STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN COUNCIL 40,
AFSCME, AFL-CIO

And

Case 66
No. 65371
INT/ARB-10580
Decision No. 31751-A

CITY OF WATERTOWN

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on October 31, 2006 in Watertown, Wisconsin. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file Briefs and Reply Briefs. The arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the parties' briefs in reaching his decision.

BACKGROUND

AFSCME, Council 40, hereinafter referred to as the Union, was certified as the bargaining representative in 2005 of the employees in the Water and Wastewater Departments of the City of Watertown, hereinafter referred to as the City. The parties entered into negotiations shortly, thereafter. They resolved some issues and then ultimately went to mediation. There were a good number of issues they still could not resolve after mediation and they have submitted them to arbitration. The final offers of the parties are as follows:

Union Proposal

Wages

1/1/05	3% across the board increase
1/1/06	3% across the board increase
7/1/06	1% across the board increase
1/1/07	Implementation of a Wage schedule with a minimum wage increase for each employee in 2007 of 3%

The Union proposes a three-year agreement.

Employer Proposals

Wages

1/1/05	3% across the board increase
1/1/06	3% across the board increase

The City proposes a two-year agreement.

Other Issues in Dispute

Article 2 Management Rights

The City would add a Section J that would specifically allow it: "to introduce new or improved operations or work practices, to terminate or modify existing positions, departments or operations or work practices; and to consolidate existing positions, departments or operations."

Section 3.08 Layoffs

The Union proposal includes a requirement that "all temporary, seasonal and part-time employees will be laid off first." The Employer Proposal does not contain this requirement.

Article VI Grievance Procedure

The Union proposal includes a provision that any discipline issued "during the hiatus period from the commencement of negotiations" may be "submitted to grievance arbitration."[1]

Section 7.01

The Union would add a sentence that requires a premium payment of $8 if the employee is required to work on a non-overtime basis outside of the employee's regular shift.

Section 7.02 Overtime

The Union has proposed adding a sentence: "Overtime distribution shall be equalized as nearly as possible among regular employees."

Section 7.03 Call Back Time

The City proposes a minimum of two hours pay if an employee is called back to work. The Union proposes a three-hour minimum.

Section 7.04 Out of Classification Pay

The Union proposal requires that any employee required to work in a higher classification be paid at the higher rate if the employee works in the higher classification for one hour or more. The Employer proposal requires the higher rate only if worked for four hours or more.

[1] The Union has indicated that there was only one suspension that would fall within coverage of its proposal.

Section 9.01 Safety Equipment
The Union proposal includes a requirement that the "City provide necessary safety and first aid equipment… in order to minimize risk of injury." The parties have agreed upon the amount of money the City will pay for safety shoes and glasses.

Section 9.03 Membership and Licenses
The Union proposal includes a requirement that any employee who is required to have a Commercial Drivers License have his or her job held open when the license has been suspended for sixty day or less, if the violation is non-occupational or for driving while impaired.

Section 10.02 Health Insurance-Retirees
Retired employees may use sick leave that has been accrued to cover the premiums for health insurance. The City would cap the amount of sick leave that can be used at 108 days. The Union would cap it at 120 days.

Section 10.05 Life Insurance
The City proposal includes language that would allow it reduce insurance coverage for individuals between the age of 65-69. The City would pay the same premium it pays for employees between the ages of 60-64. Coverage would be based on the amount of insurance that premium would provide.

DISCUSSION

There are numerous issues that have to be addressed given the number of outstanding issues that remain. The parties disagree as to the amount of wage increase in 2006. They also disagree as to whether this agreement should address wage increases in 2007 or whether it should be left for negotiation in a succeeding contract. In discussing the different proposals neither party has argued that those criteria that are to be given the greatest or greater weight are relevant in this dispute. The Arbitrator agrees. Primarily, internal and external comparables are the keys to the outcome here. Despite the fact that there are so many outstanding issues, the primary issue is wages and the implementation of a wage progression. For that reason, the wage issue shall be addressed first.

Wages

Both parties have proposed a 3% wage increase for January 1, 2005 and again on January 1, 2006. The Union has also proposed a 1% increase for July 1, 2006. The Union then makes a proposal for 2007. It has proposed the creation of five steps for each classification, Steps A-E. It

seeks to have all employees move onto the wage schedule effective January 1, 2007. Each employee would move to the step that would give the employee a minimum of a 3% increase in wages on January 1, 2007. Employees would then automatically move up one step each year, thereafter, commencing in 2008, until the employee reaches the top step.

