In the Matter of the Interest Arbitration Proceeding Between

AFSCME COUNCIL 40, LOCAL 1362, AFL-CIO, CLC

And

CITY OF CHILTON

Case 25
No. 64202
INT/ARB-10214

Decision No. 31465-A

Appearances:

Ms. Helen Isferding, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, CLC, 1207 Main Street, Sheboygan, Wisconsin, appearing on behalf of the Union.

Mr. William G. Bracken, Labor Relations Coordinator, Davis & Kuelthau, S.C., 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin, appearing on behalf of the City.

ARBITRATION AWARD

This is a matter of final and binding interest arbitration pursuant to Section 111.77(6) of the Wisconsin Municipal Employment Relations Act for the purpose of resolving a collective bargaining impasse between AFSCME Council 40, LOCAL 1362, AFL-CIO, CLC, hereinafter referred to as the Union, and the City of Chilton (Department of Public Works), hereinafter referred to as the City. On November 24, 2005, the Union filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it alleged an impasse existed between it and the City of Chilton. On September 20, 2005, the Commission certified the parties' final offers. On October 27, 2005 the Commission issued an Order appointing the undersigned, Edmond J. Bielarczyk, Jr., as the Arbitrator in the matter. Hearing on the matter was held in Chilton, Wisconsin on December 22, 2005. A stenographic transcript of the proceedings was prepared and received by the Arbitrator by January 10, 2006. Post hearing written arguments and reply briefs were received by the Arbitrator by March 4, 2006.

FINAL OFFERS

In their respective final offers, hereby incorporated by reference into this decision,

the parties disagreed on the following issues:

The Unions Final Offer:

Hours of Work: Water/Wastewater Department, Memorial through Labor Day, 4 ten-hour workdays on an alternating schedule with a 5 eight-hour workdays schedule. Delete Memorandum of Understanding

Health Insurance: 2007 increase to $200 single, $400 family

Wages: 2005. $0.55; 2006, $0.66; 2007, $0.68

The City's Final Offer:

Hours of Work: Delete: Delete Section 8.05 and Water/Wastewater Department summer work hour schedule Memorandum of Understanding

Health Insurance: 2006 increase to $200 single, $400 family

Drug Co-Pay: January 1, 2007, implement a three (3) tiered drug card Generic $0, Formulary, $10.00 Non-Formulary $25.00

Insurance Committee: Study committee to consist of two (2) members from each union, two (2) non-represented employees, and six (6) representatives from the City. The Committee is charged with studying health and dental insurance and making recommendations to the Union and the City bargaining teams to make health insurance benefits more cost effective.

Wages: 3% 2005, 3.5% 2006, 3.5% 2007.

Deleted Section 8.04: One (1) full-time regular employee from the Street Department or a seasonal employee approved by the Director of Public Works shall be at work on all seasonal workdays.

Agreed upon items:

Health Insurance: Employees pay 3% toward premium in 2005 not to exceed $25 for the single plan and $50 for the family plan, 4% in 2006 not to exceed $30 for the single plan and $60 for the family plan, and 5% in 2007 not to exceed $35 for the single plan and $70 for the family plan.

Chiropractic $25.00 co-pay after twenty-four (24) visits, deductible increase to $200 single, $400 family in 2007. NOTE: The City's final offer started the deductible increase in 2006 but the City asserted at the hearing it would be unable to implement the change until 2007.

Dental: Change to self-funded plan after issuance of arbitrator's award.

Duration: January 1, 2005 through December 31, 2007.

Section 125 Plan (not in collective bargaining agreement): Increase maximum available to be deposited to $2,000.

STATUORY CRITERIA

7 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by the 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 arbitrator panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any other of the factors specified in 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 employer.
b. Stipulations of the parties.
c. The interest 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 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 performing similar services.
e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in

comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing in private employment in the same community and in comparable communities.
g. The average consumer prices for goods and services, commonly known as the cost-of-living.
h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

PARTY'S POSITIONS

The following is intended to be a brief general overview of the comprehensive initial and reply briefs filed by the parties. The Arbitrator has reviewed their briefs and the cases cited therein in detail and the Arbitrator has given full consideration to the statute, evidence, testimony and arguments presented in rendering this Award.

UNION'S POSITION

The Union points to the statutory criteria and argues that the $3,943.87 difference between the parties over three (3) years is so small, and given the agreed upon change in dental insurance, that the City does not have an inability to pay. The Union contends the focus herein should be upon the comparables the parties have jointly used as a result of a previous arbitrator's decision. These comparables are police officers at Algoma, Brillion, Kewaunee, Kiel, New Holstein, and Calumet County as well as the City of Chilton employees. The Union argues the comparability question was resolved in *City of Chilton (Police Department)*, Dec. No. 26478-A (Kerkman 1990). The Union asserts that a review of the comparables demonstrates employees do not receive any extra ordinary wages or benefits. The Union points out a Leadman position ranks 6th out of the 8 comparables and, while the City has the highest clothing allowance, vacation, holidays and sick leave are

average.

The Union, turning to the question of health insurance, argues the employees have accepted out-of-pocket responsibility for insurance costs but that adding an unlimited drug card in the third year tilts the reasonableness of the final offers in favor of the Union. The Union asserts the instant matter is not that the Union is refusing to accept more costs; the Union avers it has increased its share in both traditional and creative ways, including paying more for the premium and the increase in the co-pay for chiropractic services. The Union argues it is unreasonable to implement a no-cap drug card that could cause the police officer that testified at the hearing $400 per month out-of-pocket costs. The Union points out the Union and the membership have already agreed to pay an additional 1% of premium in 2006, an additional $100 on the deductible, and $25 for chiropractic visits over 24 for a total of $940. The Union argues adding the unlimited exposure of $4,800 for a drug card (12 x $400) there is a total $5,740 out-of-pocket cost to a family. The Union argues an unlimited drug card is just too much in too short a time.

