

BEFORE THE ARBITRATOR

In the Matter of the Petition of

TEAMSTERS LOCAL 43

To Initiate Arbitration Between
Said Petitioner and

RACINE COUNTY (PUBLIC WORKS DIVISION)

Case 207

No. 64346 INT/ARB-10354

Decision No. 31681v

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Ms. Andrea F. Hoeschen, on behalf of the Union.

Long and Halsey Associates, Inc., by Mr. Victor J. Long, on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, herein “Union” and “County,” selected the undersigned to issue a final and binding award pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, herein “MERA.” A hearing was held in Racine, Wisconsin, on October 25, 2006. The hearing was not transcribed and the parties subsequently filed briefs that were received by December 11, 2006.

Based upon the entire record and the arguments of the parties, I issue the following Award.

BACKGROUND

The Union represents for collective bargaining purposes a bargaining unit of about 55 employees employed in the County’s Public Works Division.

The parties engaged in negotiations for a successor bargaining agreement to the prior agreement which expired on December 31, 2004. The Union then filed an interest arbitration

petition on January 6, 2005, with the Wisconsin Employment Relations Commission, herein “WERC.” The WERC appointed Daniel Nielsen to serve as an investigator and to conduct an investigation pursuant to Section 111.70(4)(cm)6 of MERA. The investigation was closed on April 27, 2006, and the parties subsequently agreed to a voluntary impasse procedure.

FINAL OFFERS

The Union’s Final Offer states:

. . .

Change all dates to reflect “January 1, 2005” and “December 31, 2006.”

18.03 Health Insurance: Employees will continue to contribute ten (10%) percent of the premium for the coverage selected for year 2005 and 2006.

20.02 Revise as follows:

Effective January 1, 2006 any employee retiring under the Wisconsin Retirement Plan shall be entitled to be continued under the County’s group health insurance plan by paying a percentage of the premium based on years of service. The following premium requirements apply to all employees retiring on or after January 1, 2006. The other provisions specified above continue to apply.

<u>25 years & over of service</u>	<u>5%</u>
<u>20, 21, 22, 23, 24 years of service</u>	<u>10%</u>
<u>15, 16, 17, 18, 19 years of service</u>	<u>20%</u>
<u>10, 11, 12, 13, 14 years of service</u>	<u>25%</u>

After January 1, 2006, employees retiring with less than 10 years of service will not be eligible for County retirement insurance. (All emphasis in original.)

SCHEDULE “A’ WAGES RATES

A.02 All fulltime, part-time and seasonal employees shall receive a 2% increase effective 1/1/05 and 1/1/06.

. . .

The County's Final Offer states in pertinent part:

...

18.03 Health Insurance (Changes to be effective January 1, 2004)

1. Employees will contribute ten (10) percent of the premium for the coverage selected by the employee. Effective January 1, 2006 employees will contribute fifteen (15) percent of the single or family premium for the coverage selected by the employee. The payment will be made through payroll deduction from the first two paychecks of each month.

20.02 Any employee retiring under the Wisconsin Retirement System shall be entitled to be continued under the County's group health insurance plan by paying a percentage of the premium based on years of service. Any employee who exercises his/her right to continue under said group policy as stated in this provision, shall be required to pay his/her share of the cost of such insurance coverage to the Treasurer's Office at least thirty (30) days prior to the date of the insurance premium. Such retired employees are also required to purchase the Medicare Part B plan for themselves and their spouse, when the employee and/or spouse is age sixty-five (65). The following premium requirements apply to all current ~~and future~~ retirees. Effective January 1, 1989:

Over 25 years of service	5%
20, 21, 22, 23, 24 years of service	10%
15, 16, 17, 18, 19 years of service	20%
10, 11, 12, 13, 14 years of service	25%
5, 6, 7, 8, 9 years of service	40%
1, 2, 3, 4 years of service	50%

Effective with the date of the arbitration award of the 2005-06 contract any employee retiring under the Wisconsin Retirement System shall be entitled to be continued under the County's group health insurance plan by paying a percentage of the premium based on years of service. The following premium requirements apply to all employees retiring on or after the arbitration award of the 2005-06 contract. The other provisions specified above continue to apply.

<u>25 years & over of service</u>	<u>5%</u>
<u>20, 21, 22, 23, 24 years of service</u>	<u>10%</u>
<u>15, 16, 17, 18, 19 years of service</u>	<u>20%</u>
<u>10, 11, 12, 13, 14 years of service</u>	<u>25%</u>

After the date of the arbitration award of the 2005-06 contract, employees retiring with less than 10 years of service will not be eligible for County retirement insurance.

