In the Matter of the Final and Binding
Interest Arbitration Dispute Between

RACINE WASTEWATER COMMISSION

and

LOCAL 2807, AFSCME, AFL-CIO

Case 700
No. 63573
INT/ARB-10196

Decision No. 31231-A

Arbitrator: James W. Engmann

Appearances:

Mr. Mark L. Olson, Attorney at Law, and Ms. Jeanne K. LaCourt, Paralegal, Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202, appearing on behalf of the Racine Wastewater Commission.

Mr. Thomas G. White, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 044635, Racine, WI 53404-7013, appearing on behalf of Local 2807, AFSCME, AFL-CIO.

ARBITRATION AWARD

The Racine Wastewater Commission (hereinafter Commission or Employer) is a municipal employer which operates the Racine Wastewater Utility (hereinafter Utility or Employer). The City of Racine (hereinafter City) is a municipal employer which has a collective bargaining relationship with the following units: City Hall, Crossing Guards, Dispatcher, Firefighters, Health Department, Local 67-DPW, Police Department Clerical, Professionals, and Public Health Nurses.[1]

Local 2807, AFSCME, AFL-CIO, (hereinafter Union) is a labor organization which is the exclusive collective bargaining representative "for all regular full-time, regular part-time and student Commission employees at the Wastewater Treatment Plant and on the Sewer Maintenance Crew (listed in Appendix A), excluding professional, clerical and office workers and any supervisory employee with the right to hire, fire or otherwise discipline employees or effectively recommend such action."[2]

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[1]Throughout this case, there is a basis disagreement as to whom the municipal employer is in this matter, with the Employer arguing that the Racine Wastewater Commission is the municipal employer and the Union arguing that the City of Racine is the municipal employer. Throughout this Award, the parties and I be use the term "Employer," but there may be some confusion as to which entity is being referred to at any particular time. I will resolve this issue as need be in the Discussion section of this Award.

[2]Article 2 Management and Union Recognition, Section A. Recognition, of the parties' collective bargaining agreement.

The Employer and the Union have been parties to a series of collective bargaining agreements, including one covering the 2001-03 term. On April 14, 2004, the instant petition regarding the 2004-2005 collective bargaining agreement was filed with the Wisconsin Employment Relations Commission (hereinafter WERC) requesting that the WERC initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. An investigation was conducted by a member of the WERC staff which reflected that the parties were deadlocked in their negotiations. On January 13, 2005, the parties submitted their final offers to the Investigator, as well as a stipulation on matters agreed upon. The Investigator notified the parties that the investigation was closed and the WERC that the parties remained at impasse. The WERC certified that the conditions precedent to the initiation of arbitration as required by statute had been met. On February 1, 2005, the WERC ordered the parties to select an arbitrator from a panel of arbitrators submitted by the WERC. In a letter dated March 3, 2005, the Employer advised the undersigned that he had been selected as the arbitrator in this matter to select the total final offer of either the Employer or the Union. Hearing was held on June 15, 2005, in Racine, WI, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs, after which the record was closed. This matter is properly before the arbitrator for final and binding resolution. Full consideration has been given to all of the testimony, exhibits and arguments of the parties in issuing this Award.

FINAL OFFERS[3]

Employer:

> **Wages – 2004:** increase 3.5% effective January 1, 2004. Increase hourly rates by 3.5% for Lead Person, Shift Differential, Boiler Operator, and Wisconsin Wastewater Workers Operators Licence.
>
> **Wages – 2005:** increase 3.5% effective January 1, 2005. Increase hourly rates by 3.5% for Lead Person, Shift Differential, Boiler Operator, and Wisconsin Wastewater Workers Operators Licence. Increase test rates for Wisconsin Wastewater Workers Operators License to $0.28/hour, $0.07/hour for each of four tests.
>
> **Lifetime Insurance Continuation:** Delete benefit for employees hired on or before December 1, 2005. Post-retirement insurance benefits (same as pre-December 1, 2005) available until Medicare eligibility for such employees.