The Union also contends playing the game of "what's on the Drug Formulary this quarter" is like ordering a blue plate special. The Union argues that formularies reduce what the doctor has ordered to what is the cheapest, changing quarterly. The Union points to City Exhibit 13c that makes the following statement:

> "If drugs are still found to be clinically equivalent, our final selection is based upon relative costs."… "Cost considerations include the length of therapy and dose required for each medication as well as the total cost of the therapy."

The Union acknowledges it has presented the worse case scenario ($5,740) but stresses there is no guarantee it will not happen. The Union argues the sum of $400 divided by $25 is only 16 prescriptions per month and the Union also points out over half of the drugs used by City employees are listed as tier 3 and subject to the $25 co-pay. The Union also argues the bargaining unit members are put at risk because the formulary is subject to change without notice. The Union also notes that the drug prescription plan acknowledges that typically 15% of a group's usage will be in the third tier. The Union concludes this means there will be no generic available for 15% of the prescriptions used and asserts that this is unreasonable.

The Union also contends the total amount of cost savings to the City is already impressive without the drug card, $2,607 in 2006 and $3,893 in 2007. The Union points out that because the City is self-insured what we are really taking about is money out of the employees' pockets and into the City's pockets. The Union argues the employees have increased monthly premiums on the third lowest standard plan and yet the City wants to add $3,780 by adding a no limit drug card. The Union contends the City's offer with no cap on the drug card has few comparables and most have the State Plan with caps. The Union concludes this tilts the Union offer to be the more reasonable. The Union also points out the only other self-insured comparable, Kiel, has no drug card.

The Union also contends changing to a self-funded dental insurance represents more room for miscalculations and improper reserves. The Union notes the City's auditor reduced

the health insurance family premium in 2004 to $836 because there was too much money in the reserves. The Union argues it should get credit for the leap of faith it took in agreeing to a self-funded plan.

The Union also argues that the status quo the parties now do for insurance meetings should be retained and that it should not be forced to meet with non-represented employees. The Union argues it has no problem meeting with the City on something as important as health insurance. However, the Union avers, it should not be required to listen to non-represented employees. The Union also is concerned what weight the recommendations would have in future negotiations. The Union acknowledges it would listen to anyone, but that they should not be given contractual status.

The Union contends the City's position on summer hours is vindictive because there was no agreement on the drug card and has fatally flawed the City's final offer. The Union points out employees have long enjoyed summer hours and asserts the City has profited from the ten (10) hour day when employees were doing construction projects. The Union contends the City wants to delete it from the collective bargaining agreement without a *quid pro quo*. The Union argues that when a party desires to make a significant change to the status quo the party proposing the change must demonstrate a need for the change and, if it can demonstrate such a need, provide a *quid pro quo*, for the proposed change (*Middleton/Cross Plains School District*, Dec. No. 282489-A, Malamud 1996). The Union points to City Ex. 24 and asserts the exhibit is devoid of dicta regarding why a change is needed. The Union also points to the April 23, 2005 letter from the City to the Union (Union Ex. 23) where in the City stated:

"… if the Union is willing to accept the drug card co-pay."

as a threat that the City would attempt to take it away if the Union would not accept the drug co-pay. The Union asserts the City is attempting to buy something, the co-pay drug card, with the status quo. The Union contends employees have enjoyed three (3) day weekends during the summer months and such a benefit is of great significance and that the City's entire offer should be discarded.

The Union concludes that rising insurance costs should not be a problem that is solved by having the employees pay more of the costs.

CITY'S POSITION

The City contends that when the parties' final offers are viewed in their entirety that the City's offer comports with what other cities and unions have voluntarily agreed to and argues that the Union's final offer, as a whole, does not. The City points out that it has paid ninety-seven percent (97%) of the health insurance premium and 100% of dental insurance premium. The City also points out the family premium has increased from $734 in 1997 to $1,130 in 2005 and the single premium has increased from $294in 1997 to $426 in 2005. The City also points out the dental insurance premium has increased from (family) $73.59 to

$131.58 (single) $21.80 to $38.99 during the same time frame. The City asserts that the fastest growing component of the health insurance program is prescription drugs and argues it introduced a co-pay to encourage heightened consumer awareness and to steer employees to the cheaper generic drugs. The City avers there is no co-pay on generic drugs, only $10 on brand name drugs, and that the $25 co-pay on non-formulary drugs is reasonable. The City contends this arrangement is fair and reasonable when viewing the external comparables and encourages employees to seek generic alternatives whenever possible. The City stresses it has proposed the same drug co-pays in its final offer to the other collective bargaining unit.

The City also contends the joint labor-management health and dental insurance committee has been used in the past by the parties and avers it is merely incorporating the existing arrangement into the collective bargaining agreement. The City asserts it is important to maintain an ongoing dialogue on these subjects. The City agues such a dialogue serves the interest of the public by allowing the parties to maintain knowledge of the ever-changing fringe benefit environment and allows the parties to take a pro-active approach to these issues. The City stresses this committee only makes recommendations and argues it can see no downside to a process that promotes greater communication between the parties. The City also stresses this committee allows the parties to work together to explore creative alternatives to deal with health care costs in the future.