There are approximately 17 employees in the bargaining unit. Seven of them are in the Wastewater Department. The most senior employee in that Department began employment in 1976. The junior employee in the Department commenced work for the City in 1992. The most senior employee in the Water Department has been employed for 31 years and the least senior employee has worked for six years. The additional 1% sought by the Union for 2006 would cost $2774. Assuming the same personnel stay employed for 2007 the cost of the Union proposal is $8274 more than what the City has budgeted for 2007. The Union proposal according to the Union would equate to a 3.8% increase in wages for 2007.[2] Under the Union proposal, one employee would receive no increase as he has been redlined due to a change in job duties. One employee would get a 9.84% increase. Ten of the 17 employees would get a 3.02% increase or less. Excluding the employee who has been redlined and the employee receiving a 9.84% increase, the average increase is 3.21%. The total difference for 2006 and 2007 represents approximately a 1.5% additional total payroll cost in 2007 and .5% in 2006.

Position of the Union

The Union made many concessions in bargaining in order to gain uniformity between the two Departments. There had been several differences that existed between the Water Department, which was governed by an independent commission, and the Wastewater Department. These were differences in some of the fringe benefits each employee group had. These differences were eliminated in order to obtain uniformity. This resulted in a loss in

[2] According to the costing figures contained in the Employer's exhibits, the total payroll costs for 2006 under the Union offer is $562,103. The cost in 2007 would be $581,231. This represents a 3.4% additional cost.

benefits for some employees. The Arbitrator should consider these concessions when judging the different proposals.

Any argument that the status quo should be preserved should be rejected. That argument applies when the parties are negotiating a successor agreement. It does not apply to a first contract. As noted by Arbitrator Engmann, such an approach would put the Union at a tremendous disadvantage. The requirement for a quid pro quo that is normal in successor agreements is not required for an initial agreement.

The weight that should be given to internal comparable wage increases should be less than it is normally given. Other Arbitrators have held that when negotiating a first contract, inequities between the employer and the external comparables should carry more weight. Many arbitrators reached that conclusion in cases where the Union was proposing larger increases than were given to the internal comparables. Here, the Union proposal does not exceed the wages increases of the other units. It is actually substantially less. This fact defeats any argument by the City that the Union proposal is trying to catch up to the others too quickly. It is important to note that in each of the other bargaining units there is a wage progression. This is the only unit that does not have one. The pre-contract wage system developed by the Employer is no longer appropriate in the new Unionized setting. The current wages paid to employees does make the transition difficult, because it would place employees with considerable service in the middle of the scale. Other Arbitrators have noted that this type of problem is inherent when making such a transition, yet they found in favor of the creation of a wage progression system.

The City proposal fails to provide longevity or step increases. All of the other bargaining units have incorporated these steps into their agreement. This is one area where internal comparables do play a significant role in this case. Furthermore, the City proposal fails to establish a new hire rate and it does not set a wage for an employee that moves from one classification to another. Without a schedule, the City can unilaterally set the wage of each

employee without any uniformity, and can pay a new hire any wage it chooses. Its proposal undermines the entire reason a Union exists. The Employer made a similar proposal for the newly formed Library Unit. There to, it did not propose any wage progression. The Arbitrator rejected that approach. He and others have found that such an approach simply perpetuates inequities. For that same reason, the City's proposal should be rejected.

The wage increases proposed by the Union are less than the increases received by employees in all the comparable jurisdictions over the same three-year period. It is not, however in the actual wages paid in those other jurisdictions that the Union feels it is behind the others. The real disparity is in the steps. All of the external jurisdictions include a wage progression in their contracts. The Union has provided a comparison of the wages paid at the low and high point in the other jurisdictions. Contrary to the assertion of the City, the classifications used for comparison match closely with the classifications in the City. The City is incorrect when it argues that the wages in other jurisdictions compare well with the wages in the City and that is a sufficient reason to deny the inclusion of a progression. The Union has cited numerous cases that say that is not so.

Position of the City

The Union has proposed a wage schedule that it argues is similar to those contained in the other bargaining units. It contends this is necessary to end the individualized method of determining wages that had been used by the City. The City does not have an individualized method for setting wages. It has granted increases in the same manner they were granted to other non-union personnel. The wage schedule proposed by the Union is also not like that contained in the other bargaining units. The other units schedule rewards new employees as they gain experience. It is for new employees. Here, this bargaining unit has personnel that have been with the City for many years. Advancing them on a schedule makes no sense. Employees with 30

years of service would move up the schedule in 2008. That is not what happens in the other bargaining units. The Union proposal would have an employee with less years of service making more than employees with much greater seniority. These problems are inherent throughout the Union's wage proposal. The Union has not shown that there are any inequities in the wages presently paid employees that require adjustment. The Union proposal should be rejected.

