EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Petition of	:	
	:	
Local 305 Affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO	:	
	:	Case 123
	:	No. 64660 INT/ARB - 10435
To Initiate Arbitration	:	[Dec. No. 31447-A]
Between Said Petitioner and	:	
	:	
City of Wauwatosa	:	

Appearances: Law Offices of Mark A. Sweet, LLC by Mr. Gene A. Holt, for the Union

Ms. Beth Thorson Aldana Assistant City Attorney, for the City

By its Order of October 19, 2005 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award, pursuant to Sec. *111.70(4)(cm)6. and 7.* of the Municipal Employment Relations Act, "to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of the [Union] or the total final offer of the [City]."

A hearing was held at Wauwatosa, Wisconsin on November 22, 2005. A transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed on February 25, 2006 with receipt by the arbitrator of the parties' reply briefs.

The parties have settled their Agreement for 2005-2007 except for three issues which are the subject of this arbitration. Both final offers include an annual increase in wage rates of 3.0% for each of three years, and thus wage increases are not in dispute. The disputed issues are: (1) the City's proposal to require deductibles and co-payments for HMO participants (until now there have been no deductibles and co-payments); (2) the City's proposal to increase the annual Public Works Allotment by $ 50; (3) the Union's proposal to include departmental seniority as the determining factor in filling job vacancies "if two (2) or more employees are relatively equal."

The disputed HMO proposal by the City is as follows:

> Modifications to the HMO Plan. Effective January 1, 2005 and continuing for the term of this Agreement and its extensions, the HMO health insurance coverage, at the City's expense, shall be the same as those provided to full-time employees on December 31, 2004 with the following

modifications. The following cost-sharing provisions outlined in the Preferred Provided Plan under “Section 3” above shall also apply to participants in the HMO Plan: Lifetime Maximum Limit, Over-the-Counter Medications, Chiropractic, and Optical Insurance.

a. Office Visit Co-Pay. Effective the date of settlement or arbitration decision, employees shall pay $ 15 for each office visit. Effective January 1, 2007 employees shall pay $ 20 for each office visit.

b. Annual Deductible. Effective the date of settlement or arbitration decision, employees shall pay an annual deductible shall be:

$ 150 for single and $ 400 for family for 2005
$ 300 for single and $ 800 for family for 2006
$ 400 for single and $ 1,000 for family for 2007.

c. Prescription Drugs. Effective the date of settlement or arbitration decision, employees shall pay $ 12 for retail generic prescriptions, $ 20 for retail formulary prescriptions, and $ 31 or 20%, whichever is greater, not to exceed $ 65 per prescription for retail non-formulary prescriptions. Employees shall pay $24 for mail order generic prescriptions, $ 40 for mail order formulary prescriptions, and $ 62 or 20%, whichever is greater, not to exceed $ 130 per prescription for mail order non-formulary prescriptions. Mail order prescriptions shall be for a maximum of 90 days. There shall be no reimbursement for prescription co-payment.

d. Prescription Drugs. Effective January 1, 2007, employees shall pay $ 15 for retail generic prescriptions, $ 24 for retail formulary prescriptions, and $ 40 or 20%, whichever is greater, not to exceed $ 80 per prescription for retail non-formulary prescriptions. Employees shall pay $ 30 for mail order generic prescriptions, $ 48 for mail order formulary prescriptions, and $80 or 20%, whichever is greater, not to exceed $ 160 per prescription for mail order non-formulary prescriptions. Mail order prescriptions shall be for a maximum of 90 days. There shall be no reimbursement for prescription co-payment.

e. Emergency Room Co-Pay. Effective the date of settlement or arbitration decision, employees shall pay $ 100

for an emergency room visit, waived if the patient is admitted.

f. Urgent Care Co-Pay. Effective the date of settlement or arbitration decision, employees shall pay $ 50 for an urgent care visit.

g. In-patient Co-Pay. Effective the date of settlement or arbitration decision, employees shall pay a $ 250 per hospital admission co-pay.

In making his decision, the arbitrator is required to consider the factors enumerated in the statute.

The first is the "factor given greatest weight," which requires the arbitrator to "consider and...give the greatest weight to any state law or directive lawfully issued by a state legislature 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 Union asserts that the greatest weight factor has no application in the present matter. The Union acknowledges that the City has less ability to pay than it did, because of changes in legislation in 2005, but argues that the City is not claiming inability to pay. The Union views this as an unwillingness to pay, not an inability to pay, and it notes that the differences in cost between the two final offers is not a significant amount. The Union argues that implementation of its final offer would not significantly affect the Employer's ability to meet State-imposed restrictions. Moreover, it argues, "The City has not identified 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...There is no evidence that Wauwatosa is harmed in any significant fashion and certainly not more than any other comparable communities."