Union:

[3]Both final offers include matters upon the parties have agreed. Included in this section are only those matters in which their final offers differ.

Appendix "A" Wages: Increase wage rates across the board 2.5% effective January 1, 2004, and 3.0% effective January 1, 2005.

ARBITRAL CRITERIA

Section 111.70(4)(cm) MERA states in part:

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:

1. The lawful authority of the municipal employer.

2. Stipulations of the parties.

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

4. 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.

5. 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.

6. 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.

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

8. 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.

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

10. 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.

POSITIONS OF THE PARTIES

Employer on Brief

The Employer asserts that the statutory role of the Arbitrator is to attempt to place the parties in the same position as that which they would have achieved had the parties been able to reach a voluntary settlement. The Employer argues that when the parties' offers are viewed in their entirety, there is little doubt that its offer is consistent with that to which other parties, both external and internal, have voluntarily agreed while the Union's offer does not confirm to this standard; that the Employer has presented evidence proving the critical need for the Employer and Union to work together to control health costs; that, historically, the Employer has paid 100 percent of the single and family health insurance premiums and will continue to do so under the Employer's offer; that premiums have dramatically increased from $848 per month in 2003 to $1,076 per month in 2005 for the family health premium, a two year increase of 26.9 percent; that, significantly, the major issue in this case is not the Employer requesting, requiring or forcing the employees to contribute toward health insurance premiums; that, instead, the Employer is proposing to place reasonable controls upon the skyrocketing costs of providing life-long,

unlimited health insurance coverage to retirees, but in a fashion which is purposely constructed to leave the lifetime benefit in place for all employees hired prior to December 1, 2005; that, significantly, the Employer is not attempting to tinker with the benefits enjoyed by present employees; that, instead, it is proposing that employees hired in the future, on or after December 1, 2005, be limited to Employer paid health insurance premiums from the date of retirement until reaching Medicare eligibility; that the status of retiree insurance which would be established by this Employer proposal is overwhelming supported among the external comparables; that the Employer is further offering a generous *quid pro quo* for this change; that the Employer is offering a significantly higher percent wage increase, despite its already high ranking among the comparables, than that submitted by the Union; that the Employer is offering substantial increases in its extra pay classifications (i.e., lead person, shift differential, boiler operator, operators' licenses); that the Employer's wage offer is also above the prevailing comparable internal and external 2004/2005 settlement pattern; that the Employer's above-average two-year wage offer is another significant factor in support of its position that it has offered an appropriate *quid pro quo* for the proposed change in retiree health insurance benefits; and that, in fact, the Employer's offer presents a change which has no impact on present employees.

Specifically, the Employer argues that the cost of providing life-long benefits to retirees has become prohibitive; that virtually no other comparable utility offers the lifetime retiree health insurance benefit; that this post-Medicare health insurance benefit is not provided by any other comparable Wisconsin utility; that the Employer faces on ongoing privatization threat; that the package cost of the offers is relevant to assessing the merit of the final offers; that the pool of comparables has been established in a prior arbitration between the parties and should be incorporated herein;[4] that the comparable pool consists of the water utilities of Appleton, Beloit, Green Bay, Janesville, Kenosha, Madison, Milwaukee, Oshkosh, Sheboygan, and Waukesha; that the Employer's employees are wage leaders among the comparables; that there is neither a need for any catch-up wages, nor is there any slippage in wage ranking as a result of the Employer's final wage offer; that retiree health insurance benefits surpass those offered by any other comparable utility; that 81.8 percent of the external comparables do not pay health insurance for retirees; that the only utility which pays health insurance premiums does not begin paying for retirees until the first month following the 60th birthday; that the Employer provides its employees the most generous retiree health insurance benefit; that this status will not be changed in any way by the Employer's final offer; that under the Employer's final offer, all retirees, including those hired subsequent to December 1, 2005, will continue to receive retiree insurance benefits which surpass the benefits that are provided to retirees in any of the comparable utilities; that the Employer is the only utility which provides health insurance premium payments to post-Medicare eligible retirees; that the Employer is attempting to prospectively change a benefit; that the proposed change is justified because it is an unreasonably expensive benefit; that it is a benefit that is unparalleled among the area comparables; that, if modified, it will have absolutely no effect on the present employees; that the problem of continuing a benefit of this magnitude is sufficient to