The difficulty in reviewing the external comparable wages is that the jobs being compared in those Cities are not the same as the jobs in this City. The job title might be the same, but the duties are not. In some jurisdictions, the electrical utility is included in the bargaining unit and that raises the overall wage rate. The Union in order to support its proposal has compared job titles elsewhere with the job titles in this City. Those titles do not equate to each other. In so doing, the Union has inflated the wages being compared. The Union also argues that there is a need for these employees to catch up to the wages in the comparables. There is no evidence that the employees in the City are underpaid when compared to the other jurisdictions.

Internally, the lift in wages in the other units does not represent the actual cost to the City of those contracts. The actual cost was less due to other savings. The other units' contracts also contain a new hire rate. The Union claims that its proposal does, but there is none in the Union's actual proposal. There is no valid method being proposed by the Union for placement of employees on the scale like there is in the other units. It is obvious that the creation of a scale like that contained in the contracts of the other units is best left to the negotiation process rather than through arbitration.

Discussion

The most relevant factors in evaluating these wage proposals are internal comparability and external comparability. The discussion will begin with the external comparables.

External Comparables

The parties each proposed the same list of comparables.[3] The Union cited several cases involving this City where the Arbitrator established a list of comparables. Whitewater was added after the first arbitration. That list has now been clearly set, which is probably why both parties have used the same Cities for comparison purposes. The Arbitrator finds the Cities of Beaver Dam, Fort Atkinson, Oconomowoc, Sun Prairie, Waupun and Whitewater shall be used as comparables. The Union has chosen a classification from each of those Cities that it claims matches closely with a classification in Watertown. It then compared the wages in the other jurisdictions with the wages in its 2007 proposal.[4] The Employer argues that some of the classifications used by the Union for comparison are inappropriate as the duties in the various jobs being compared differ from those duties required in Watertown. The Arbitrator has looked at the job descriptions from the comparables that have been placed into evidence to compare the duties in the various classifications in the other Cities with those in Watertown. There are several classifications contained within this bargaining unit. The Arbitrator has looked at the duties in them vis-à-vis the external comparables. However, for purposes of discussion here, the Arbitrator will only compare the operator's duties in Watertown with a classification that has similar duties in the comparable Cities. The operator classification will provide a sufficient basis for comparison. The chart below is the culmination of the review of the positions in those other Cities as they relate to the operator classification. The chart shows the minimum and maximum wages for the positions in the other jurisdictions in both the Water and Wastewater Departments that the Arbitrator finds compare most favorably with the duties in Watertown. In some cases, it is the same classification used by the Union and in some cases it is not. Watertown has an Operator I and Operator II, but there is only one job description for the Operator position. It is unclear how one moves up the ladder from an Operator II to an Operator I. The classifications

[3] Union Exhibit 6 and Employer Exhibits 4-9.
[4] The wage used from the Union proposal includes the additional 1% it is seeking on July 1, 2006.

being compared from the other Cities fit more closely with the more experienced operator in Watertown so for comparison purposes an Operator I wage is being used. The Chart also indicates which jurisdictions have a wage progression, the number of steps in the progression and the number of years it takes to reach the top rate.

WATER DEPARTMENT

	Comparable Class	Min	Max	Steps
Beaver Dam	Operator-Level 1*	19.55	22.35	Yes-3
Ft. Atkinson	Util Maint/Meter**	17.80	19.13	Yes-3
Oconomowoc	First Class	20.26	23.30	Yes-3
Sun Prairie	Operator Classification not Comparable as more expertise			Yes-9
Waupun	WII Lic. Plant Operator	16.16	20.51	Yes-7
Whitewater	Water Operator	19.26	21.41	Yes-3
Average		18.60	21.34	
Watertown	Operator I	18.55	20.84	

* Beaver Dam has not settled for 2007. The Arbitrator assumed a 3% from 2006
** Position more skilled than Meter and less skilled than maintenance. Wages averaged

WASTEWATER DEPARTMENT

	Comparable Class	Min	Max
Beaver Dam	No Contract for years in question		
Ft. Atkinson	Utility Maintenance Spec.	17.44	18.72
Oconomowoc	Plant Operator	21.10	22.45
Sun Prairie	None of the attached job classifications matched		
Waupun	Operator Grades I-IV	20.25	22.98***
Whitewater	Operator (No Cert. Re'd)	19.26	21.41****
Average		19.51	21.39
Watertown (Union)	Operator 1	18.26	21.89

*** Advancement from Grade I to IV based upon certifications, not longevity
**** Higher wage paid for each level of State Certifications

The Union proposal places the City of Watertown in the middle of the comparables in the Water Department. It is below the midpoint for a starting wage in Wastewater, but in the middle for the maximum in that Department. The City has not made a proposal for 2007 so for comparison purposes only the Union proposal is shown. From that comparison, it is apparent that the Union proposal does not place the City's employees in a more favorable position than the employees in the comparable jurisdictions.