In support of its argument, the Union points to the fact that the costing of the proposals by the City for 2006 shows a difference between them of $ 63,814, which is 0.14% of the total General Fund budget: $ 45,879,755.

In arguing that the greatest weight factor favors its final offer, the City cites the revenue caps placed on municipalities by the State legislature in 2005. The result was that the City was not permitted to raise its tax levy by more than 2% in 2006. The City has already committed more dollars than its levy will generate. It presented data showing that "there is a $ 161,000 shortfall before considering the increase in health insurance at issue in this arbitration." The City Administrator testified that the City has already made budgetary changes and raised some fees in order to reduce the shortfall.

The City argues, in addition, that "the total difference between the parties' offers cannot be calculated because the 2007 premium rates are unknown, even considering what can be calculated, if the Union's offer is selected the shortfall will be at least $ 68,614 greater than if the City's offer is selected..."

The Union argues that only 68.8% of the City's revenues come from property taxes. It argues that the alleged shortfall of $ 161,093 for 2006 before applying the cost of health insurance hasn't been demonstrated, when all revenue sources are considered.

While the cost differences between the final offers are not significant when viewed as a percentage of the budget, the fact that the City already has a shortfall which will become more pronounced if the Union's offer is selected, combined with the City's inability to raise more money than it has through the property tax (which generates the largest portion of its revenues), because of the State Legislature's imposition of revenue caps, causes the arbitrator to favor the City's position with respect to the "greatest weight" factor. Contary to the Union's assertion, the City does not have to demonstrate an inabiity to pay in order to be supported by the greatest weight factor.

The next factor to be considered is the greater weight factor in which the arbitrator must "consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

The City argues that the greater weight factor supports its final offer. Its assessed value has decreased $ 2 million in the last budget, which is the result of reduced value by the State, businesses moving out, and the fact that the City is fully developed and has very little new growth occurring. "The City must manage its resources conservatively, which means...that it must take steps to control its health insurance costs--an enormous and increasing component of its budget." The City asserts also that the application of the greater weight factor doesn't require a finding by the arbitrator that the City is worse off than comparable cities.

The Union argues that the greater weight factor isn't applicable in the present dispute, because the City is not arguing that it has an inability to pay. The Union notes also that while the City is correct that net valuation has decreased by $ 2 million in the last budget year, the net valuation has increased by $ 19 million over the past several years.

The arbitrator is not persuaded by the evidence that the City's overall economic conditions are such that this factor must be given greater weight than any of the other factors. The revenue caps, as discussed above, limit the revenues that the City can generate, and that has been taken into account in discussing the "greatest weight" factor, but the arbitrator does not view the City's economic circumstances in other respects as requiring that they be given special consideration at this time.

Of the remaining statutory factors, several of them have not been cited by either party as having relevance to the dispute. Those which have been argued are discussed below.

Factors (d) and (e) require the arbitrator to consider "comparison of wages, hours and conditions of employment of the municipal employees..." Factor (d) calls for comparisons with "other employees performing similar services; factor (e) calls for comparisons with "other employees generally in public employment in the same community and in comparable communities.

The arbitrator will consider these factors together for purposes of analyzing each of the issues in the final offers. It should be noted that the parties are in agreement that the comparable municipalities are: Brookfield, Greenfield, Menomonee Falls, New Berlin, Oak Creek, South Milwaukee, Waukesha and West Allis.

With respect to the seniority issue, the Union asserts that all but one of the external comparables use seniority in some fashion in filling jobs. Of those, Brookfield and New Berlin do it in the manner proposed by the Union. The City notes that the external comparables show a mixed picture with respect to the use of seniority in filling vacancies, "and support neither proposal." It argues that most of the comparables which use seniority as a factor "do not have the ambiguity in the contract of 'relatively equal.'"

What is involved in this issue is specific contract language. While the Union is correct that most other external comparables have references to seniority in filling vacancies, it is not the case that most of the comparables have language which states that seniority will be the determining factor when qualifications are "relatively equal." Since seniority language is used in most other comparables, the arbitrator views the external comparables as favoring the Union's final offer more than the City's, since the City's proposal would continue the existing language which does not consider seniority as a factor in filling vacancies.