The City acknowledges it is proposing to delete any reference to the summer work schedule and return to the regular work schedule. The City argues a summer work schedule is no longer necessary because if no longer does utility work. Developers are now performing utility work. The City argues that the summer work schedule now results in a loss of productivity and a reduced level of service to the community. The City points out none of the comparables have such a schedule. The City argues the Union, by incorporating the summer work schedule into the collective bargaining agreement, failed to present any evidence demonstrating why such a change should be made and failed to offer a *quid pro quo* for the change. The City also points out that because the wage offers are basically similar, the cents per hour approach of the Union is equivalent to the percentage approach of the City, that this is not a significant dispute. The City argues the total package cost of its final offer is 2.8% in 2005, 5.5% in 2006 and 3.6% in 2007 if health insurance increases 10% and dental insurance increases and the Union's total package cost is 2.8% in 2005, 5.25% in 2006 and 4.3% in 2007, with a total dollar difference of approximately $4,000. The City argues the differences between the two final offers are primarily due to drug co-pay. The City acknowledges that $4,000 is not a significant amount of money but stresses it is important to introduce the prescription drug co-pay feature so as to mitigate the health insurance cost increased that show no sign of abating in the future.

The City also acknowledges the parties have agreed upon the external comparables of Algoma, Brillion, Kewaunee, Kiel, New Holstein, Peshtigo and Calumet County, comparables used by Arbitrator Joe Kerkman in his 1990 arbitration award.

The City contends the proposed prescription drug co-pay plan is reasonable, that the plan targets the fastest growing component of health care costs, and that there exists a crisis in heath care costs is irrefutable. The City points out that had health care costs tracked the

cost-of-living, such costs would have increased between 1997 and 2005 twenty-seven percent (27%) less and the family premium would only be $893 instead of $1,130. The City also points out that had dental costs increased the same as the cost-of-living such costs would have increased twenty-two percent (22%) less and be $90 instead of $132. The City argues this information underscores and justifies the need to control fringe benefit costs. The City also acknowledges it has the burden to demonstrate that a problem exists and in support of its position points to the fifteen (15) exhibits it introduced at the hearing that demonstrate employees are paying more for health care costs as such costs continue to escalate. The City contends it faces the same dilemma facing other employers. The City argues that the Union's failure to introduce any prescription plan co-pays runs counter to the overwhelming practice found in other public and private employers. The City also points to several arbitral decisions where arbitrators have acknowledged employers and employees must share the burden of rising health costs.

The City also contends it is not asking employees to do anything that is not in the mainstream of the external comparables. The City stresses only Kiel does not have a drug card but points out Kiel has higher deductibles. The City points out three (3) of the comparables use the State plan, which has higher co-pays and a no-cap $35 co-pay for non-formulary drugs. The other three (3) comparables have higher co-pays. The City concludes its proposal is fair and within the mainstream of the practice found among the external comparables.

The City also argues that while a *quid pro quo* is not required when there is such an overwhelming practice found among comparables, however, asserts the one half percent (1/2%) increase in wages in 2006 is for the increased deductible ($150/$300 to $200/$400) in 2006 and asserts the one half percent (1/2%) increase in 2007 is for the drug co-pays. The City notes here it is unable to implement the new deductible in 2006 and the Section 125 plan can shield up to thirty percent (30%) of an employees unreimbursed medical expenses. The City concludes there is a net gain in 2006 and 2007 of approximately $202 for the Leadman and approximately $187 for the operators to pay for potential increase of the $100 deductible and for prescription co-pays.

The City argues it carefully phased in the changes to the health insurance plan and points out there are no changes in the first year of the collective bargaining agreement The City stresses employees who do not use health insurance will not incur any additional costs and will receive the benefit of the *quid pro quo*. The City contends those who partake of a service or benefit should pay a portion of the costs.

The City also contends its proposal is designed to encourage employees to be better consumers. The City asserts such consumer awareness can lead to increased savings for both the employee and the City. The City also stresses it has based its changes upon advise from its health insurance advisors. The City argues these advisors conclude health costs are doubling every five (5) years. The City notes the advisors suggested a drug co-pay of $5/$20/$35 based upon the fact drug prices are rising at double-digit rates. The City also notes here that even though there was a slight decrease in the number of employees in the City's health plan there was a twenty-six percent (26%) increase in the number of paid

prescriptions. The City argues the average cost of a generic drug is $20.20 and the average cost of a brand name drug is $75.21. The City concludes there is cost incentive to encourage employees to use generic drugs when medically possible. The City estimated it lost approximately $950 to lost generic opportunities. The City argues the $0/$10/$25 co-pay is a slow start in an attempt to acclimate employees to this new program.

The City also argues the officer who testified at the hearing that his spouse uses five (5) or six (6) medications and that the new co-pays would result in him paying $400 per month for prescription drugs is not credible testimony. The City points out that even if all six (6) prescriptions were non-formulary, the total cost is only $150 per month. The City concludes this officer's testimony cannot be relied upon as a reliable indicator of what the actual costs will be. Further, the City argues, while there can be compassion about the plight of one employee, the Arbitrator must consider the overall impact of a proposal, not an isolated anomaly. The City also points out that this police officer can obtain a ninety (90) day supply of a prescription drug at the cost of a sixty (60) day supply if he uses the plan feature of rewarding employees who use the cost-effective mail order system.

