 1/1/05. Thus, both are less than the average of the reported 2005 wage settlements to date among the comparables.

However, there is the internal police department comparable as well. The City's settlement with the police unit mirrors the City's final offer to this unit. The police bargaining unit voluntarily agreed to a 2% wage increase in 2004 and a 2.5% increase in 2005. The Union argues that characterizing the police settlement as a pattern settlement is allowing the proverbial "tail to wag the dog" inasmuch as there are more than three times as many employees in this bargaining unit than are in the police unit.

Were the facts of this case like those in the Marathon County case cited by the Union the undersigned might find that decision more persuasive. However these cases are distinguishable. Here there are only two represented bargaining units in the City whereas in Marathon there were many and those that were settled represented a fragment of the total represented employee population. To adopt the Union's logic would be to accept the proposition that if the smaller of the only two represented units is the first to settle voluntarily it cannot be considered as creating an internal pattern. Furthermore, as far as this bargaining unit is concerned the police unit would effectively be eliminated as an internal comparable. As so many before me have said, the interest arbitration law was designed with the idea of producing awards that represent what a voluntary settlement would have looked like if the parties had been able to achieve it. One predictor of what that result would look like is another settlement(s) negotiated by the employer with other of its represented employees. Because such a settlement involves one of the parties to the arbitrated dispute it receives considerable weight in determining which of the parties' final offer most closely resembles the voluntary settlement that was achieved through bargaining. Accepting the Union's logic in the circumstances present in this case would eliminate that valuable predictor from consideration.

That is not to say that there may have been factors present in the other bargain(s) giving rise to the voluntary settlement that are not operative in the arbitrated dispute that diminish the amount of weight the voluntary settlement should receive. In this case, the Union argues that police officers make more money and work more overtime hours than employees in this bargaining unit, and therefore could accept the City's lower wage offer because it would generate more money for police officers than employees in this unit. First, overtime hours are speculative in the sense that there is no guarantee what, if any, overtime will be required in either bargaining unit. Second comparison of wage settlements has historically been based upon the size of the percentage increase of the across the board raise, not the actual cents/dollar amount of the increase. For example 2% ATB not $.32 ATB. That's because just as within this bargaining unit a 2% percent ATB increase will generate different cents per hour increases depending upon the hourly rate being paid to each employee before the ATB percentage increase is applied. Thus, in this unit if an employee is making the average hourly rate of the bargaining unit of

$16.09 per hour his/her raise will be $.32 per hour, whereas someone earning $12 per hour will receive a raise of $.24 per hour. Thus, merely because one group of employees is paid more than another cannot be the basis for concluding their percentage wage increase settlement carries less weight for comparative purposes.

For these reasons the 2% percent wage increase negotiated between police officers and the City carries significant persuasive value with the undersigned.

It is also the case that while the additional paid holiday does not increase an employee's annual compensation it does have value. In this case about .4% on the average bargaining unit wage of $16.41 in 2004 under the Employer's final offer (2003 average hourly rate of $16.09 x 1.0 2% = $ 16.41). While it is not wages it does have value and cannot be disregarded.

Nonetheless, when coupled with its insurance proposal, regardless of its position as a wage leader among its comparables, I believe the City's wage proposal is overreaching, particularly its offer for 2004. However, while the City's wage offer in the first year of the contract is less than the Union's and farther from the average of the external comparables, it is supported by the internal comparable settlement in the police unit. The police unit was facing the same City health insurance proposal, and it is not known whether the police bargaining unit was a wage leader.