Within the bargaining unit, the Union acknowledges that it has been the practice to fill vacancies by seniority, "with one noted temporary exception," (although in that one instance, the senior candidate eventually received the position). In the other internal units, the Union asserts, seniority is stated as a factor in three of the other four bargaining units. The Union notes also that under its proposal, "Adding seniority as a factor does not detract from who is ultimately selected for the position since the City is not required to place an unqualified employee into the job."

In opposing the Union's final offer to have seniority be a factor in filling vacancies, the City notes that there has been only one instance in which it was asserted that the City didn't appropriately take account of seniority. The City argues that this one instance is "...simply not a compelling reason to change the *status quo*." Moreover, the City argues, the Union's proposed language would introduce a problem of ambiguity in interpreting the term "relatively equal."

The City notes that the internal comparisons provide no support for the Union's proposed seniority language. None of the other units have the language proposed by the Union. One unit "gives no preference in the contract to seniority as between bagaining [unit] members." In the protective units, seniority is the determining factor, but only if, in the sole opinion of the City, two or more applicants for a single vacancy are in all respects equally qualified to fill such a vacancy..."

The arbitrator views the Union's proposal as a reasonable one, and it is not uncommon for collective bargaining agreements to have a provision which makes seniority the determining factor where qualifications are relatively equal. Statutory factors (d) and (e) require that the comparisons be made with the same or comparable communities. When the internal comparisons and the external comparisons which the parties view as relevant are used, there is more support for the Union's final offer on this issue to include seniority as a factor than for the City's final offer which would not have seniority as a factor, notwithstanding the fact that the comparables do not support the specific language of the Union's proposal.

The next issue which the arbitrator will discuss is the Public Works Allotment issue. The parties did not argue the merits of increasing or not increasing the allotment, except in the context of the adequacy of the increase as a *quid pro quo* for the City's health insurance proposal. The increase was offered by the City as a *quid pro quo* for its offer to impose co-payments and deductibles for HMO participants. The arbitrator must determine, below, whether to select the City's final offer on health insurance, or the Union's.

In addition to finding the City's final offer on HMO contributions to not be supported by comparables, the Union argues that for the City to offer such changes requires it to give the Union a *quid pro quo* for giving up having the HMO available to employees at no cost to them. The Union argues, and the City disagrees, that the $ 50 annual increase in the allotment is not an adequate *quid pro quo* and is reason in and of itself to find in favor of the Union's position. Thus, the arbitrator will only discuss the allotment issue further if he favors the City's HMO final offer and in addition views it as necessary for the City to offer a *quid pro quo*.

The central issue in dispute in this case is the health insurance issue. That is, in the arbitrator's view, neither the seniority issue nor the Public Works Allotment issue, taken separately or together, are of sufficient importance to outweigh the health insurance issue. That is, if the arbitrator were to determine that the health insurance issue favored one party, and that either (or both) of the seniority and public works allotment issues favored the other, the decision would be made in favor of the final offer of the party whose position is viewed as most reasonable on the health insurance issue.

With respect to the health insurance issue, the Union argues that there is no pattern of co-payments and deductibles in an HMO, either internally or externally. Neither the City's police nor firefighters bargaining units have an HMO available. Only one

bargaining unit, the dispatchers represented by IBEW has agreed to the changes in the HMO sought by the City. The Union notes that there are only nine employees in the dispatcher unit, and only two of those are in the HMO. The Union argues that this "does not constitute sufficient internal support to justify the change in the HMO." The remaining internal comparable is the clerical unit represented by OPEIU. The tentative settlement with OPEIU provides, with respect to the HMO, that the parties will implement whatever is decided by this arbitrator in the current dispute.

The City argues that its intent is to have uniform health insurance benefits, and it has almost achieved that. It has proposed the same PPO and HMO changes to all employee groups which have them. Police, fire and dispatchers have agreed to the PPO changes. Dispatchers have agreed to the HMO changes. The tentative agreement covering clericals includes the City's proposed changes to the PPO, and the parties have agreed to abide by the decision in the current dispute with respect to HMO changes. The City has also implemented these changes for its non-represented employees. The City argues further that it "...has a compelling need for a change and has demonstrated a reasonable and consistent response by proposing to make the same health insurance changes for all its employees."

The arbitrator recognizes the validity and importance of the City's desire to provide all of its employees with the same health insurance benefit opportunities. The fact remains, however, that only one of its three bargaining units, representing a very small number of employees, has agreed to its HMO proposal. There is no pattern internally which the arbitrator views as compelling a change in the HMO structure. The fact that a second bargaining unit is willing to accept the decision of the arbitrator in the current dispute on the issue of health insurance, does not establish its acceptance of the City's HMO offer *per se,* although it is evidence that the unit did not view the City's proposed changes to the HMO as unreasonable, or unreasonable enough to go to arbitration over it.