The City acknowledges that a doctor should make the choice of what medication to use, generic, formulary or non-formulary. However, the City contends that if a patient engages in a discussion with the doctor, just as effective, lower cost alternatives can be used saving both the employee and the employer dollars. The City argues this is why a formulary list is provided to employees so that it can be shared with a doctor to discuss the costs of treatment being provided. The City also points out that this formulary list was shared with the Union during negotiations, that most employees would be using generic prescription drugs at no cost to the employee, and that only fifteen percent (15%) of the prescription drugs being used by employees and their families are in tier three (3) of the plan. The City concludes the City's co-pay prescription drug plan is reasonable and does not place an undue burden on employees.

The City notes here that it has increasingly picked up the costs of insurance and has attempted to contain increases by absorbing more of the risks. It has continuously increased it's stop-pay insurance, from $12,500 in 1996 to the current $20,000. The City avers that it has taken a balanced approach and is not proposing that employees take on the entire burden of health care costs increases.

The City contends returning to the work schedule of five (5) eight (8) hour days during summer hours is reasonable. The City argues that the present system was a trial period that began with the 1999-2000 collective bargaining agreement. The City points out the language effects five employees in two departments, Water and Wastewater. The City avers the summer work schedule is no longer justified since the City no longer does utility construction work. Since 2001, there have only been two new developments in the City and the developer was responsible for the utility work. The City argues that the summer work schedule results in a loss of productivity and a reduction of service to the community. The City points to the testimony of Director of Public Works to support this contention (Tr. pp 7-31). The City argues when it eliminated seasonal employees the work they performed has to be performed by bargaining unit employees. The City concludes that because of the size of

the work force there is a lack of manpower that makes the summer work schedule inapposite to serving the public. The City also stresses that none of the comparables have a summer work schedule. The City also argues in attempting to move the Memorandum of Understanding into the collective bargaining agreement the Union has the burden to demonstrate the trial period summer work schedule is needed. The City stresses that the current language allows either party to not renew the practice on a year-to-year basis. The City concludes it is merely enacting the rights given it to terminate the practice.

Turning to the wage issue, the City points out it used a percentage increase, that this is the more common approach to wages, and all the comparables used this approach.

The City also contends it is providing a competitive wage rate, that it has settled higher than the prevailing settlements and continues to do so in the instant matter, and that its final offer is reasonable and fair. The City further contends the parties are in basic agreement on health insurance changes except for a few components and implementation dates. The City points out that in moving from a 97% contribution to a 95% contribution towards the premium, only two comparables make greater contributions. Of these two, the City argues Peshtigo is not a readily comparable plan because Peshtigo's employees pay a major portion of medical expenses. The City stresses the increased deductible is within the mainstream of the practice found among the comparables.

The City also points out most of the relevant comparables do not provide dental insurance and points out it contributes significantly more towards the cost of the dental insurance. The City acknowledges that the parties' agreement to allow the City to self-fund the dental insurance may help to rein in its high cost in comparison to those few comparables who provide this benefit. The City stresses the statutory criteria of "overall compensation" requires the arbitrator to take into account the impact of this valuable benefit as well as the fact it provides higher level of sick leave accumulation.

The City further points out the wage increase is above the cost of living and that it has historically done so. The City avers that its total package increase is well above the cost of living and thus guarantees employees will gain in spending power. The City thus concludes the overall compensation factor supports selection of the City's final offer.

The City also contends the greatest weight factor supports the City's position. The City points out it is operating under strict levy limits established by the State of Wisconsin limiting the City to a levy increase rate of 3.182%. The City stresses it has taken budget actions to curtail costs such as eliminating street lighting, scaling back street projects, not filling a vacant police officer position and eliminating seasonal employees in its Public Works Department. At the same time, the City points out, dental insurance has increased twenty-nine percent (29%) and health insurance has increased forty-two percent (42%). The City argues these factors demonstrate the difficulty the City has in living within the levy limits and trying to contain costs.

The City also contends the greatest weight factor of local economic conditions favors the City's final offer. The City points out the Chilton median household income is over

$3,000 below the state average ($43,791), the City has experienced one business start (125 employees) and one business closing (100 employees) and unemployment rates ranged in 2005 from 3.8 % to 4.7%. The City stresses that with a flat dollar cap on health insurance premiums it protects employees from runaway costs.

UNION'S REPLY BRIEF

The Union asserts it has been properly reactive to rising costs of insurance by increasing deductibles, increasing employee contribution to premium cost, increasing co-pays, and changing insurance carriers. The Union argues that if this were a wage catch-up situation, the Arbitrator would not allow immediate catch-up. The Union asserts it has done enough to react to the rising costs of insurance in the instant negotiations. The Union also argues picking up the costs doesn't resolve poor consumerism, better information does.

The Union also asserts the City's insurance advisors are self-serving and should carry little weight. The Union contends the testimony of the police officer at the hearing demonstrates the impact of the City's offer on the drug card and given the fact there are only five (5) employees in the Police Department bargaining unit that amounts to a twenty percent (20%) impact on the bargaining unit. The Union avers the City has given the Union no credit for the dental change or even costed the impact of the change. The Union does recognize that the free market is not working and avers it has not planted its head in the sand. However, the Union contends it has done enough during these negotiations.

The Union argues the City recognized the value of the summer hour schedule to employees because it tried to use it as a carrot, one that the employees already have, in the negotiations. The Union points out the summer hour schedule reduces down time and that this benefit still accrues to the City, if at a lesser rate because of the lack of utility construction. The Union also points out utility construction stopped in 2001. The Union again points to the April 14, 2005 letter from the City to the Union (Union Ex. 23), noting the letter cited no productivity problems, concluding it is reasonable to assume the deletion of the Summer Work Schedule is retaliation. The Union points out summer hours existed through 2002, 2003 and 2004 by mutual consent.