Health Insurance:

Arguments:

The City argues that history and the comparables support its proposal regarding health insurance. It claims that from January 1989 until August of 2000 these employees contributed 10% of the family health insurance premium. During that period the premium rates rose from $478 to $654. Then in 2001 the premium increased 24% to $813 per month and from January to July 2001 employees were paying $81.25 per month toward the family health insurance plan. That partially self-funded plan also had a $100 - $200 deductible provision and there was no dental or vision coverage. In that same year the police bargaining unit also contributed 10% to ward the premium but that payment was capped at $45 per month. In an effort to attempt to limit the ever increasing health insurance premiums the City negotiated with both Unions to get them to agree to switch

to the non-deductible State of Wisconsin insurance plan where the City agreed to pay up to 105% of the lowest qualifying plan. In return the City granted employees wage increases in each year of the three year contract of 3% at the beginning of each contract year and another 2% in the middle of each contract year totaling 15% over the three year contract. Notwithstanding the change in plans the premiums have continued to rise significantly. The City's contribution for family coverage based upon a 40 hour work week has risen from $4.10 per hour in August 2001 to $6.27 per hour in 2003. This amounts to an increase in the employee insurance benefit of $2.17 per hour over three years.

Given these significant increases the City concluded that employee contributions toward health insurance premiums were warranted again. Thus, it proposed to its two bargaining units that employees contribute $25 and $55 per month toward the single and family premiums in the 2004 contract year and $35 and $85 per month in the second contract year and $45 and $110 per month in the third contract year. The same contribution level was established for the nonrepresented employees as well for the sake of uniformity among all City employees. The police bargaining unit accepted this premium sharing arrangement along with the City's proposed wage increases. Therefore, if the Union's offer is selected the employees in this bargaining unit will not be required to participate in the same cost sharing as all other City employees and this inequity will create morale problems which the City has attempted to avoid.

The City argues that in addition to the history and internal comparable settlement that support the City's final offer so do both the public and private external comparables' insurance programs. Among the comparables the average monthly premium contribution in 2004 is $28.97 for single and $89.39 for family and in 2005 those numbers are $37.83 and $112.97. Whereas the Union's offer only provides that employees contribute $10 for single and $25 for family effective with the arbitrator's decision. The City argues that employees in effect will not have to contribute anything during the first year of the contract under the Union's offer because of how long it has taken to get to an agreement. And, the Union offer will result in a contribution level that is $27.83/month for single coverage and $87.97/month for family coverage less than the average of the comparables in 2005. However it argues that its proposal will bring the contribution level closer to the

average of the comparables although still lower. The City's offer would result in premium levels that are $2.83/month for single coverage and $27.97/month for family coverage less that the average of the comparables in 2005. It concludes that adoption of the Union's final offer would maintain the existing disparity between the City of Tomah and its comparables.

The City also contends that its final offer provides a sufficient *quid pro quo* because of the circumstances of this bargain. It argues that in this case both parties are proposing a change in the status quo and the only dispute lies in the amount of premium contribution employees will be making. In that regard the City asserts that the question posed is whether a *quid pro quo* is either required and/or sufficient given the circumstances of this case. It cites Arbitrator Krinsky's ruling in Whitefish Bay School District, Dec. No. 27513-A where both parties were proposing a change in the status quo regarding the employee health insurance premium contribution. In that case, the arbitrator rejected the union's assertion that a *quid pro quo* was required and said "the District has to justify the size of the proposed contribution, but under the circumstances of this case, it does not have to provide and incentive for requiring a change in the cost sharing". The City believes the same to be so in this case. The City points to the drastic increases in health insurance premiums since 1998, the significance of this benefit increase - $2.17per hour on an average hour wage of $15.37 per hour, and concludes its proposed employee premium contribution levels are more than reasonable in comparison to the comparables. Furthermore, it argues that it will still continue to absorb most of the increase in health insurance premiums even if its offer is selected. The increases in premium absorbed by the City in 2004 and 2005 will amount to a monetary benefit to employees of $4245.60 and $5379.60 per year respectively.

The City also contends that arbitrators have concluded that internal comparability of the employer's offer in matters of a fringe benefit as significant as health insurance should receive paramount importance. According to the City, since there is no evidence that distinguishes the factors present in this case from those that drove the voluntary settlement in the police bargain the outcome in terms of wages and health insurance should be the same in this bargaining unit. And in terms of any argument concerning the

sufficiency of any *quid pro quo*, as this arbitrator has previously stated, that conclusion must be based upon the unique circumstances of each case.