In conclusion, it is the arbitrator's view that there is not a pattern of internal comparability which compels implementation of the City's final offer, although what the City is proposing is reasonable and has been, or would be accepted by the other bargaining units.

With respect to the external comparables, the Union argues that none have an "HMO and PPO that provides the same or similar level of deductibles and co-insurances" as is proposed in the City's final offer. That is, where a comparable employer offers an HMO and a PPO, the two options do not have the same or similar level of deductibles and co-payments. The Union argues further that nothing in the external comparables supports the City's specific proposal for co-payments and deductibles for the HMO. It argues further that the City's premium increases are not out of the norm relative to other HMOs, and there is no compelling reason for the City to shift additional costs to the employees in the bargaining unit.

The City argues that only one of the external comparables offers a "free" plan, and it is one of the PPO plans offered by that municipality, and it has much higher deductibles than the City is proposing. Thus, what the City is offering is much more advantageous to employees than they would have if they were covered by that "free" plan. Moreover, the City argues, "no comparables have what this Union wants - a 'free' HMO plan with no deductibles or co-pays." It argues that after its proposed changes the HMO and the PPO offered by the City will continue to be free, in the sense that there will be no employee contribution to premiums, and any costs to employees will relate to their utilization of the services. The City notes that most of the external comparables charge employees 5-10% of the premiums for their offered plans, which it calculates to average about $ 70 per month, which is $ 840 per year. The deductible proposed by the City in the current dispute, for a family participating in the HMO, is $ 800. Thus, the City argues, an employee in the HMO will pay less than the employees in the comparable municipalities must pay, and the amount paid may be considerably less, depending on their use of services.

It appears that the external comparables which have an HMO (there is only one), as well as those which do not, provide justification for the City to impose some manner of contributions on employees who participate in the HMO, as that is what all of the comparables do in their various health plans. The City has not proposed a contribution to the premium, although the comparables have premium sharing. The City's preferred method of cost sharing is to impose costs as they relate to utilization. The City views the form of the contribution as less significant than the fact that all of the plans except one require employee contributions. Thus, it argues, there is no support in the comparables for continuing an HMO arrangement which has no cost to the employees.

In the arbitrator's view the external comparables do not compel acceptance of either final offer because there is not a pattern of HMOs, much less with the structure proposed by the City. There is also no pattern which supports the continuation of an HMO which is provided to employees at no cost to them. The City is correct, however, in noting that there is a pattern among the comparables of shared costs, regardless of the plan.

The remaining analysis of the health insurance issue falls within factor (j), "such other factors...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining...arbitration or otherwise between the parties..."

The City emphasizes the need for it to address the rapidly rising costs of health insurance. It emphasizes that during the term of the parties' last contract, the City's cost of the HMO went up 75%. What it has proposed here is an employee contribution which is not out of line with what other employees in the City and in the external comparables will contribute, while at the same time the changes will result in premium costs to the City over the three years of the contract which will be more than $ 125,000 lower than if the Union's final offer is selected, because the HMO premiums will be much smaller under the City's final offer. This sum is particularly significant, in the City

view, given that it already faces a shortfall of $161,000 shortfall in its budget because of the 2% cap on levy limits. The Union argues that a ruling in favor of the Union would increase the HMO costs by 7.9% which, it argues, is "hardly the type of spiraling cost increases described in certain recent arbitration awards that permitted the municipality to diminish the relative importance of establishing a *quid pro quo.*"

The Union acknowledges that the City's proposed changes in the HMO would result in a lower HMO premium, but it argues that those savings will benefit only the City, as employees do not share in the premiums. Thus, under the City's proposal, the City would pay a reduced premium for the HMO while employees who utilize it will pay more than was the case previously where they paid nothing.

There is no issue raised by the Union about the reasonableness of the specific dollar amounts of the co-payments and deductibles; rather, the Union asserts, charging co-payments for doctor's visits, urgent care, emergency room visits and hospital admissions is simply cost-shifting to the employees rather than making them more enlightened consumers of medical services.

The arbitrator finds the City's argument more persuasive. It is the case that employees will not share in the premium savings under the City's final offer,but they will benefit in the sense that the likelihood of continuation of the HMO as an option will be enhanced, and at a premium level acceptable to the City,while the pressure to share premiums will be reduced accordingly.