The Union also argues the Health Insurance Committee proposal is not crucial to insurance discussions. The Union agrees that it is important to have a dialogue on insurance issues and will continue to do so. The Union contends it is unreasonable to include on the committee non-represented employees. The Union asserts that if such employees desire to have a voice in determining benefits let them join the Union. The Union argues the past process did not confer non-represented employees the right to be a part of a decision making process. The Union's concern is what weight will a future arbitrator give minutes of such meetings in future discussion.

The Union also asserts the cents per hour approach to wage rates most closely fits the pattern of what the parties have agreed upon in prior negotiations. The Union points out the last voluntarily agreed upon collective bargaining agreement contained cents per hour

increases. The Union concludes the City is breaking the pattern the parties usually agree upon and trying to bolster its position by claiming "catch-up".

The Union would have the Arbitrator select its final offer.

CITY'S REPLY BRIEF

The City argues it is telling that the Union never discussed the Summer Schedule provision in its initial brief. The City asserts the Union cannot justify the expansion of the summer schedule to water/wastewater crews on a permanent basis. The City points out the Union provided no rational or a *quid pro quo* for the change.

The City contends it has not raised an ability to pay argument by advancing the presence of levy limits and poor economic conditions. The City contends it has raised the issue of levy limits to advance the greatest weight factor, and, has raised poor economic conditions to advance the greater weight factor of local conditions. The City argues with rising health care costs it is imperative the City position itself to withstand the levy limits and poor local conditions. The City also points out that by ignoring prescription drug costs the Union ignores a major factor that is driving health insurance costs.

The City also asserts the external comparables support the City's position pointing out that the sick leave accumulation rate is second among the comparables and very few of the comparables provide dental insurance.

The City also acknowledges the Union has made modest changes to contain health costs, however, the City points out the City's final offer regarding plan change and premium contribution is still below the norm found amongst its comparables. The City points out six of the seven of the comparables have higher drug card co-pays. The City asserts the City's proposal is not a radical change but an attempt to become part of an overwhelming norm. The City also stresses the Union's silence on acknowledging that most of the comparables do not have a cap on drug cards demonstrates the Union raised this issue as red herring.

The City also points out that while the Union wants credit for problem solving, such as the introduction of a $25 co-pay after twenty-four (24) visits to a chiropractor, it fails to acknowledge only one City employee had more, three (3), than twenty-four (24) visits to a chiropractor in the year November 1, 2003 to November 1, 2004. The City points out chiropractor visits cost over $14,000 in 2004.

The City also argues that while the Union has put forth a worst case scenario of the officer who testified at the hearing, the estimate of costs ($400) was in error and the Union fails to acknowledge that other employees may not incur any costs at all. The City concludes that those who partake of a benefit should pay a portion of the costs. The City again stresses under its proposal employees will become better consumers.

The City also contends the Union's ascertation about changing formularies is unfounded. The City points out formularies are based upon many factors including effectiveness of the drug, alternatives, as well as costs. The City, in acknowledging that forty-two percent (42%) of the prescription drugs being used under the health plan, points out this contributed to seventy-two percent (72%) of the cost of pharmaceuticals. The City also points out only twelve percent (12%) are tier three (3) pharmaceuticals. The City also points out that formularies change when new discoveries are made, some drugs become over the counter, and some drugs are pulled off the market for health reasons.

The City, in acknowledging the Union has made changes to the health plan, avers the Union needs to go a step further and include prescription drug co-pay. The City contends there are no savings going into the City's pockets. The City again points out most of the comparables, contrary to the Union's assertion, do not have caps on prescription drug co-pays and all have higher co-pays. The City also points out that while the Union pointed to Kiel's no co-pay it failed to acknowledge Kiel employees pay a higher proportion of the insurance premium and have a higher deductible.

The City also contends there is no evidence it has miscalculated its reserves. The City asserts that because it is a small group it has larger gyrations in costs due to claims experience and points out that in reducing the reserve it reduced the premium costs paid by employees.

The City also points out the Joint Insurance committee does not make decisions on insurance issues, only recommendations. The City stress the Committee does not make any formal decisions, and as such, it only makes sense that non-represented employees be included in the group. The City avers this is the status quo and this provision will elevate the committee's status and strengthen the Committee's resolve to deal with issues.

The City also points out the Union has acknowledged there is not a lot of construction planned but fails to recognize this is why the summer work schedule is no longer needed. The City, asserting it was not vindictive, argues the Arbitrator should not consider attempts to settle a collective bargaining agreement.

The City concludes it provides competitive wages and benefits and argues employees should pay their fair share of health insurance costs. Based upon the statutory criteria the City would have the Arbitrator select its final offer.

DISCUSSION

The Municipal Employment Relations Act states arbitrators shall consider and give the greatest weight to any enactment that places limitations on expenditures that may be made or revenues that may be collected by the municipal employer. The City has pointed to the State imposed levy limit and has argued the greatest weight factor supports the City's position. The City presented evidence that the levy limit is 3.182 because the City is experiencing growth. The City has costed the City's final offer as: 2005 - 2.8%; 2006 -

5.5%; 2007 - 3.6%, and costed the Union proposal as: 2005 - 2.8%; 2006 - 5.25%; and 2007 - 4.3%. The total difference between the two offers, as costed by the City, is approximately $4,000. As the City has pointed out, this is not a significant sum. However, there has been no showing by the City that acceptance of the Union's final offer will significantly effect the City's ability to comply with the State's levy limits. Therefore. the Arbitrator finds that the "greatest weight" factor does not clearly support either final offer.