The City concludes, therefore, that the facts and circumstances of this case demonstrate a need for a meaningful health insurance premium contribution. And adoption of the City's final offer will bring this bargaining unit into conformity with the police unit and also closer to the external comparables while maintaining superior and/or competitive wages.

The Union argues that in the previous contract the City had agreed to pay 105% of the lowest plan option under the State of Wisconsin plan in order to be able to switch to that plan from the previous partially self-funded plan. Now the City is proposing that there be an employee contribution. The Union points to the external comparables where Baraboo, Mauston, and Richland Center have the same plan as the City's and are paying 105% of the lowest premium option, and Mondovi which pays 100% of the single premium and 95% of the family plan premium. The other comparables are paying: Sparta and Viroqua 90%, Black River Falls, Prairie du Chien, and Reedsburg have caps on the employee's contribution toward premium of $52, $25, and $32.50 respectively. Here the City is seeking a cap of $85 in 2005 for those employees electing the family plan, and is thus seeking to have its employees go from no premium contribution to one of the highest among the external comparables.

The Union also asserts that one of the most troubling factors in this case is the total lack of any *quid pro quo* being offered by the City for the change it seeks. It notes that while the City cites arbitrator Engmann's award in City of Onalaska, Dec. No. 30550-A the Union prevailed in that case. In this case not only has the City not offered a *quid pro quo*, but it also is offering a substandard wage increase. On the other hand the Union has offered to make a smaller contribution toward the health insurance premiums, but there is a *quid pro quo* under the Union's final offer. The Union also refers to passages from the award in City of Onalaska where the arbitrator has quoted other arbitrators for the proposition that "[I]t is commonly accepted that a proponent of a change in the status quo bears the burden to showing both the change is necessary, and that some *quid pro quo* has been offered to the other party for the change." The Union contends that if a legitimate problem in health insurance exists in this case its final offer

has addressed it, and that shifting premium costs to the employees really does nothing to address the increasing costs of health insurance.

The Union defends its position that its offer, if selected, not take effect until the date of the award. It sees this as reasonable inasmuch as the City is not offering a *quid pro quo* offer for its proposed changes in health insurance. It concludes that the City's final offer on health insurance coupled with a substandard wage increase and no *quid pro quo* is not warranted.

Analysis**:**

I believe that anyone looking objectively at the situation that exists today in terms of health insurance costs, not only in Wisconsin but around the country, can recognize there is a crisis in terms of affordability. Historically, in the public sector, employees have enjoyed very good to excellent health insurance coverage for years. But, in the past several years the cost to employers of continuing to provide that benefit has been rising rapidly. So rapidly that I think most would agree the benefit for many employees, particularly those who for insurability reasons need the protection of group plans, has become the cornerstone of the compensation package offered by employers. Also, its cost now represents a significantly larger portion of the employer's cost of each employee than at any time since the benefit was initially provided, and clearly more expensive than anyone could have anticipated when it was negotiated into the collective bargaining agreement. Employers and Unions struggling to deal with this fact have experimented with many ideas in an attempt to hold down the rate of increase in and overall cost of this valuable benefit, but without success. These parties' last negotiation was an example of such an effort. They switched from a partially employer self-funded plan with employees contributing 10% of the cost of the premiums in an attempt to slow down the rate at which premiums were increasing. If that could be achieved, it would benefit both the City and its employees. In the first year under the new plan they recognized a more than $100 per month decrease in the cost of the family plan premium by switching to the State of Wisconsin plan. Under that plan the City would pay up to 105% of the premium of the lowest cost qualified plan toward the costs of any available qualified plan offered in their service area. It is interesting to note that under the old plan employees had been contributing 10% toward the premium costs, but that did nothing to