[4]City of Racine, Wastewater Commission, Dec. No. 24266-A (Mueller, 1/25/88).

entitle the Employer to modify it without incurring the need for a quid pro quo; that even if the arbitrator determines that a quid pro quo is required, the Employer is offering that quid pro quo via a 3.5 percent increase in each of the two years, a 1.5 increase over the Union's offer which all employees, including those hired after December 1, 2005, will enjoy; that the Employer has demonstrated a need for the change it is proposing; that the Union's attempt to maintain the status quo is misplaced and unrealistic; that the present employees will continue to enjoy the same retiree benefits under the Employer's offer; that the Employer is competitive in providing outstanding fringe benefits to its employees; and that consideration of the Consumer Price Index supports the Employer's final offer.

In terms of internal comparables, the Employer argues that the City is not a true internal comparable; that the Employer, that is, the Commission, governs the Utility; that the Employer is separate and distinct from the general City government; that the Utility is independently run; that its organizational structure is independent of the City; that the operations of the Utility are governed by the Commission which is comprised of elected and appointed officials; that the Utility maintains its own budget which is governed by the Commission; that the Utility sets its rates; that it is monitored and controlled by the State of Wisconsin Public Service Employer with regard to the rates which it charges; that the licensing and monitoring of the Utility is not subject to the City's approval; that, instead, the Utility operates under the State of Wisconsin through the Wastewater Commission; that the Utility, in addition to having a different set of directors from the City, also has different regulations and requirements, different business operations, different employees and different governance; that for these reasons, the City is not truly a comparable of the Utility; that the Racine Water Utility is the only internal comparable of the Employer; that the two utilities are two branches sharing the same governance and management, as well as a commonality of operational and legal purpose; that the Union's argument that the City did not propose a change to its retiree premium payments to the police unit is misplaced; that a sufficient quid pro quo has been offered by the Employer when comparing its wage proposal to the wage increases agreed to by City bargaining units; that health care costs are dominating contract bargaining and remain a stumbling block in negotiations; and that local economic conditions should be considered when choosing an acceptable final offer.

In summary, the Employer argues that its offer is supported by a review of internal and external comparables; that it certainly must be considered to incorporate a generous, and more than adequate, quid pro quo; that, for all of these reasons, the Employer's final offer emerges as the most reasonable before the arbitrator, as measured by all relevant statutory criteria; that acceptance of the Employer's final offer would present, in reality, a "win-win" situation, in which all current employees would benefit by significantly higher wage increases for 2004 and 2005 while, at the same time, providing the Employer with prospective relief from the potentially disastrous effect of continuation of providing lifetime benefits to retirees; and that for all of these reasons, the Employer's offer emerges as the most reasonable offer and should be selected by the arbitrator.

Union on Brief

In terms of the arbitral criteria, the Union argues that, in regard to Section 7 – Factor Given Greatest Weight, there is no evidence in the record that there is any state law or directive which prevents the City from paying either offer; that, in terms of Factor 7g – Factor Given Greater Weight, local economic conditions favor the Union's offer; that the Union finds nothing in the record to indicate that this factor is determinative; that even according to the Employer's statistics, the Union's offer is less costly; that the other factors, 7r. (a-j) are determinative in the instant case, that many of these factors are not germane to this dispute; that the Union relies on the comparables adopted in a prior award, previously cited in footnote 3; that in terms of internal comparables, the Union's offer matches the pattern set by the City and its other represented groups in both wage increase and benefits; that the wage increases proposed by the Union mirror the majority of the internal comparables and are identical to the cumulative wage increase over the three year period of 2003-2005 as other represented units of the City; that the Union's final offer most closely follows the wage pattern set by settlements in the City; that a review of the internal comparables for health insurance also shows that the Union's final offer again most closely follows the health insurance/benefits pattern set in the City; that in spite of the fact that all other groups of the City, including non-represented employees, still have the lifetime retirees insurance coverage benefit, the Employer seeks to eliminate this benefit for new hired employees; that it is a very long standing benefit for the employees; that no other employee group of the City is faced with this benefit alteration; that the Union claims that this arbitration is about fairness and consistency; that the level of benefits serve to cement the Union's contention that consistency or maintaining the status quo is the appropriate avenue for the arbitrator to travel in this case; that this bold statement is offered because the pattern set by the City with its many units has not wavered during bargaining with any of them; and that the Union firmly believes that because there was no effort on the part of the City to make this change with any other unit, there is no justification for the arbitrator to grant this major change to the Employer here.