Effective January 1, 2015 any employee retiring under the Wisconsin Retirement System shall be entitled to be continued under the County's group health insurance plan by paying a percentage of the premium based on years of service. The following premium requirements apply to all employees retiring on or after January 1, 2015. The other provisions specified above continue to apply.

<u>25 years & over of service</u>	<u>5%</u>
<u>20, 21, 22, 23, 24 years of service</u>	<u>10%</u>
<u>15, 16, 17, 18, 19 years of service</u>	<u>20%</u>

After January 1, 2015, employees retiring with less than 15 years of service will not be eligible for County retirement insurance.

The above contribution rates do not apply to employees on long term disability, who will be required to contribute 10% until normal retirement age, regardless of length of service. Employees who qualify under this paragraph as a result of a work related injury or illness, occurring on or after September 1, 2000, will be entitled to the spousal and dependent coverage specified in Article 18.03(7) of this agreement. Employees who begin receiving a long term disability benefit on, or after January 1, 2006, will be required to contribute 15% until normal retirement age, regardless of length of service.

A.02 Full time positions in the bargaining unit shall receive wage increases of ~~3.5%~~ 2.0% effective ~~1/1/03~~ 1/1/05, ~~3.5%~~ 1.0% effective ~~1/1/04~~ 1/1/06, and 1.0% effective 7/1/06 with the following base hourly rates of pay in the various classifications applying:

Part time and seasonal employees shall receive a ~~3.5%~~ 2.0% increase effective ~~1/1/03~~ 1/1/05, ~~3.5%~~ 1.0% increase effective ~~1/1/04~~ 1/1/06, and 1.0% increase effective 7/1/06. Retroactive payment will be paid upon request with the following rates of pay applying: (All emphasis in original.)

...

POSITIONS OF THE PARTIES

The Union contends that “The County’s proposal to change the status quo regarding its self-funded health insurance plan is unreasonable” because increasing the employee’s share of the health insurance premiums from 10% to 15% “does not address the problem of escalating health insurance costs”; because the external comparables do not support the County’s offer;

because the County's proposal is not accompanied by a quid pro quo; and because increased premium sharing is "not a necessity." It also contends that its wage offer should be adopted because the County's wage offer is "substandard on its face" and because the combination of such a wage package "with increased premium sharing and inflation results in a loss of take-home pay and a decreased standard of living for the entire bargaining unit." The Union also points out that it has agreed with the County to eliminate retiree health insurance for employees with less than ten years of service; that selection of the County's offer will result in the employees here paying more actual dollars for health insurance than any employees among the external comparables; and that the County will have the lowest annual wage lifts among all of the external comparables regardless of which Final Offer is selected.

The County counters that its external comparables should be selected because they are supported by a prior interest arbitration award involving the County;¹ that the decision herein should be based upon the internal comparables and the five other bargaining units who have settled with the County rather than the external comparables; that "the internal comparables and the escalation in health insurance costs justify the acceptance . . ." of its Final Offer; and that the Union "omits a very significant benefits comparison . . . and that is the growing cost of retiree health insurance." The County also argues that its offer is supported by the "greatest weight" and "greater weight" factors; that the County's recent financial difficulties justify its offer; and that the County already has taken numerous steps to help reduce its health care costs.

¹ Racine County and Racine County Deputy Sheriffs' Association, Decision No. 29968-A (McClimon, 2001).

DISCUSSION

The major issues here are health insurance and wages.

The health insurance issue centers on: (1), whether current employees should pay 15% of their health insurance premiums for the County's self-funded health insurance plan effective January 1, 2006, as proposed by the County, or whether they should continue to pay 10% as proposed by the Union; and (2), whether employees in 2015 with 10-14 years service will continue to receive partially paid health insurance when they retire (retirees now pay 25% of the premium) as proposed by the Union, or whether they will need at least 15 years service before receiving that benefit as proposed by the County.

The Union proposes a 2% across-the-board wage increase effective January 1, 2005, and January 1, 2006, and the County proposes a 2% across-the-board wage increase on January 1, 2005; 1% on January 1, 2006; and 1% on July 1, 2006.² The wage offers therefore provide for the same 4% wage lift over the course of the agreement and they are about ½ of one percent apart in actual dollars.