stave off the continually rapidly rising premiums. Thus, the cost shifting of placing more of the costs onto employee shoulders to create better consumerism in an attempt to reduce costs or hold down the rate of increase had obviously not been successful. The parties moved away from that approach in 2001 to a plan where the cost to employees of the insurance benefit was significantly reduced, if not totally eliminated, depending upon which of the qualified insurance plans the employee selected. As will be seen later, this change did have an impact on the rate of increase in the premium costs. Yet, costs have continued to rise, albeit at a slower pace. Nonetheless, once again those increasing costs put the issue in the forefront of negotiations thus providing a significant impediment to the parties' ability to voluntarily agree on a successor agreement.

I think it is also significant and worthy of comment that the wage increases negotiated for the prior three-year agreement that accompanied the change in insurance plans were 3% -2% split increases in each contract year resulting in a 15% increase to the wage rates over 3 years. These wage increases were substantial at a time of relatively low inflation and represented significant real wage gains. Employees were even more advantaged when these significant wage increases (15%) accompanied the elimination of the 10% ($81.25/month) employee premium contribution, elimination of the deductibles and provided for some new dental and vision benefits. At the same time, the family health insurance premiums increased from $707/$715 (Health Tradition/Gunderson) per month in 2001 after the switch to the State of Wisconsin Plan to $1035/$1126 (Health Tradition/Gunderson) per month in 2003 [1]. This represented a 68%/63% increase in the monthly premium for the family plan coverage. Thus, while the City didn't realize any significant financial benefit in terms of premium increases from the change in plans the employees were handsomely rewarded for their agreement to change plans while at the same time unencumbering themselves from sharing in 10% of the cost of the insurance as well as the deductibles. However, for 2004 and 2005 the premiums have increased to $1115.80/$1074.80 and $1240.30/$1245.10 per month for the family plan respectively. This represents a 19% (Health Tradition) and 11% (Gunderson) increase in premium costs over the term of this disputed two year agreement. In fact, the premiums decreased

[1] Throughout my discussion of the parties' offers I will only be referring to the premiums and percentage increases for the family plan and not the single plan inasmuch as in 2003 there was only one bargaining unit employee who had selected the single plan.

in 2004 under the Gunderson plan because the plan dropped its dental coverage. Also, according to the City's exhibits the lower cost increase in the Health Tradition plan was attributable to a change in the manner in which the prescription drug benefit is administered. Thus, these changes have resulted in some financial relief from the exorbitant increases experienced during the previous five years according to the City's exhibits. The 19% and 11% increases for 2004 and 2005 are compared with increases of 42% and 52% for Health Tradition and Gunderson family plans in 2002 and 2003 and 117%/ 136% increases respectively between 1998 and 2003. While things are getting better in 2004 and 2005 in terms of the rate of increase in premium costs the question remains whether these are temporary lulls in the rate of increase due to plan design changes or harbingers of the future. Only time will tell.

What is clear is that the costs are not going down and there is no reason to anticipate they will. This brings me to the question posed by this case. Should these bargaining unit employees be required to assume a greater share of the premium costs than provided for in the Union's final offer? I'm persuaded the answer to that question is yes for several reasons. First, I am troubled by the Union's offer that provides the employee contribution to premium is not effective with effective date of the agreement. I am sympathetic to concerns that employees will be required to pay back money that was not deducted if the City's offer is selected. This occurs in many cases because of the nature of the Wisconsin arbitration law and its inability to even facilitate the collection of final offers prior to the expiration of the then current agreement, let alone provide sufficient time for an award to be issued before the effective date of the successor agreement. In this case that means that if the City's final offer is selected employees will be obligated to pay back money to the employer and the longer the delay the larger the sum owed by employees. In this case it is at least 14 months worth of premium contributions. It also means that employees who enjoyed the benefit but have left the City's employ will not share in the cost of that benefit as his/her remaining fellow employees will be obligated to do. Nonetheless, by delaying the employees' obligation to absorb some of the cost of the premium the value of the Union's offer is significantly diminished for the term of the agreement to which it applies. Under the bargaining law as it exists today, depending upon the amount of time that elapses from the expiration of