The Union also argues that external comparables also yield no support for the Employer's final offer; that for the most common position in the unit, Operator, the Employer's wages are in the range near the median of the comparables; that the Employer is well behind its peers when comparing health insurance plans and user penalties; that in 2004, despite the fact that the Employer had one of the lowest total dollar health insurance plans, these employees had the highest user penalties and out-of-pocket costs than employees in the external comparable pool; that in 2005, despite having an insurance plan whose costs were no higher than the median of the external comparables, these employees again pay the highest with regard to co-insurance and second highest in out of picket costs (i.e., deductibles and prescription drugs); that as far as the unit's retirees' health insurance language is concerned, with regard to the external comparables, the Medicare eligibility proviso is favorable; that, however, the rule of 75 eligibility requirement for this unit is more than several of the comparables; that with respect to other benefits (i.e., dental insurance, longevity, holidays and vacation), this unit's benefit level lag significantly; that the total compensation of this unit, including wages, health insurance and other benefits, is much more in-line with the external comparables.

In terms of the status quo and quid pro quo, the Union argues that the City has failed to meet any of the burdens placed on the moving party under arbitral criteria; that, first, there is no unanticipated problem; that the reasons stated for the proposal to eliminate the retiree insurance benefit for new hires is an effort to address uncontrollable health insurance costs; that the Employer's premium costs are lower than nearly all of the external comparables while out-of-pocket costs are greater than any external comparable; that, second, the Employer's final offer fails the test that the proposed change reasonably addresses the problem; that the Employer also fails any other tests applied by arbitrators faced with similar facts; that this attempt to change the status quo without any substantive justification is uncalled for and unsupported by the evidence; that arbitrators generally find that the final offer that maintains the status quo or those contract provisions that the parties have previously agreed to during the collective bargaining process is most reasonable unless there is some unusual; that the Employer has not offered facts in this case to support such an argument or compelling circumstances; that given the fact that the parties must immediately begin bargaining for a new labor agreement once the arbitrator makes the decision in this case, there is no urgency here; and that if the Employer believes it must eliminate this benefit, it should do so during the collective bargaining process and not seek an arbitrator's ruling to substantially alter this benefit.

In addition, the Union argues that the interests and welfare of the public are best served by the Union offer as it is the most reasonable offer; that there can be no argument of ability to pay; that the Employer can raise sewer rates and still be lower than many communities, including Racine's closest comparable, Kenosha; that the Union's offer is 1.5 percent less over the term of the contract; that this more completely meets the criteria herein; that the Union's offer maintains the status quo and the pattern set by the City and its other bargaining unites during the 2004-2005 time period while the City's offer breaks the pattern and the status quo;

In conclusion, the Union argues that the differences between the offers of the parties are centered on an attempt by the Employer to gain a change in the status quo by significantly altering a long standing retiree health benefit for all newly hired Union employees; that there is no internal comparable that the Employer can point to for support in this case; that, on the contrary, the pattern within the City units completely supports maintaining the status quo; that there is no external comparable weighty enough to offer support for the Employer's argument; that a review of the external comparables fails to support the City's position; that the Employer's attempt to change the status quo through interest arbitration is also a path on which the Union has demonstrated most arbitrators choose not to tread; that in this case the Employer has failed to show urgency, a financial need, or any comparable to justify its position; that under the Union offer, the unit employees maintain the status quo and continue to offer their support against the Employer's rising health costs by again accepting greater out of pocket costs in the form of increasing deductibles and co-pays; that the Union's offer also mirrors the internal pattern set by the City and its other units most completely; and that, therefore, based on the record as a whole and the reasoning set forth herein, the Union requests that the arbitrator find that the Union's offer more closely adheres to the statutory criteria and order the inclusion of the Union's offer in the 2004-2005 labor agreement.