There is another aspect of this case which favors the City's position. The HMO has not been included in the parties' Agreement. It has been provided unilaterally by the City. The arbitrator is not persuaded that the City should be obligated to provide a plan to which employees make no contribution, when almost all of the other plans discussed in this case require employee contributions, and where the City stands to save significant premium dollars under its proposal. Moreover, the employees in the HMO will still have an option of participating in the PPO and under terms which the parties have bargained.

The City emphasizes that it would not be equitable to just change the PPO plan, without changing the HMO. In the City's view, if only the PPO changes are made, employees will move from the PPO to the HMO, particularly employees with high utilization of services who would not have to pay co-payments and deductibles under the HMO rather than the PPO. The arbitrator is not persuaded by this argument, and one can only speculate about where the employees, given the choice of plans, will enroll. If the Union's offer were selected, and the movement of employees from one plan to the other took place as the City predicts, that could be addressed in future bargaining over the appropriate structure of the plans.

The Union argues that there was no necessity for the City to make the HMO more expensive just because of negotiated increases in the PPO.d "What the City should

have done was address the issue of how to convince employees to switch from the PPO to the HMO, a move which would have generated significant savings to the City. Instead, the City opted to make the HMO less attractive by adding co-pays and deductibles where none previously existed. If the City's proposal is adopted, employees are more likely to opt out of the lower cost HMO and into the higher cost PPO. The City's proposal simply lacks common sense. It is not good for the City and it is certainly not good for the employees." The Union notes that the HMO premium is substantially lower than the PPO premium and that was the case in 2002 as well. "While the premiums demonstrate some reason to make changes to the PPO, the same cannot be said about the HMO with its substantially lower premiums."

The Union argues further, "...By virtue of its agreement with the Union to make changes to the PPO it is fair to assume the City was satisfied that such changes were fair to the parties otherwise one would expect the City to bring the PPO issue to arbitration. In other words, apparently the City believes a 7.2% increase in the single premium resulting in a monthly premium increase of $ 45.55 is fair. In contrast, with respect to the HMO the City argues that a 7.9% increase resulting in an actual monthly increase to single coverage of $44.15 is unfair. Similarly, when comparing the bottom line, the City must argue that a single PPO premium is reasonable at $675.70 but the HMO single rate is unreasonable at $ 558.80. For these reasons alone, the City's offer should be rejected."

The Union is correct that the current HMO premiums are lower than the PPO premiums, and they are lower than many of the premiums experienced by the comparables. The City's emphasis is not on the premiums being too high or unfair, but rather that by making the changes it proposes, the City will realize a significant savings in the HMO premium while at the same time providing cost-sharing arrangements which are less costly to employees than those in place elsewhere. The question then is whether the changes are reasonable ones, and in the arbitrator's view they are. As for the likely movement from the HMO to the PPO predicted by the Union, that is speculation, as the arbitrator noted was the case with respect to the opposite prediction by the City. If the Union proves to be correct that these changes result in higher costs to the City, not lower ones, the City will undoubtedly address the matter in the next round of bargaining.

It is the arbitrator's view that on balance, the City's position is favored on the health insurance issue. Under the City's offer, it can realize significant premium savings, put in place the same co-payments and deductibles for all of its employees, and still give employees in the bargaining unit a choice of whether to participate in the HMO or the PPO. The cost to bargaining unit employees in the HMO will vary, depending on the degree to which they use the HMO, but their costs will not be out of line with what other employees of the City will pay, or with what employees pay who work for comparable municipalities. The arbitrator understands that the Union would like to continue to have a no-cost health insurance arrangement for the employees which it represents, but the arbitrator views the City's arguments as more compelling than the Union's on this issue.

Since the arbitrator favors the City's offer with respect to health insurance, the question of the *quid pro quo* must be addressed further. The employees, regardless of whether they are in the HMO or the PPO will receive an additional $ 50 in their annual Public Works Allotment, with that increase effective in the second year of the Agreement. That is not a large amount when considering that an HMO employee may spend up to $ 800 more per year than was previously the case. On the other hand, as stated above, the employees in the HMO will spend less than employees will have to spend in the external comparable units, and they will maintain the option of enrolling in the PPO if they prefer. Given this situation, the arbitrator does not view the *quid pro quo* as an unreasonable one, and especially so, as mentioned above, in light of the facts that inclusion of the HMO in the Agreement for the first time does not result in the Union having to give up anything which it has had in the prior Agreement, and cost-sharing arrangements are the rule, not the exception, in comparable communties.

The arbitrator is required by statute to award in favor of the final offer of one party or the other in its entirety. Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD:

The City's final offer is selected.

Dated this 6th day of April, 2006 at Madison, Wisconsin

_____
Edward B. Krinsky
Arbitrator