the predecessor agreement until an award is rendered, conceivably employees may not be obligated to make any payment for the contract term, while the employer's obligation continues at a level higher than even what the Union's offer proposes. The Union's rationale for its offer is that it is in response to the fact that the City did not offer a *quid pro quo.* However, that explanation does not diminish my concerns regarding the reasonableness of this aspect of the Union's offer. As I said with respect to the City's wage offer, I believe the Union has over reached by not making its health insurance offer retroactive to the effective date of the 2004 – 2005 contract.

Second, the City's offer would put the amount of the employees' contribution toward premium in the middle of the comparables in 2004. Mauston and Richland Center have the State of Wisconsin plan and employees make no premium contribution. On the other end of the spectrum Monroe County employees contribute $157 and $175 per month for family coverage respectively. In both Sparta and Viroqua employees pay 10% of the monthly family premium, whereas Prairie du Chien, Reedsburg, and Black River Falls cap the employee health insurance premium contribution at $25, $33.50, and $52 per month respectively. Here, under the City's offer, the dollar caps employees would be contributing toward health insurance premiums would equal approximately 5% of the total family premium in 2004 and 7% in 2005, whereas under the Union's final offer employees would be contributing nothing in 2004 and approximately 2% of the family premium in 2005. Clearly, the City's final offer is supported by the contractual health insurance provisions among the external comparables.

Third, there is an issue presented due to the lack of a *quid pro quo* for the City's proposed change in the health insurance. As evidenced by both parties' offers they are in agreement that the employees will be contributing something toward their health insurance premiums, and their dispute centers on how much. A lot has been written by arbitrators about the need for a *quid pro quo* when a party is proposing a change to the status quo. Is there a legitimate problem that needs to be addressed, if so, does the proposal reasonably address the problem and if those two factors are present then has the proposer of the change offered an appropriate/sufficient *quid pro quo?* Arbitrator Torosian discussed the question of what constitutes a sufficient *quid pro quo* in Oconto Unified School District, Dec. No. 30295-A (10/02),

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

Other arbitrators have also addressed the issue of the sufficiency of the *quid pro quo* being offered for proposed changes in the health insurance plan provided for in the parties' collective bargaining agreement. These arbitrators have engaged in an analysis of the adequacy and reasonableness of the proffered *quid pro quo* and not surprisingly have found it to be adequate and reasonable in one circumstance and yet not so in another. Their conclusions are clearly based upon the unique facts of each case and thus no general rule regarding what constitutes a sufficient *quid quo pro* has emerged. As I have said before, after analyzing many awards any discussion of the sufficiency of and need for any *quid pro quo* is necessarily governed by the unique facts of each case.

In this case, the City has identified the problem as being the ever increasing cost of the health insurance benefit provided to employees and the lack of any current employee sharing in the cost of that benefit. The City argues that it's contribution for family coverage based upon a 40 hour work-week has risen from $4.10 per hour in August 2001 to $6.27 per hour in 2003. This amounted to an increase in the employee insurance benefit of $2.17 per hour over three years, and the City therefore concluded that employees needed once again to contribute toward the cost of their health insurance.

As discussed above, at the start of 2001 City employees were contributing $81.25/month or 10% of the total family premium for a plan with $100/$200 deductibles and no vision or dental coverage. Then, in return for agreeing to increases of 5% to the wage rates in each of the next three years (15% over three years), the plan was changed. Under the terms of the settlement the City agreed to pay up to 105% of the lowest qualified plan premium toward the cost of any qualified plan selected by the employee and increased coverage for some dental and vision benefits. Thus, employees received expanded coverage, elimination of their 10% contribution toward the cost of the monthly premium and at the same time received a 15% increase in wage rates over the next three years. However over the next three years the premium costs continued to increase, and

also in the two years about which this dispute is concerned, albeit at a smaller rate of increase. The City presents the problem as being that the cost of the health insurance benefit has risen so high and gotten so expensive and proposes as a response that employees should therefore contribute toward those costs. It does not believe a *quid pro quo* is required under the unique circumstances present in this bargain.