All of the contracts in the comparables include steps. Most of the employees reach the top step within two to three years. The Union has proposed steps for this City. That would certainly equate to what is done in the other Cities. The Employer does not ostensibly disagree that a transition is going to happen and that a wage progression will be part of that transition. It just believes that transition takes time and that since the parties would be entering negotiations immediately if its proposal were adopted, it believes that would be the time to address the transition to steps and a set wage for each classification and step. The Union has cited a Decision

by Arbitrator Rice in Iowa County, Dec. No. 23941-A 1987) to support its argument. He observed:

> The Union proposal includes the establishment of a new salary schedule with progression based on seniority. Arbitrators are always reluctant to impose a new salary schedule because that is best bargained out between the parties. However, the Employer's salary schedule is not realistic. It proposes a starting salary for each classification and progression based on seniority. Then it proposes a maximum salary that is very good but there is no procedure for ever achieving that maximum salary and there is no procedure to advance to the next highest classification. In other words, the Employer's proposal requires it to give a progression at the end of six months but it can unilaterally determine when and if an employee is going to the maximum step. That is an unrealistic salary schedule. The Arbitrator is not reluctant to impose a classification system and salary schedule when his other choice is an unrealistic salary schedule such as that proposed by the Employer.

This Arbitrator is persuaded by the decision of Arbitrator Rice and the findings of the other arbitrators cited by the Union on this point. It would not be unreasonable for this Arbitrator to find that the external comparables point in favor of the inclusion of a wage progression in this the initial contract. Its wage proposal is also in line with the external comparables wage rates. Consequently, the Union proposal is favored under this criterion.

Internal Comparables

There are five other bargaining units in the City of Watertown. None of those units as of yet have settled their agreement for 2007. The chart below contains the list of bargaining units and the settlements reached in each for the years 2005 and 2006 and the number of steps contained in each contract together with the number of years it takes to reach the maximum.

Unit	2005	2006	Steps*
Dispatchers	3% 1/1 and 1% 7/1	2% 1/1 and 2% 7/1	Yes-5(1-4yrs)
Public Works	3%	2% 1/1 and 2% 7/1	Yes-5 (1-4yrs)
Police	2% 1/1 and 2% 7/1	2% 1/1 and 2% 7/1	Yes-5(1-4yrs)
Fire	3%	2% 1/1 and 2% 7/1	Yes-4(1-3yrs)
Library	3%	2% 1/1 and 2% 7/1	Yes-6(1-4yrs)
Union Proposal	3%	3% 1/1 and 1% 7/1	Yes-5 (1-4yrs)
City Proposal	3%	3%	No

*Included as a step is the Start Rate for new employees.

The increases that this Unit has received over the last few years, as pointed out by the Union, are less than were received by employees in the other bargaining units. In 2005, the wages in some Units got a 3% lift and some got a 4% lift. Both parties have proposed a 3% . All the other units got a 4% lift in 2006. They would also get that under the Union proposal. The only difference is that the Union wants 3% on 1/1 and 1% on 7/1 and the others got 2% and 2%. The City is only proposing a 3% lift for this unit. Why it did not make the same 2% and 2% offer it made to others is unclear. While the total wages earned is the same in 2006, the lift at the end of the year is less. That means any increase in 2007 would be added to a smaller base rate. The Union wage proposal based on this past history is not extreme. Given the disparity noted, the percentage increase proposal of the Union is slightly favored. Having so found, this fact is not the dominant factor when evaluating the parties' proposals. The progression sough by the Union is the key issue in determining whose proposal is favored on internal comparability.

All of the other bargaining units have a wage progression based upon length of service. The Library Bargaining Unit is a newly certified unit and a wage progression was included in the Union proposal that was adopted by Arbitrator Peterson a few months ago. In that case, the City had argued that the inclusion of a wage progression was "merely a method to unnecessarily increase wages." The City had also argued that "the Union proposal does not account for

seniority and that the proposal from the Union "inserts employees into various steps unrelated to their length of service."[5] In rejecting those arguments, Arbitrator Peterson noted: "Once initial placement is achieved, the system's rationality is obvious over time."[6] This finding is relevant here because in this case the City has argued that the progression suggested by the Union does not work based on these same arguments. Arbitrator Peterson found them unpersuasive. Is there any reason why this Arbitrator should not similarly find them unpersuasive? The Arbitrator cannot find any such reason.