The Municipal Employment Relations Act also states the Arbitrator shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the other factors. The record demonstrates that the City has a below average medium income per family. The City also pointed to the unemployment levels, however, the City did not offer any evidence of whether this was above or below the state average for communities of its size. The record also demonstrates that the State levy limit is 2% or the rate of growth, whichever is greater. Herein the City's levy limit, as noted above, is 3.182%. This levy rate demonstrates the City is growing. Given the small dollar amount separating the two parties the arbitrator concludes this factor favors neither the City's final offer or the Union's final offer.

The Arbitrator finds that there is no dispute that the City has the lawful authority to implement either offer (Factor a). The Arbitrator also finds that while the parties are in agreement on many of the issues in their final offers, there were no stipulations with respect to any of the issues (Factor b). However, at the hearing the Union did not dispute that the City would be unable to implement the increased deductibles until the third year of the agreement (2007) even though the City's final offer has them commencing in the second year (2006).

There is also no dispute that the City has the ability to pay either of the offers (Factor c). Any increase in wages and benefits increases the financial burden on taxpayers, however, in order to provide appropriate municipal services the City must be able to recruit and retain competent employees. Thus the interest and welfare of the public is met when the City can maintain a competitive position and treat its employees fairly. Determining what is fair treatment is established by applying the statutory criteria. While the City did present evidence concerning the levy limit, average medium income and other economic conditions in Chilton, the City has the financial resources to meet either offer. Particularly in view of the fact only $4,000 separates the two offers.

External comparables are used to obtain guidance in comparing wages, hours and conditions of employment (Factors d, e, and f). This is a comparison of employees performing similar services in public and private employment in comparable communities. Herein the parties have agreed on the use of external public sector employers established in *City of Chilton (Police Department)*, Dec. No. 26478-A (Kerkman 1990). These are the employees in the municipalities of Algoma, Brillion, Kewaunee, Kiel, New Holstein, and Peshtigo and Highway Department employees in Calumet County.

The Union has presented a "cents per hour" increase for each year of the collective bargaining agreement and the City has presented a "percentage per hour" increase for each

year of the collective bargaining agreement. The comparables presented all used "percentage per hour" for wage increases. However, the City has agreed in the past to "cents per hour" increases. The variations do not impact on total costs of the final offers. Therefore the Arbitrator concludes this proposal carries no weight in the final determination or selection of the final offer.

None of the comparables have an insurance committee (Factors e, f and g). However, the Union does not dispute the parties have a practice of meeting to discuss insurance matters and does not dispute that non-represented employees have attended these meetings. In effect the City is attempting to codify the existing practice into the collective bargaining agreement. The Union's disfavor with this is twofold, being required to meet with non-represented employees and the weight the recommendations of the committee would have in future disputes between the parties. The Arbitrator finds no merit to these concerns. The fact is non-represented employees have been involved in discussions about insurance matters in the past and there is no evidence the Union refused to discuss insurance matters with the City when they were present. Further, the Union can direct its representatives not to agree to any recommended changes unless the representatives have discussed the matters with the Union leadership and the bargaining representative. The Union can create such a check and balance to ensure their representatives do not concur with a recommendation the Union may have concerns about agreeing to or concerns as to whether changes being recommended by the committee would be ratified by the membership. Further, (Factor c), it would be in the interest and welfare of the public for there to be on-going discussions about a matter that has direct impact on the ability of the City to meet financial needs. However, whether in the collective bargaining agreement or not, it is in the best interests of all concerned for the Union and the City to continue to communicate and discuss insurance matters. The Arbitrator also notes that although the language requires the committee to make recommendations to the parties, the language does not bar the Union's two (2) representatives from submitting dissenting opinions. Nor are there any costs impact associated with this proposal. Therefore, based upon the above and foregoing, the Arbitrator concludes the City's offer is more reasonable.

The significant issues herein are the matters that pertain to health insurance and summer work schedule. The language of the Memorandum of Understanding states that it applies to employees in the Water and Wastewater Departments and states the following:

> "The new schedule, if adopted, would be on a trial basis for one year. Both parties must mutually agree to continue the new schedule on a year to year basis."

This language commenced with the 1991-2000 collective bargaining agreement and the summer work schedule has been continued until the instant contract.

The record also demonstrates that in the 1980's the City began installing utilities (water mains, sanitary sewer systems and storm sewers) for new developments in the City. The City, in agreement with the Union, established a utility construction crew and created the summer work schedule (10 hour days, 4 days a week) for the four (4) employees on the Utility Crew. Thereafter the summer work hours were applied to all Street Department employees. The record also demonstrates that since 2001 the City has not used a utility

crew, has had only two new construction programs and the developers installed the utilities, and recently eliminated seven (7) seasonal employee positions in the Department of Public Works. The record also demonstrates there are five (5) bargaining unit employees who work in the Streets Department and four (4) who work in the Water and Wastewater Departments.

A review of the seven (7) comparables demonstrates that none of the comparables have a summer work schedule and given the changed conditions, in particular the elimination of seasonal employees, the City's proposal on the issue is more reasonable. The Union did argue that the City gained productivity because there was a productivity gain because of less down time (start up time and start down time), however, this argument fails to address the loss of seasonal employees and the resulting reduced work force. Therefore the Arbitrator concludes the City's offer is more reasonable.