Turning to the statutory criteria set forth in Section 111.70(4)(cm)7 of MERA, the County claims that the "greatest weight" factor supports its Final Offer because the County is within \$164,000 of the State's levy limits for 2007 thereby showing that there is "little slack" in the County's finances, and that the "greater weight" factor is in its favor because of the difficult budgetary conditions it has recently faced.

² The County agreed at the hearing that its retroactive wage proposal covers all employees who terminated their employment since January 1, 2005.

County Executive William McReynolds testified that the County by the end of 2003 had a budget deficit of about \$9,200,000 which included a deficit of about \$6,700,000 in its health care reserve. He explained that the County took numerous steps to improve its finances which included closing the County's school in 2006; reducing about 144 employee positions over the last four years; consolidating functions; reducing funding for services; and reducing health care costs by joining together with other local employers to purchase certain services and to negotiate lower prices and by joining with the City of Racine in negotiating a 3% discount at a local hospital. He also stated that there will be no increase in the health insurance premium for active employees in 2007 and that retirees will only pay 5% more for their insurance; that the County has been able to save money because employees have pitched in; and that: "I have to commend the employees. They have partnered with us."

County Finance Director Douglas Stansil testified about the "dramatic increases" in health insurance which rose on a county-wide basis from \$10,000,000 in 1999 to \$20,000,000 in 2004, and added that the "overall costs have gone down" in 2005-2006 because the County has fewer employees and lower health care claims; that the County's health insurance reserve fund is still short; and that the County in recent years has seen a drop in shared revenues.

Human Resources Director Karen Galbraith testified that the County initially proposed to make design changes in its plans but that two bargaining units rejected those changes and that they and the County then agreed to retain the existing plan and to raise the monthly premium contribution from 10% to 15% in lieu of making those changes. She also stated that the County now has about 555 retirees and that about 365 of its current employees are over 50 years of age (County Exhibit 1-13).

The record therefore establishes that the County has had financial difficulties and that it has taken a number of steps to tighten its financial belt.

However, there is no state law or directive which prohibits the County from paying for the Union's offer which is why the "greatest weight" factor is inapplicable. The "greater weight" factor does not favor the County's offer because there is no proof that the local economic conditions cannot now support the Union's offer.

I further find that there is no issue relating to the lawful authority of the municipal employer; that the stipulations of the parties do not favor either party; that the interests and welfare of the public and the financial ability of the County to meet the costs herein during the course of the agreement do not favor either party; that comparisons with private employment do not favor either party; that the overall compensation received by the employees herein does not favor either party; that there have not been any changes in any of the foregoing circumstances during the pendency of this proceeding; and that there are no "other factors" which must be considered.

The CPI favors the Union's proposal because the County's 2% wage offer for 2005 and its 1½% wage offer for 2006 is less than the CPI for those years and because adopting the County's offer will raise the monthly health insurance premium by another 5%, thereby further eroding an employee's earning power.

As for the external comparables, the parties have agreed upon Dane County, Kenosha County, Waukesha County and Winnebago County. The Union wants to add Eau Claire County and Walworth County which the County opposes, and the County wants to add Brown County, Outagamie County and Rock County to which the Union "does not necessarily object."

The Union claims that “The County has not offered any demographic data to support the exclusion of Walworth or Eau Claire counties or the inclusion of Brown, Outagamie and Rock counties.” It also asserts that the inclusion of Walworth County is “common sense” because it is “contiguous to Racine County and therefore draws on the same labor pool . . .,” and that Eau Claire County should be included because it is “one of the largest non-suburban counties in the state.”

The County, in turn, relies upon the prior interest arbitration award involving the County and the Racine County Deputy Sheriffs’ Association, supra, wherein Arbitrator James A. McClimon found that the external comparables consisted of Brown, Dane, Kenosha, Outagamie, Rock, Waukesha and Winnebago counties. Id., at 4.

Those external comparables were agreed to by the parties and thus did not involve any independent determination on Arbitrator McClimon’s part as to whether Walworth and/or Eau Claire also should be part of the comparability group.

I ordinarily am very reluctant to disturb prior determinations relating to what constitutes the appropriate comparables because there is a great need to provide stability and predictability on this issue. That is why I agree that Brown, Dane, Kenosha, Outagamie, Rock, Waukesha and Winnebago are appropriate comparables.

But, Arbitrator McClimon never considered whether Walworth and Eau Claire counties should be included as an external comparable which means that that issue is of first impression.