The City has raised an argument in this case that was not raised in the earlier Library case. It argues that the progression proposed by the Union fails to contain a start rate. In reviewing the Union proposal for the Library, the first rate in the progression is labeled "Start." That term is also used in the Dispatchers and Police Agreements. The Public Works has a rate the "1st year." The Fire lists a "Base" rate. There is no such terminology in the Union proposal. However, the Arbitrator does not find that to be a fatal flaw. It is apparent that the first rate listed in each progression is the start rate. The Union proposal states that it will "correspond to wage schedules in the six comparable bargaining units." Since all have a start rate, it is apparent that the "A" rate is the start rate for new employees and that these new employees would move up one step each year thereafter until the maximum is reached. Thus, the Arbitrator disagrees with the Employer that there is no start rate in the Union proposal.

Conclusion

The City has noted that under the Union proposal some employees actually will get a larger increase than other similarly situated employees and that it believes this makes the proposal unfair. However, the fact that some employees will under the Union proposal receive a greater increase than others is not unexpected when moving from a unilaterally imposed wage

[5] Pages 9 and 10 of Decision

[6] p. 14. Arbitrator Peterson and several of the other arbitrators cited by the Union also observed that as more senior employees leave and are replaced by new employees, there is a cost saving that offsets any initial extra cost. That applies equally in this case.

schedule to a negotiated one. There is no easy way to transition to a schedule, especially when the wages each employee receives is different than what almost every other employee is receiving. The Union goal of moving employees to a set schedule that would unify a wage structure is a goal that all Unions seek and a goal that has been attained by all of the internal and external bargaining units. New employees will get to the top a lot faster than current employees, but that situation is simply unavoidable. The Union is beginning from the point established by the City. The Union could have proposed moving all employees based upon years of service to the top, but the cost of that proposal would have been far greater than the cost of the Union proposal. Instead, the Union has taken a more modest step by placing an employee on the progression at the point where that employee will attain a minimum raise of roughly 3% in 2007.[7] That is not an exorbitant increase. As noted earlier excluding the two extremes the average increase is 3.21%. The key to the Union proposal is that in a few years everybody will be at the same point, except any new employee who may subsequently be hired. Any new employee will only get to the top when they have gained the experience that warrants such an increase. Both the Union and Employer agree that is the reason such a progression exists.

The fact that Arbitrator Peterson was not hesitant to add a progression system through arbitration is significant. It is also significant that the dispatchers were able to attain voluntarily in their first contract a wage progression in the late 1990's. These prior examples lead the Arbitrator to conclude that there is no reason to take an approach different than that of Arbitrator Peterson or what the City voluntarily did in the 1990's. The wage proposal of the Union is favored for all these reasons.

[7] Only five employees under their proposal get a substantial increase or catch up wage.

Other Issues

Duration

After wages, this is the most significant of the outstanding issues. The Employer has proposed a two-year agreement. The Union seeks a three-year agreement. The contract under the Employer proposal would have expired on December 31, 2006. The parties would have to enter into negotiations for a successor agreement immediately following the issuance of this Award. The Employer in making its proposal has sought to have all of its labor agreements expire simultaneously. Part of the reason for that desire is the State's requirement that participation in its health plan requires uniformity within the City, including all of the bargaining units. In that regard, it is interesting that this is the end of February and none of the other units have yet settled. It may very well be that the reality is that all units will go for several more months without a contract. Thus, the expressed reason for the shorter contract may conflict with what actually transpires.

The Union notes that with the exception of the Library Contract the length of the agreements in the other bargaining units has been three years. It believes that is a pattern. It also argues that arbitrators have looked with disfavor upon issuing Awards where the contract expiration date has preceded the date of the Award. As Arbitrator Yaffe noted:

> With respect to the duration of the proposed agreement, although a three-year agreement appears to be somewhat unusual among the comparables, in view of the fact that the parties have spent approximately two years negotiating the agreement in question, and in view that said agreement will not be concluded until four months of the 1984 calendar year have elapsed… it is the undersigned's opinion that under these factual circumstances the Association's proposal for a three year agreement seems to be appropriate and in the best interest of the parties' relationship.

This Arbitrator agrees with Arbitrator Yaffe's premise. The parties need some time for the relationship to develop. While it will not be long before they would be back at the bargaining table even under the Union offer, it does still give some respite and some chance for stability. On that basis, this Arbitrator agrees with the Union that a three-year agreement is preferable.