The thrust of the Union's arguments have been that the City's offer lacks a *quid pro quo* and also contains a substandard wage increase, but not that this bargaining unit is distinguishable from the police unit in a way that is significant and meaningful in terms of changes in the employees' health insurance premium contribution. Other than an attempt to show that police officers are higher paid and work more overtime, which was discussed earlier, there is no record evidence to distinguish this bargaining unit form the police bargaining unit as it relates to accepting the City's proposed changes in health insurance and its wage and holiday proposals.

I agree with the City that the circumstances of this case are indeed unique when one looks at the parties' prior two contracts and what has transpired regarding the issue of health insurance in the last bargain and this one. Employees were paying 10% of the cost of the health insurance premiums, then agreed to change plans to one that afforded them expanded benefits, eliminated their cost sharing while receiving wage rate increases that were far in excess of increases in the CPI. There is no record evidence that disputes the notion that this bargaining unit is in a unique situation. And, in light of the totality of circumstances present in this case it does not seem unreasonable, as argued by the City, that a *quid pro quo* is not required. This conclusion is reinforced by the fact that the other City bargaining unit voluntarily agreed to the terms of the City's offer to this bargaining unit and there was no *quid pro quo* present there either.

Fourth, as most arbitrators have concluded, including this one, an employer's ability to negotiate to a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such an agreement(s) that

diminishes it persuasive value.[2] See arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91); arbitrator Malamud in Greendale School District, Dec. No. 25499-A(1/89); arbitrator Nielsen in Dane County (Sheriff's Department), Dec. No. 25576-B (2/89); arbitrator Kessler in Columbia County (Health Care), Dec. No. 28960-A (8/97); and arbitrator Torosian in City of Wausau (Support/Technical), Decision No. 29533-A, (11/99). In this case, the City did just that. It achieved a voluntary settlement with its police officer bargaining unit on the same terms for wages and health insurance that are contained in its final offer. The Union argues the undersigned should discount this settlement because police officers are paid more than employees in this bargaining unit, work more overtime hours, and because there are more employees in this bargaining unit so to grant that settlement significant weight would be like the "tail wagging the dog". As I discussed above, I do not find those arguments persuasive. There are only two groups of represented employees in the City of Tomah – this unit and the police unit. And, it is not as though the police officers bargaining unit should be dismissed and the agreement the City reached with it treated as though it were achieved with a "company union". While there may be fewer members in the police bargaining unit they are represented by a statewide labor organization representing police officers throughout Wisconsin and is no less formidable as a bargaining entity. And, as I stated in Marshfield, unless there is some basis for distinguishing the factors that drove the police bargaining unit voluntary settlement from those present in this bargain, such that internal comparability is not the paramount consideration, the outcomes should be the same. There has been no such evidence presented in this case. Therefore, in the undersigned's opinion the settlement reached between the City and the police bargaining unit is very significant and entitled to substantial weight in the deliberative process of deciding which offer to select and will be accorded such.

[2] I stated in City of Marshfield, Dec. No. 30726-A "The undersigned believes that internal comparability in matters of a fringe benefit as significant as health insurance should, aside from the greatest weight and greater weight factors, receive paramount consideration".

In conclusion, based upon the evidence, testimony, and argument presented, and consideration and application of the statutory criteria contained in Section 111.70 (4) (cm) that are to be utilized in determining which offer to select the undersigned selects the City's final offer. Therefore, it is my

AWARD

That the City's final offer is selected and shall be incorporated into the parties' 2004-2005 collective bargaining agreement.

Entered this 18th day of February 2005.

Thomas L. Yaeger
Arbitrator