Since it is contiguous to Racine County and draws upon part of the same labor pool, I find that Walworth County should be included among the external comparables. As for Eau Claire County, its population and per capita income are nearly identical to that of Walworth County. However, its population is about 100,000 less than Racine County; its net new

construction in 2004-2005 was a little less than one third of Racine County's; and its total equalized value in 2005 was about half of Racine County's. When all that is combined with the fact that Eau Claire County does not draw from the same labor pool as Racine County and that there is a sufficient enough set of external comparables without it, I find that Eau Claire County should not be included within the external comparables.

I thus conclude that the external comparables consist of Brown, Dane, Kenosha, Outagamie, Rock, Walworth, Winnebago and Waukesha counties.

The internal comparables consist of the following six bargaining units:³ the Courthouse and Office employees unit which is represented by Belle City Lodge No. 437, District 10, International Association of Machinists and Aerospace Workers ("Machinists"); the Human Services Department unit which also is represented by the Machinists; the nurses' bargaining unit which is represented by the Racine County Federation of Nurses, Local 5039, AFL-CIO, ("Nurses"); the Nursing Home unit which is represented by Ridgewood Local #310, AFSCME; the Attorney's unit which is represented by the Attorney's Association; and the Sheriff's Department unit which is represented by the Racine County Deputy Sheriff's Association.⁴

All but the Sheriff's Association, which has submitted its dispute to interest arbitration, have agreed to contracts which provide for the health insurance proposal the County has presented here (County Exhibit 5).

³ The command staff in the Sheriff's Department is represented in a supervisors' unit and it has not been considered on the issue of internal comparability because its members cannot proceed to interest arbitration.

⁴ The County's Final Offer to the Sheriff's Deputies is the same as here.

As for wages, the Attorneys' Association and the Nurses have agreed to the identical wage proposal as here. The Machinists Union, because it has many lower paid employees, received a 2% increase with a minimum of 40¢ an hour effective January 1, 2005; a minimum increase of 21¢ an hour effective January 1, 2006; and a minimum increase of 21¢ an hour effective July 1, 2006. The AFSCME Union, because it has the lowest paid employees among all the bargaining units, received 2.5% for 2006 for everyone except the LPN's who received a \$1.00 an hour wage increase.

Since five out of the six internal comparables agreed to contracts which match or are similar to the County's Final Offer, the statutory factor relating to internal comparability favors selection of the County's Final Offer. In addition, and as I have stated previously: "Ordinarily, internal settlements are given great weight unless a party can establish special circumstances as to why that should not be done . . ." ⁵

Here, the Union has established that the County's wage offer which provides for a 2% wage increase on January 1, 2005, and split 1% wage increases on January 1, 2006, and July 1, 2006, is less than the wage offers agreed to by any of the external comparables; that no external comparable requires its employees to pay more than 10% of their monthly health insurance premiums; that the employees herein pay the highest monthly health insurance premiums among any of the external comparables; that selection of the Union's offer will result in the employees here paying nearly double what employees pay for health insurance coverage in Walworth

⁵ See Shorewood Police Association Local 307 and Village of Shorewood, Decision No. 31061-A (Greco, 2005), p. 9.

County; and that several of the external comparables – i.e. Winnebago, Outagamie and Walworth counties – received health insurance concessions only after they paid for them by offering quid pro quo's.

But while the external comparables support the Union's wage offer and its proposal for continuation of a 10% health insurance premium contribution, all of the external comparables support the County's retiree proposal which seeks to cut off County-paid health insurance benefits for employees who retire with less than 15 years of service after January 1, 2015.

Under the prior agreement, retirees could obtain such benefits by paying 50% of the premiums if they only had 1-4 years of service and by paying 40% of the premiums if they had 5-9 years of service. The Union has agreed that following the issuance of this Award, "employees retiring with less than 10 years of service will not be eligible for County retirement insurance."

The parties are still apart, though, over the County's proposal which does not provide for such retirement insurance unless an employee has 15 years of service effective January 1, 2015. In other words, the County by 2015 wants to cut off this benefit for those employees who have between 10-14 years of service and who now pay 25% of the monthly health insurance premium.

A look at the external comparables shows that Dane County requires retirees who are at least 55 years old and who have exhausted their sick leave credits to fully pay for their health insurance; that Kenosha County requires retirees to be at least 60 years of age and to have 15 years service before they receive fully paid health insurance; that Rock County and Waukesha County allow retirees to pay for the full cost of their health insurance; that Outagamie and

Winnebago counties do not provide for any retiree coverage; that Brown County allows retirees with at least ten years of service to pay for their own insurance; and that Walworth County allows retirees to convert 60% of their unused sick leave bank for health insurance.⁶

None of the external comparables thus pay any part of the health insurance premiums for employees who retire with less than 15 years service. In addition, the only external comparable which pays for health insurance after 15 years of service is Kenosha County which requires such retirees to be at least 60 years of age.