Employer on Reply Brief

The Employer argues that the statutory provisions dictate the criteria to be considered in rendering an interest arbitration award; that in terns of the Factor Given Greater Weight, the Employer argues that the Union is seriously erroneous in alleging that the Union's offer is "less costly" than that of the Employer; that it is the exorbitant and escalating cost of the retiree health insurance which is the main focus of the Employer's offer; that the Employer's offer builds in a future cost control which will accomplish a long-term cost savings to the Racine Wastewater Utility; that this would not be true under the Union final offer, since that offer makes no effort whatsoever to address or to control the uncontrolled cost of the continuation of current retiree benefits; that the Employer's final offer is more generous to current and to future employees because the Employer's offer increases wages one percent higher in the first year and one-half percent higher in the second year of the two year offer; that it is more generous to persons hired prior to December 1, 2005, than the Union offer; that it provides a generous salary base for present and future employees; and that it has no impact on the lifetime insurance benefits of all current employees employed as of December 1, 2005.

In terms of the internal comparables, the Employer argues that the Union continues to erroneously allege that the bargaining units of the City are internal comparables to the Utility; that the reality is that this Utility is governed by the Commission, not by the City Council; that the Union's constant references in its brief to "the City" are simply a specious effort to mislead the arbitrator regarding the appropriate status of this utility; that the Racine Water Utility is an appropriate comparable; that the Union alleges that the City seeks to eliminate a benefit of the utility while not modifying that benefit for any other City employee group; that the City does not bargain with this unit; that the Commission, not the City, is the bargaining agent on behalf of the employer; that the Union's contention that the City is the bargaining agent for the Commission is simply erroneous and misleading; that it ignores the independent governance of the Utility by the Commission, a body which is separate and distinct from the City Council; that the Commission cannot speak for nor control the City's employment and benefit decisions; that the interests and welfare of the public are best served by establishing cost controls on future Utility expenditures; that the lifetime retirement benefit to which the Utility is seeking to apply future controls is one which has, and will continue, escalate beyond the control of the Utility; that the Union's final offer ignores this reality; and that it does not afford any consideration to the public, which assumes the burden of these uncontrollable costs

Union on Reply Brief

The Union argues in disputes involving common fringe benefits, internal comparables have been found to carry more weight than external comparisons; that in this case, the Union's status quo language reflects the language currently in place in all of the City's contracts (Dispatchers, Police Department Clerical, City Hall, Public Health Nurses, Firefighters, Health Department, Local 67-DPW, and Professionals), except for the Crossing Guard unit; that this unit is made up of part-

time employees that does not have health insurance coverage; that the Employer argues that these comparisons be disregarded and that consideration be given to only one of the internal units, the Racine Water Utility; that this is a complete change in position from the previous case involving the parties; that the Union wage offer results in an 8.7 percent cumulative increase over the three-year span of 2003-2005, reflective of the internal settlement pattern across all of the ten units that have reached settlement; and that the Employer's attempt to alter a comparability set it previously forwarded, a comparability pool adopted by the arbitrator, should be rejected.

In terms of external comparables, the Union holds that they are of secondary importance in the present case; that the Employer attempts to place the unit in a position superior to wastewater employees in comparable municipalities; that this is inaccurate and unsupported by the evidence in the record; that unit employees are subject to the highest user penalties of its comparables; that, add in the uncapped prescription drug cost, it is clear the costs experienced by unit members far exceed those of the comparables; that while it is true unit members make no contribution toward the plan premium, consideration must be given to the out-of-pocket costs (i.e., deductibles and co-insurance penalties) when comparing insurance plans; and that analysis of insurance plans based on total out-of-pocket costs experienced by unit members reveals that the Employer's insurance plan is far below average and a far distant cry from superior.