Layoffs

The Union seeks to include in the layoff language a requirement that part-time, seasonal and temporary employees be laid off before any full-time employees are laid off. The City argues that it has not hired employees in any of those classes in the past and that the language is superfluous. It notes that no other bargaining unit in the City has such language. Beaver Dam, Fort Atkinson, Sun Prairie, and Waupun have language similar to that proposed by the Union. The others do not.

Language like that proposed by the Union is not unique. The Arbitrator has frequently seen language such as that proposed by the Union in collective bargaining agreements. The fact that four of the seven comparables have this language demonstrates this is so. It is true that this language is not contained in the other City Agreements. However, one would not expect this type of language in the Police or Fire contracts since those are certified professions. Such language would be atypical in dispatch given the nature of the job. This language would not be atypical in DPW.

There is no question that it would certainly have been better for the parties to have voluntarily agreed upon layoff language rather than to leave it to arbitration. Nevertheless, the Arbitrator finds that the Union proposal is favored, because such language is not unique or out of the norm.

Commercial Drivers License

The Union proposes to include a provision in the Agreement that requires the City to maintain the employment of any employee whose Commercial Drivers License has been suspended for sixty days or less unless the conviction is occupational or for driving while impaired. Beaver Dam recently obtained in arbitration a provision that requires that City to retain the employee if other work for that employee in his or her classification is available and if the employee will get his or her license back at the end of the suspension. Oconomowoc has similar language. Sun Prairie has some language, but the employee there is placed in a lower paying position during the

suspension. Waupun will hold a position open for 90 days, with qualifications.[8] None of the internal comparables have this type of language.

While language like that proposed by the Union is not unusual, it is a benefit that the Arbitrator is reluctant to provide as part of arbitration. It is something that should be agreed upon voluntarily, if at all, as part of the give and take of negotiations. While the Arbitrator was not hesitant about finding in favor of the Union on the layoff language, he is much more hesitant about doing so here. There is potential cost and hardship that can result from it. There is no provision in the proposal like there is in Beaver Dam that states that the employee must only remain employed if there is work for the employee. That is a weakness in the Union proposal. The Arbitrator finds that the Employer proposal is favored on this issue.

Sick Leave Accrual

The parties have agreed that employees can accrue sick leave and that the value of that accrued sick leave can be used to cover insurance premiums upon retirement. They also agree that the maximum accrual allowed would be 120 days. They disagree as to the amount of days an employee can use to cover the insurance premiums. The Union has proposed that all 120 days can be used for that purpose. The City would only allow 108 days to be used. The Union also seeks to allow a retiring employee the right to cash in ½ of that sick leave if the employee so chooses. The City proposal does not provide for any cash payments.

The City proposal conforms to the provisions in all of the other internal agreements. None of the other bargaining units can utilize more than 108 days and none are allowed any cash-in privileges. Three of the externals allow a payout below that proposed by the Union. One has the same and three allow a greater amount. On a benefit like that involved here, internal comparables carry considerably more weight. The Union is undoubtedly aware of that fact. The Arbitrator can

[8] The Union exhibits showed other jurisdictions not in the comparable pool that have language addressing the topic. Since they are not in the agreed upon comparable pool, the Arbitrator has not considered them.

only assume given these facts that the Union has made this proposal on the assumption that its overall package is better and that this proposal is simply the gravy.[9] That remains to be seen.

Premium Payments and Overtime Equalization

The Union proposes that any employee whose schedule is modified by the City be paid an additional $8. The City has not proposed any premium payment in that circumstance. The DPW premium is $1 per hour for each hour worked outside the regular work schedule. The employee would only be paid $8 if the employee worked a full extra shift. None of the contracts in the other bargaining units provide for any premium payment. The City has then proposed that employees who reach the age of 55 have the amount of their life insurance reduced to whatever amount of insurance would be available at the same premium that is paid for employees between the ages of 60 and 64.

The City proposal is favored given the internal comparables. In reaching this conclusion, it must be noted that the cost of these two items is minimal at best. Accordingly, these items though favoring the Employer are not entitled to the same weight as the more costly items.[10]

Call Back Pay

These employees prior to the Union's certification were guaranteed overtime pay of three hours if they were called back to work. The Union has proposed continuing that practice. The City has proposed decreasing the guarantee to two hours. That is the same guarantee that DPW, Dispatch and the Fire employees have. Police are guaranteed two hours for court appearances. The City maintains that the reduction it has proposed is in line with the internals. They are correct. One of the goals of the Union in bargaining was standardization of benefits with the other Unionized employees. It cannot seek to standardize only where it benefits the employees

[9] The Union in its brief has alluded that some of the items it believed had been agreed to by the City during negotiations. No TA was signed. Maybe, this item falls into that category.