The County thus stands utterly alone among all the external comparables in paying for the retiree benefit the Union wants to retain.

This is a very lucrative benefit. The County now pays 75% of the monthly premiums which now total about \$969 - \$996 for single retiree coverage and \$2,083 - \$2,141 for family retiree coverage for those retirees who are under 65 years of age (County Exhibit 1-11). Based on today's premiums, the County therefore is paying about \$750 a month for such single coverage and about \$1,600 for such family coverage, for yearly premium payments which total about \$9,000 for single coverage and about \$19,200 for family coverage a month.

An employee with family coverage retiring with 10-14 years of service at 55 years of age thus can receive about \$192,000 in County paid health insurance before receiving Medicare at age 65 - i.e. \$19,200 a year for 10 years. If only five employees are in that category, the County will then spend about \$960,000, i.e. \$192,000 for each of the five employees. Moreover, even if these figures are reduced, the Union's proposal still requires the County to perhaps spend hundreds of thousands of dollars on this benefit.

⁶ It perhaps should be noted that Eau Claire County, which the Union wants to use as an external comparable, requires retirees to pay for the full cost of their health insurance.

This therefore also is a very expensive benefit at today's insurance rates.

No one, of course, knows what the insurance rates will be in 2015 when the County's proposal is scheduled to kick in but, to the best of my knowledge, no one in America is predicting that future health insurance costs are going down. Hence, the current insurance rates probably will either remain the same or go up.

That is why the County is legitimately concerned about this issue now and why it is imperative to address it now so current and future employees know ahead of time how many years of service they will need to qualify for County-paid health insurance upon retirement.

The Union points out that the proponent of change must prove that there is a need for change; that its proposal reasonably addresses that problem; and that the proposed change is accompanied by an appropriate quid pro quo.

Here, the County has proven the need to cut off County paid health insurance for retirees with less than 15 years service because it no longer can continue to pay for such a lucrative and expensive benefit which can cost it hundreds of thousands of dollars and its proposal reasonably addresses that problem by making it effective in 2015. But, the County has not offered any quid pro quo for its proposal.

That, though, is not fatal because a quid pro quo is not always needed when there are extraordinary circumstances showing that there is a compelling need to change and when the size of the proposed change makes it impractical to offer a sufficient enough quid for the quo sought. Arbitrators thus have ruled that a quid pro quo is not always needed to change the status quo in the following cases: Racine County Department of Public Works, Decision No. 26075-A (Mueller, 1990); Pierce County Human Services, Decision No. 21816-A (Weisberger, 1995);

Sauk County, Decision No. 29584-A (Vernon, 2000); City of Beaver Dam, Decision No. 26548-A (Oestreicher, 1991); City of New Berlin, Decision No. 29061-A (Yaffe, 1997).

That is the case here because it is unreasonable to require the County to offer a quid pro quo for its retiree proposal when there is zero support for the Union's proposal in either the internal or the external comparables; when the Union's retiree proposal is not supported by any strong policy or equitable considerations; and when it is necessary for the County to reign in its ever-escalating health care costs for retirees.

Furthermore, since the external comparables are split in supporting the County's retiree proposal on the one hand, and the Union's proposed 10% health insurance premium contribution on the other hand, I find that internal comparability must be given greater weight than external comparability and that the County's health insurance proposal should be selected over the Union's proposal.

As related above, the Union's proposal on wages is closer to the CPI and is supported by the external comparables.

When balanced against the County's health insurance proposal, however, I find that the latter is more important than the wage issue over the long term because the County simply no longer can afford to pay health insurance for employees who retire with less than 15 years service when there is absolutely no justification for doing so.

I therefore conclude that the County's Final Offer is more reasonable than the Union's Final Offer and that it is to be included in the parties' 2005-2006 agreement, along with all tentative agreements agreed to by the parties.

In light of the above, it is my

AWARD

That the parties' 2005-2006 successor agreement shall contain all of the terms of the County's Final Offer, along with all of the tentative agreements agreed to by the parties.

Dated at Madison, Wisconsin, this 12th day of January, 2007.

Amedeo Greco /s/

Amedeo Greco, Arbitrator