In terms of fringe benefits, the Union argues that the Employer was particular in highlighting fringe benefits to which unit members fare average or above average in relationship to other comparable utility employees; that benefits that are lesser in comparison to the comparables are dental insurance, longevity and vacation; that the unit employees do not receive dental insurance benefits; that unit members hired after January 1, 1989, do not receive longevity pay; that unit members are tied at the lowest number of vacation days; that the unit is the second highest with regard to years of work needed to max out at 25 vacation days; that taking into account wages, health insurance and fringe benefits, unit employees are in a comparable position to employees in comparable municipal units; that there is no denying that the retirees health insurance benefit is generous, but the eligibility requirements for the benefit (the Rule of 75) is particularly stringent in comparison to the eligibility requirements put forth by other employers for retiree health benefits; that a lower level of benefits in other areas is a major consideration in ruling for the Union's proposal to maintain retirees health insurance; that while unit employees have the benefit of retirees health insurance, it has been bargained at the sacrifice of other fringe benefits enjoyed by employees of other municipal units; that the unit's standing among the external comparables favor the Union's final offer to maintain the status quo; and that the internal comparables support the status quo language.

In terms of the quid pro quo, the City may arguable have a quid pro quo in its final offer; that, however, it has not fulfilled the test generally utilized by arbitrators to determine whether a status quo change is warranted; and that, therefore, the Union's final offer is the correct choice in this case.

DISCUSSION

Introduction

This case involves two interesting issues. First, the Employer's offer caps a previously negotiated long-held employee benefit which thereby establishes a two-tiered system in regard to this benefit with some employees, current employees, continuing to receive the full benefit previously negotiated but new employees, while having the benefit, will have said benefit capped. Second, the parties do not agree as to whom the actual employer in this matter. This is not something that arbitrators generally face, and it needs to be resolved first as it has an impact on the determination of the appropriate internal comparables. That is where we must begin.

Internal Comparables

The Union argues that all of the bargaining units of the City of Racine, including the City Hall, Dispatcher, Firefighters, Health Department, Local 67-DPW, Police Department Clerical, Professionals, and Public Health Nurses units, are appropriate internal comparables. The Employer argues that, as it is not the City of Racine but the Racine Wastewater Commission, the only comparable for the Racine Wastewater Utility is the Racine Water Utility and not the City's bargaining units over which the Commission has no control.

This dispute was not apparent at hearing and only surfaced in the briefs of the parties; therefore, there is not much in the record to decide this matter. I note that the Employer is correct that many arbitrators have treated utilities separate from other city units, but I also note that the Union is correct that utilities have been treated similarly to other city units in many awards, as well. Arbitral precedent does not offer a clear-cut answer to this question.

In this case, the benefit in question, life-long health insurance for retirees, is a benefit which the Racine Water Utility unit has, as do all of the units of the City specified above.[5] This strongly suggests there is or has been a coordinated bargaining effort by the City and the Commission in terms of bargaining with all of these units. The fact that the Commission is comprised partly of City officials strengthens the argument that the City is the employer.

By the same token, it appears in the record that the Commission is a distinct entity which exercises authority separate from the Racine City Council. Both the Wastewater Utility and the Water Utility have their source of revenue independent from the City's taxing power and both are subject to privatization, all of which separates these two units from the City's bargaining units mentioned above.

[5]The Crossing Guard unit is comprised of part-time employees who do not receive any health insurance benefit, including life-long employer-paid retiree health insurance, and so its use as an internal comparable is limited, at best.