The record demonstrates the following concerning premium co-pay, deductibles and pharmaceutical co-pay:

Premium co-pay

	Family/Single		
Algoma	90%/100%		
Brillion			
Plan 1	81%/72%		
Plan 2	92%/50%		
Plan 3	41%/22%		
Kewaunee	95%/100%		
Kiel	94%/94%		
New Holstein	97%/97%		
Peshtigo	100%/100%		
Calumet County	90%/90%		
Chilton	2005 - 97%	2006 - 96%	2007 - 95%
	Cap $25/$50	$30/$60	$35/$70

Deductibles

	(Single/Family)
Algoma	State Plan HMO no deductibles, Standard Plan $250/$500
Brillion	State Plan HMO $500/$1000, Standard Plan $250/$500
Kewaunee	HMO's, no deductibles
	Standard Plan in net work $100/$200
	Standard Plan out of net work $500/$1000
Kiel	$225/$500
New Holstein	$250/$500
Peshtigo	$200/$400
Calumet County	HMO no deductible, other plan $200/$400
Chilton (Union)	2007 $200/$400
Chilton (City)	2006 $200/$400

Pharmaceuticals Co-Pay

Algoma	State Plan	$5/$15/$35
Brillion	State Plan	$5/$15/$35
Kewaunee	State Plan	$5/$15/$35
Kiel	None	
New Holstein	$10/$20/$40	
Peshtigo	25%, 20% mail order	
Calumet County	$5/$15/$30	
Chilton (Union)	None	
Chilton (City)	$0/$10/$25	

Undertaking comparisons of the above data demonstrates that only Peshtigo pays the full health insurance premium, however, as pointed out by the City, Peshtigo requires the highest co-payment on health services. New Holstein is the only other comparable that pays a higher percentage of the health insurance premium. The average of the remaining five comparables is approximately 92%. Chilton is the only comparable that has caps on the amount of premium contribution made by employees. These caps, in effect, protect employees represented by the Union from unusually high premium increases. A review of the information concerning trends submitted by the City demonstrates that the trend in health insurance is to shift more of the costs of premiums to employees. While the Arbitrator may not agree that this is the best usage of an employer's dollars, cost sharing of the health insurance premiums between employers and unions have occurred with employees paying a greater percentage of the premium and continue to occur, primarily a result of the increasing costs of health insurance.

Turning to the deductibles, the above data demonstrates that, other than the HMOs and the in-network Kewaunee plan, Chilton has the lowest deductible. Thus, based upon the comparables, the City's offer on this is preferable even if the City could implement the change in 2006.

Turning to the other major issue herein, the pharmaceutical co-pay, a review of the comparables demonstrates six of the seven comparables have a co-pay system in effect, with Peshtigo most likely the highest because a percentage is paid for every prescription (20% not to exceed $200). Four of the six have a $5/$15/$35 co-pay and Kiel has the highest flat dollar co-pay, $10/$20/$40. The City's position is to introduce a co-pay of $0/$10/$25 in 2007 while the Union has argued it has made concessions in the insurances of the collective bargaining agreement and these concessions are sufficient for this round of bargaining. At the hearing the Union argued that because the City did not place a cap on total out-of-pocket prescription payments, the imposition of the City's pharmaceutical co-pay would place an undue burden on employees. The Union pointed out that three of the comparables are under the State Plan and the State Plan has a $300/$600 cap on co-payments for pharmaceuticals. However, a careful review of the State Plan, as pointed out by the City, demonstrates the cap does not apply to tier 3 ($35) prescriptions.

In addition, the Union, at the hearing, presented testimony from a City Police Officer that due to his spouse's medical condition he would have to purchase six (6) tier 3 prescriptions per month and that he estimated the City's co-pay plan would cost him over

$400 per month. However, as the City points out, six times $25 is only $150 per month and no medical evidence was presented that would bar the seeking of tier 1 or tier 2 alternatives. While the Arbitrator is sympathetic to the plight of the Police Officer, under the benefit levels of six of the comparables the Police Officer would have even greater out of pocket expenses.

The Union also raised questions concerning the formulary process the City has included in the health insurance plan. However, all of the plans must have a system for establishing what is generic, formulary and non-formulary. These formulary systems were not placed before the Arbitrator so there is no basis to determine whether the formulary system proposed by the City is reasonable or unreasonable. The record does demonstrate, contrary to the ascertation put forth by the Union, that only fifteen percent (15%) of the pharmaceuticals being used by current City employees are non-formulary (tier 3) drugs. Nor is there anything in the collective bargaining agreement that prevents the Union from policing decisions in this area. The Arbitrator notes here that the clause of the formulary system cited above by the Union points out cost is only considered after a drug has been found to be clinically equivalent. Thus, clinical equivalency has to be established prior to the consideration of cost. Given the fact the comparables have a generic, formulary and non-formulary tier system the comparables must established a system to classify pharmaceuticals, the fact that none of these systems have been placed before the Arbitrator, and the fact the Union can police the City's actions in this area, the Arbitrator concludes the City's formulary system is reasonable.

Based upon the foregoing it is evident the comparables clearly favor the City's position. Chilton would still be ranked behind the other six comparables in pharmaceutical co-pay, have the lowest non-HMO deductible, and the City will be the third highest amongst the comparables in premium percentage payment. The Union has pointed out that the only other self-funded health insurance plan is Kiel. Kiel does not have a pharmaceutical co-pay plan, however, as pointed out by the City, Kiel employees pay a greater portion in of the health insurance premium and have a higher deductible. Therefore the Arbitrator concludes the City's proposal is more reasonable.