[10] There is also a proposal by the Union to equalize overtime. The Employer contends such language is not necessary. The Arbitrator shall not individually address this issue as there is no cost and it is not a significant provision in the overall scheme of things.

and avoid standardization where it does not. That is what is occurring here. For that reason, the Employer proposal is favored.

Floating Holidays

The Agreement contains floating holidays. The Union argues that the employee should be able to use the holiday anytime the employee wishes. The City argues that employee should only be allowed to take the holiday upon management approval. The internal contracts all require prior approval before the holiday can be taken. As noted by the City, this Arbitrator has often said that in an area such as this one, internal consistency is paramount. The City proposal is favored.[11]

Health Insurance

The parties have agreed upon the contribution rate paid by the employees in this bargaining unit. The Union does not seek to change that, but asks the Arbitrator to take note of the terms of that agreement as compared to both internal and external bargaining units. It contends that two of the four other bargaining units in the City made changes in the contribution rate in 2006. Dispatch and DPW according to the Union had reductions in the employee rate in that year. The City argues that the Union has overstated the value of this alleged concession, and argues that because it is a TA it is not relevant.

There were four health insurance plans available to all of the bargaining units in 2005. A fifth plan was added in 2006 for all of the units. The rates in two of the plans increased for everyone in 2006. However, the increase in cost to the employee was much less for DPW and Dispatch than for the other three units. Dean went from $90 to $99 in the first two bargaining units and from $90 to $189 in the other three, including this unit. The Unity plan costs employees in the first two units nothing for a family plan in 2006, but costs $90 for employees in the three other

[11] There are language differences in several other Sections of the contract in dispute. They have no financial impact and are minor. The Arbitrator shall not, therefore, individually address them in this discussion, as was the case with overtime standardization as noted in footnote 10. .

units. The Mercy Care Plan showed a decrease in cost for DPW and Dispatch in 2006 and an increase for Police, Fire and this Unit. The disparity can be explained by the inclusion of certain language in the DPW and Dispatch agreements, which is not in the other ones. There is a provision that states:

> If, during 2006, Unity or Mercy Care become the lowest cost health plan available, then for the purposes of determining the employee and employer contribution rate, Dean Health Rates Shall be used provided that the Employer contribution does not exceed one hundred and five percent (105%) of the lowest available cost rate.

The Union notes that it was a conscious decision by the employees in both this unit and the Library Unit to accept less in order to gain the wage progression it sought for the library and currently is seeking for this unit.

The Union also points out that the amounts paid by both the Employer and the employee is lower in this City than it is in the external comparables. The employer contribution rate was higher in four of the six comparables. The lowest employee contribution is lower in all of the external comparables. [12]

The Arbitrator understands the City argument that it is somewhat disingenuous to utilize an area where agreement has been reached to justify a proposal that is still unresolved. However, the reduction in rates in two of the units and the Union's choice to forego any attempt to gain that same benefit is something the Arbitrator finds does merit consideration when evaluating the overall proposals of each side. After all, total compensation is one of the Statutory Criteria that is to be considered by the Arbitrator.[13]

Summary

The Employer has raised an argument against adopting the Union proposal as a whole. It contends that the Union is seeking in a single first contract to get everything all of the other internal and external comparables have. It argues that the Union proposal should be rejected

[12] Of course, it is impossible to compare plans to ascertain whether the plan in this City is better or worse than the plans in the external comparables.
[13] Sub-Section J of the Statute lists overall compensation as a factor.

because full parity takes time and the Union is attempting to get there in one fell swoop. It notes that this is not the first time an Arbitrator has had to arbitrate a first contract. It cited several cases to support the proposition that employees who have just become unionized should only gradually gain the benefits other long-time Unionized bargaining units have attained. It cited a Decision by Arbitrator Briggs in Butternut School District (Support Staff) Dec. No. 27313-A, March 16, 1992:

> Conventionally, unions obtain advances for employees in piecemeal fashion, making modest wage and benefit gains in successive rounds of bargaining. It is extremely rare for a union in bargaining a first contract for employees whose wages have been at the bottom historically to achieve complete wage parity in one round of bargaining.
>
> This is a dispute over the first contract and that Rome wasn't built in a day. In free collective bargaining, unions negotiating the first contract generally expect to make modest inroads; they do not normally have the bargaining power to achieve blockbuster gains overnight.