In reviewing the collective bargaining agreement, I note that the cover page reads as follows: "Articles of Agreement between Racine Wastewater Commission and Local 2807, American Federation of State, County and Municipal Employees, AFL-CIO." I note that the Preamble to the agreement reads as follows: "This Agreement made and entered into by and between the Racine Wastewater Commission, Racine, Wisconsin, hereinafter called the 'Commission' or 'Employer' and the American Federation of State, County and Municipal Employees, AFL-CIO Union Local No. 2807, hereinafter called the 'Union'." Finally, I note that the Recognition clause quoted in part above refers to the "Employer" which takes us back to the Preamble which defines the "Employer" as the Racine Wastewater Commission.

So this leads me to two somewhat unusual decisions. First, since this issue was not argued, for the purposes of this arbitration only, I find the employer in this matter to be the Racine Wastewater Commission. Second, I find the Racine Water Utility to be the primary internal comparable, with the bargaining units of the City of Racine listed above to be secondary internal comparables.

In terms of the Racine Water Utility, the parties are in arbitration for a 2004-2005 collective bargaining agreement, as is the Utility in this case, with each of the parties taking positions similar if not identical to the positions they have taken in this case. Thus, the Union is incorrect when it argues that this is the only unit which the Employer is seeking the change it is seeking from this unit. The Employer is seeking such a change from the Water Utility, as well. But the Union is also correct that the City did not seek such a change from any of its units. The Employer argues that it has no control over the City's negotiation position, but that it has sought such a change with its comparable unit over which it does have control.

So the primary internal comparable is situated in such a position as to be of little assistance in determining this matter, other than to show that the Employer is attempting to modify both collective bargaining agreements and not just the one before this arbitrator. In terms of the secondary internal comparables, as each of them continues to have the benefit in question, they strongly support the Union's position in this matter.

External Comparables

I accept the comparables as determined by Arbitrator Mueller in the previous interest arbitration between these parties.

And it is absolutely clear from the record that no external comparable, none, not one, has a life-long employer-paid retiree health insurance benefit anywhere near the benefit in question here. Most of the comparables have no such benefit; the one that does is not even close to the benefit offered here. The external comparables strongly support the Employer.

Status Quo and Quid Pro Quo

As the Employer is attempting to change the status quo, the burden is on it to go forward and meet

said burden.

Many arbitrators have formulated such burden in many somewhat similar ways. Let me offer the following articulation of the mover's burden: to show that there is an actual, significant and pressing need for change of the status quo; that the proposed change addresses the need in as limited a manner as possible; that comparables are consistent with and supportive of the proposed change; and that a proper quid pro quo is offered to compensate, at least in part, the party resisting the change.

In this case, the Employer has shown an actual and significant problem in terms of the contract benefit requiring employer-paid life-time health insurance coverage for retirees. The post-medicare costs of such coverage are substantial, both in terms of actual cost and percentage of total costs, as shown in Employer documents admitted at hearing. And the problem will not go away by itself; indeed, it will only worsen as more employees retire and as more retirees age and become more involved in the health care system. The Union argues the need is not pressing, but that is a short term view; in the long term, the sooner a change is made, the sooner the financial costs will be contained.

Arbitrators on average do not like to change previously negotiated and long-held employee benefits, nor do they like to establish dual systems of benefits among employees, believing both should usually be changed by mutual agreement of the parties. The Union would raise a fairness issue in having an arbitrator change the status quo in that way, arguing that when a person accepts a job with an employer, there is some expectation that the benefits used to attract the employee will be available to the employee for the course of his or her employment. There are times, of course, when a union will agree with an employer to change a benefit, but in that case, employees can assume it is a deal their representatives made with their best interest in mind.

But the Employer has framed its offer most conservatively. It is not proposing that any current employee lose the benefit of life-long employer paid retiree health insurance. And for those employees who will be hired on or after December 1, 2005, who will not receive the life-long employer-paid retiree health insurance coverage, they will still receive fully-paid employer-paid retiree health insurance coverage, though said coverage will now end when the employee becomes eligible for Medicare. Thus, no employee is losing or having capped a benefit that was available to him or her at the time of hire. The amazing thing is that employees hired after December 1, 2005, will still enjoy employer-paid retiree health insurance and that said benefit is far better than any of the external comparables. If the employer had been less conservative in its offer by proposing to eliminate the life-long benefit for all employees, a position which would not be totally unreasonable on its face, it would have given this arbitrator more pause in coming to a decision in this matter.