The City has pointed out that generally the settlements between the parties have been greater than cost-of-living (Factor g). Both parties' final offers are higher than the cost-of-living, with the Union's being slightly higher.

The employees represented by the Union receive a number of other benefits including dental insurance that few of the comparables provide and have an above average sick leave bank. The parties have agreed to a general wage increase of 3% for 2005, 3.5% for 2006 and 3.5% for 2007 (with the Union's expressed in cents per hour). The overall compensation received by the employees (Factor i) places them in a competitive position amongst its comparables. The City has raised issues concerning the total cost impact of the relative final offers, including that it should receive credit for the fringe benefits it provides and pointing to total package increases over the three years of the collective bargaining agreement. The Arbitrator again notes here that the arbitrator in the 1990 decision involving the parties used the hourly rate cost of the Dental Insurance when comparing wage rates to

determine the reasonableness of the parties final offers. However, total package increases are difficult, if not impossible, to compare and what may seem reasonable is subject to the opinion of the viewer (e.g., a dispute concerning a wage catch-up may have a higher package costs than a dispute that does not, should that package settlement be meaningful when compared to other non-catch-up negotiations). Further, a party seeking a language change may receive or give a cost proposal to the other party resulting in a higher or lower total package.

The parties have not brought any changes (Factor j) to the attention of the Arbitrator during the pendency of the arbitration proceedings except for the City's claim it cannot implement the increased insurance deductibles until 2007. The City pointed out at the hearing that it's insurance provider cannot recoup the deductible in 2006(Tr. Pp 56-57). The inability of the City to implement the deductible change in 2006 adds some, but very, little weight to the reasonableness of the City's offer.

(Factor J) The City has also claimed that the 3.5% increase in 2006 and the 3.5% increase in 2007 include the 0.5% above 3% to purchase, *quid pro quo*, for the changes in the insurance plan and summer work schedule. Some arbitrators have held a *quid pro quo* is not required for changes in health insurance, *Pierce County (Sheriff's Dept.)*, Dec. No. 28187-A (Friess 1995) and *Cornell School District*, Dec. No. 27292-B (Zeidler 1992), noting that comparative tests are a sufficient burden of proof. Other arbitrators have held that rising health costs alone change the status quo and negate any presumption that health benefit programs and costs should be carried over to a successor collective bargaining agreement, *Walworth County Handicapped Children's Ed. Bd.*, Dec. No. 27422-A (Rice 1993). Another arbitrator has held continued health insurance coverage without some employee contribution and without provisions controlling or reducing costs is no longer reasonable, *Buffalo County (Sheriff's Dept.)*, Dec. No. 31340-A, (Grenig 2006). The City's addition of 0.5% in 2006 and 0.5% in 2007 provides an adequate *quid pro quo*, if one were required, for the City's proposed health insurance changes. This conclusion is based upon the fact that some employees will not be impacted by the change to the three tier pharmaceutical program, some will be not be impacted by the change in deductibles and some will not be impacted by the change to a chiropractic co-pay after twenty-four (24) visits.

The Union has claimed that the changes it has agreed to in the chiropractic plan, the 2007 deductible and the self-funded dental insurance are sufficient savings for the City during the pendency of one collective bargaining agreement. This argument ignores the fact that the fastest growing portion of health insurance costs is pharmaceuticals and ignores the fact the comparables clearly support the City's position. The change in chiropractic plan may only effect one (1) City employee that had more than twenty-four (24) visits. The change in the deductible is to a deductible that is lowest of the comparables. The change to self-funded dental insurance may or may not reduce total costs of the dental insurance policy but it maintains the same level of benefits, a benefit few of the comparables receive. Thus, the Arbitrator concludes the City's final offer with respect to pharmaceutical co-pays is more reasonable.

As pointed out by the Union, when one party seeks a significant change, the party

proposing the change must demonstrate a need for the change, and, after demonstrating the need for the change provide a *quid pro quo*, *Middleton/Cross Plains School District*, Dec. No. 28496-A (Malumud 1996). Herein, the City has demonstrated that need, the elimination of seasonal employees resulting in a reduced workforce during the summer. Further, the City's position is supported by the comparables. The City has also argued that the average settlements are a three percent increase (3%) and the Union has not disputed this claim. Thus, the Arbitrator concludes the additional one half percent (1/2 %) in 2006 and 2007 are *quid pro quo's* for the changes the City is seeking.

The evidence satisfies the Arbitrator that the comparison of pharmaceutical co-pays and the other statutory factors support the City's offer. Further, there is nothing in this record that demonstrates the employees should have a more superior benefit than the employees in most of the other comparable communities. The evidence also satisfies the Arbitrator that the City has demonstrated a need for a change in the Summer Work Schedule and the one half percent (1/2 %) wage increases above the average settlements is a sufficient quid pro quo for the change to a pharmaceutical co-pay and the change in the Summer Work Schedule. Therefore, based upon the above and foregoing, the Statute, and the evidence, testimony and arguments presented, it is concluded that the City's final offer is more reasonable and the Arbitrator makes the following:

AWARD

Having considered all the statutory factors, and all the evidence, testimony and arguments presented by the parties, the City's final offer is more reasonable that the Union's final offer. The parties are directed to incorporate the City's final offer into their collective bargaining agreement.

Dated at Sun Prairie, Wisconsin, this 20th day of April, 2006.

Edmond J. Bielarczyk, Jr., Arbitrator