It cited several other cases to support that same proposition.[14]

The Union contends that the cases cited by the City can be distinguished from the present one. It notes that several major issues remained open in those cases and that the arbitrators in those cases felt that the Union was trying to gain too much too fast in all of those major areas. It believes in this case that all of the major issues, but wages have been resolved and what is left, other than wages, are "lesser issues." It has also cited several cases that addressed a first contract and specifically the importance of the inclusion of a wage progression.

> The matter of whether there shall be automatic time progression increases between contractually established minimums and maximums for the several job classifications … is more important than the actual dollar amount of the entire economic package. It strongly opposes the continuance of an unstructured personalized salary schedule and would gladly sacrifice the fringe benefit increases in the City's proposal to obtain a more structured schedule.[15]

[14] City of Shell Lake Dec. No. 28486(Vernon, 1996); Holmen School Dist.. Dec. 28411 (Vernon, 1996)
[15] City of DePere, Dec. No. 13097-A (Marshall, 1/1975)

It appears as though the Union was attempting to follow these precepts in this case when it put aside any increases in health insurance in favor of a wage progression. However, the Arbitrator cannot agree that wages alone should carry the day. There are too many other outstanding issues to simply ignore them. If wages and a wage progression were the only issues as argued by the Union that the Arbitrator was being asked to address this would be an easier case than it is. Because there are so many other outstanding items, that task has become much more difficult. The Arbitrator wishes he could go issue by issue and decide the case that way. Unfortunately, the Law forbids that. He must pick one party's entire proposal or the other's. As a result, the contract that ultimately is created is not the contract that the Arbitrator might or would prefer. That is painfully true in this case. There are provisions in the Union proposal that the Arbitrator would rather not award to them. Conversely, there are holes in the Employer proposal that the Arbitrator would be unable to fill if the Employer's proposal were adopted. The most glaring hole is in its wage proposal.

When all the dust has settled, the Arbitrator finds that what he is asked to decide is not significantly different from what Arbitrator Petersen had to decide for the Library Bargaining Unit. He too had to address other issues, albeit not as many. The argument made by the City that it takes time for non-union employees to catch up to union employees is, indeed, the same argument it raised regarding the Library bargaining unit. It was rejected. The cases cited by the City to the contrary are as argued by the Union, distinguishable from the present case. Though there may not have been as many outstanding issues in those cases, there were a number of issues besides wages that were far more significant and costly than the issues involved here. If the Union had sought to obtain the health insurance changes obtained in DPW and Dispatch that would not be the case. The Union did not seek changes in health insurance that would parallel changes in other units, but instead focused on the progression system. The Union also noted that during negotiations it had to eliminate differences in benefits that existed within this very same

bargaining unit. The Water Department and the Wastewater Department employees were under separate entities and had separate benefits. They were integrated and in some cases the integration involved choosing the lesser benefit rather than the greater one. That is also a consideration per Section J of the Statute. Finally, the Union wage proposal is, as was discussed earlier, a modest one.

The Arbitrator has discussed in some detail many of the issues that remained unresolved. In reaching his decision, the Arbitrator has not ignored these provisions. They have been factored into the equation. It is for that reason they have been addressed, but despite those areas where the Arbitrator believes too much was sought, by the Union, those issues are not cumulatively enough to tip the scale in favor of the Employer, especially since the Union proposal was also favored on a few of the other issues, such as the layoff language and others not specifically addressed.[16]Therefore, the Arbitrator despite his misgivings in awarding the entire proposal for either side must conclude that on balance the Union proposal is favored.[17] The cases cited by the Union involving the implementation of wage progression are most compelling. Unions particularly in the public sector typically include set progressions in their agreements. It is part of the reason employees join Unions. They do so to avoid a wage system that can be very individualized. The methodology of an employer who has unilaterally set wages is not always transparent or easy for the employee to understand. These employees made the choice to join a Union. They have sought to make the transition from an individualized salary schedule to the progression system. The Arbitrator believes the time to do that is in this contract and not in negotiations for a successor agreement that would have to follow right on the heels of this Award.

[16] This would include its safety proposal, its grievance procedure proposal and its proposal to equalize overtime distribution.

[17] Another major factor in this Decision was that the cost of the Union proposals, even under the City's calculations is not substantially greater than the cost of the Employer proposals, when viewed as a percentage of total personnel costs.

AWARD

The Union proposal together with all tentative agreements shall be incorporated into the parties' collective bargaining agreement.

Dated: February 21, 2007

Fredric R. Dichter,
Arbitrator