As noted above, the external comparables strongly, indeed, totally, support the Employer in this manner.

The Employer argues that the issue is such that it need not offer a quid pro quo. There are times when a lesser quid pro quo or even no quid pro quo is needed for a change to be made. Such cases includes the situations of when a contract clause or benefit has caused or will cause a significant problem, unseen at the time of agreement, to one or both parties, or the clause or benefit is so significantly out of line with the comparables as to be an aberration, or the clause or benefit is of such a nature that there is a mutual interest and benefit to changing it because it no longer serves the parties well, but only one party has offered a reasonable resolution. I am not convinced that the Employer does not need a quid pro quo to make the change it is proposing here, though I may have been able to be persuaded because of the unique nature of this benefit when compared to the external comparables and because of the present and escalating future cost of the benefit.

But the Employer went forward and does offer a quid pro quo: a one percent wage increase the first year above the Union's wage offer and a one-half percent wage increase in the second year above the Union's wage offer. And the Employer did not limit the quid pro quo only to those future employees whose benefit would be capped, but extends it to current employees, as well, who will benefit from this change for the rest of their work days while retaining the employer-paid life-long retiree health insurance coverage they presently have. As the Union's offer is very consistent with the settlements of the secondary internal comparables and the external comparables, this is a true quid pro quo, not just an offer that looks higher because the Union came in low to fight the change.

So I find that the Employer in this matter has shown an actual and significant need for a change in the status quo, a need that grows larger with each passing year; that the Employer's proposed change addresses its concern in as limited a manner as possible; that external comparables are consistent with and supportive of the proposed change, though the secondary internal comparables are not; and that the Employer has offered a proper quid pro quo for the change.

Other Statutory Criteria

The parties agree that the "Factor given greatest weight" is not an issue in this case. In terms of the "Factor given greater weight," the Employer argues that this is an issue, but I find that, if it is, it is insignificant to the final outcome.

In terms of the stipulations of the parties, I note that though the Employer argues that the Union did not offer anything in the area of life-time employer-paid retiree health insurance, the same cannot be said of the health insurance plan itself. The Union did agree to an increase in deductibles in an effort to keep health insurance costs down. In that, the Union has shown good faith in what should be everyone's desire to contain health insurance costs.

Both parties can argue somewhat persuasively that its final offer serves the interest and welfare of the public, so this factor goes both ways. There is no dispute that the Employer can meet the costs of the Union's offer for this contract term, though the Employer would argue that, in the long run, the life-long employer-paid retiree health insurance will rise beyond what the Employer is able to

pay. The factor involving the average consumer price index offers no guidance in this matter, nor does the overall compensation received by these employees.

Summary

For purposes of this arbitration, I find the Racine Wastewater Commission to be the Employer in this matter; that the Racine Water Utility is the primary internal comparable; that the bargaining units of the City of Racine are the secondary internal comparables; that the primary internal comparable does not have any impact in this decision as it, too, is involved in arbitration with the same issue in dispute; that the secondary internal comparables strongly favor the Union's position; that the external comparables are as previously determined in arbitration; that the external comparables strongly favor the Employer's position; that the Employer has shown an actual and significant need for a change in the status quo, a need that grows larger with each passing year; that the Employer's proposed change addresses its concern in as limited a manner as possible; that external comparables are consistent with and supportive of the proposed change, though the secondary internal comparables are not; that the Employer has offered a proper quid pro quo for the change; and that the other criteria do not have an impact on the final decision.

For these reasons, based upon the foregoing discussion, the Arbitrator issues the following

AWARD

That the final offer of the Employer shall be incorporated into the collective bargaining agreement between the parties for the 2004-05 term.

Dated at Madison, Wisconsin, this 20th day of December, 2005.

By _____
James W. Engmann, Arbitrator