
In the Matter of the Petition of

CITY OF FRANKLIN

Case 65
No. 65835
INT/ARB – 10712
Decision No. 32113-A

To Initiate Interest Arbitration
Between the Petitioner and

CITY OF FRANKLIN EMPLOYEES LOCAL NO. 5,
AFSCME, AFL-CIO (DPW EMPLOYEES)

APPEARANCES:

Davis & Kuelthau, s.c., Attorneys at Law, by Ms. Nancy L. Pirkey, appearing on behalf of the City

Law Offices of Mark A. Sweet, Attorneys at Law, by Mr. Gene A. Holt, appearing on behalf of the Union

ARBITRATION AWARD

City of Franklin, hereinafter the City or Employer, and City of Franklin Employees Local No. 5, AFSCME, AFL-CIO, hereinafter the Union, reached impasse in their bargaining for the 2006 – 2008 collective bargaining agreement. The City filed the subject interest arbitration petition on April 27, 2006. The Wisconsin Employment Relations Commission's staff investigator conducted an investigation of the petition on August 31, 2006, and March 21, 2007 and by September May 18, 2007 the parties had submitted their final offers to the investigator. The Commission, on May 29, 2007, certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the captioned matter was held on September 19, 2007, in Franklin, Wisconsin. The parties submitted post-hearing briefs and reply briefs that were received by November 28, 2007.

BACKGROUND:

This dispute is concerned with the terms of the parties 2006-2008 collective bargaining agreement in the bargaining unit of Department of Public Works, Highway Maintenance Division employees. The parties reached several tentative agreements during their negotiation for a successor agreement to their 2003-2005 collective bargaining agreement. Those tentative agreements dealt with the term of the agreement, bargaining procedures, seniority, rates of pay and hours of work. Also, their final offers are identical on two items – inclement weather make-up, and an increase in the amount of life insurance provided to each bargaining unit employee. The two final offer items that remain in dispute are wages, and changes to the employee health insurance program.

There are 34 employees in the DPW bargaining unit and 29 of those employees are enrolled in the City's health insurance program, with six being enrolled for single coverage and 23 selecting the family coverage. The 34 bargaining unit employees had a weighted average hourly wage of \$19.82 for 2005, the last year of the preceding collective bargaining agreement.

The parties have also agreed upon several changes to the health insurance program for their 2006 –20087 contract. They agreed that DPW employees would be responsible for a monthly premium contribution of \$26 for single coverage and \$66 dollars for family coverage in 2006. In 2005, the last year of the preceding contract, DPW employees were responsible for a monthly premium contribution of \$23 for single coverage and \$57 for family coverage. For 2007 the parties agreed that employees would be responsible for a monthly premium contribution of 7% of the total premium capped at \$44 for single coverage and \$100 for family coverage. For 2008 the parties agreed those contributions would increase to 8% capped at \$50 for single coverage and \$115 for family coverage. In addition, the parties agreed to increase the co-pay for an emergency room visit from \$50 to \$100, and increase the co-pays for prescription drugs from \$5/\$15 to \$10/\$20/\$30. Their final offers, as can be seen below, are also identical with respect to the amount of the in-network (PPO) out of pocket maximums which will increase from \$200/\$600 to \$400/\$1200 per year.

The differences in the parties final offers that led to this arbitration pertain to the health insurance in-network deductibles (PPO) and the size of the wage increase in the

2007 and 2008 contract years. The City is proposing to implement, for the first time, an in-network (PPO) deductible and the Union is seeking a \$.25/hour ATB wage adjustment in both 2007 and 2008 which is in addition to the 3% ATB adjustment that is contained in each party's final offer. While the City has also proposed a \$.25/hour wage adjustment for 2007 it has proposed that the increase will not be effective until the first of the month following issuance of the arbitrator's award in this matter.

FINAL OFFER ISSUES IN DISPUTE:

1. Wages	<u>Effective 1/1/06</u>	<u>Effective 1/1/07</u>	<u>Effective 1/1/08</u>
City's Offer:	3.0% ATB	3.0% ATB \$.25 per hour effective the 1 st of the month after arbitration award is rendered	3.0% ATB
Union's Offer:	3.0% ATB	3.0% ATB \$.25 per hour ATB	3.0% ATB \$.25 per hour ATB

2. Health Insurance Changes in Dispute

City's Offer:

Deductible - \$200/\$600 in-network; \$500/\$1500 out- of- network

Out of Pocket Maximums - \$400/\$1200 in-network; \$1500/\$4500 out-of- network

Union's Offer:

Deductible - \$0 in-network; \$200/\$600 out- of- network

Out of Pocket Maximums - \$400/\$1200 in-network; \$1600/\$4800 out-of- network

DISCUSSION:

In determining which offer to select the arbitrator is required to apply the following statutory criteria established for the evaluation of the parties final offers.

Section 11.70

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal Employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal Employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal Employer.
- b. Stipulations of the parties.
- c. The interests 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 wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, 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.

The parties' arguments in this case make it clear that the "greatest weight" factor is not applicable in this dispute and that they have focused their arguments on factors 7r. and 7g. a. c., f., and i. The parties also agree upon which municipalities should comprise the pool of external public sector comparables.

The City contends the internal comparables supports its final offer because its final offer is consistent with the settlements it has reached with those bargaining units. And, the City asserts that other interest arbitrators have been reluctant to award a final offer that is inconsistent with an established internal settlement pattern where one exists. Consequently, the City believes that arbitrators give great weight to those settlements. The City also believes that the external comparables support its final offer. It argues that it is a wage leader and that its ranking among the comparable pool has improved dramatically in the past seven years. It has gone from a significant amount below the average to close to one dollar above the average at the maximum wage rates, depending upon the position being reviewed. It also contends that its wage offer compares very favorably to the wage settlements among the comparables, and the Union's proposal for an additional \$.25/hour increase in 2008 is not justified or warranted.

The Union, on the other hand, argues that the internal settlements are not the same across all the bargaining units. It points to the Clerical/Dispatchers bargaining unit where the employees received a \$.20/hour increase in 2007 and a \$.05/hour increase in 2008, and the Inspectors bargaining unit where employees were granted a \$.10/hour increase in 2008 in addition to the \$.25/hour adjustment in 2007. Regarding the external comparables the Union contends that the City is the most affluent and prosperous of the comparables and that therefore it should be one of the wage leaders among its comparables. In Greendale and Oak Creek employees received a 3.25% increase each year in 2006 and 2007. And Hales Corners employees received a 3.4% increase in 2008 on top of the 3% increases in 2006 and 2007. Also, when looking at the classification wage rates the Union notes that in the case of the Custodian that even after the Union's

proposed \$.25/hour increase in 2008 the City's Custodian classification rate will be below Cudahy and St. Francis. Regarding the Heavy Equipment Operator wage rates the Union argues that the City's maximum is lower than all other comparables with the exception of South Milwaukee and West Milwaukee. In the case of the Mechanic classification the Union argues that even after its proposed wage increase for 2008 is applied the City's maximum wage rate for Mechanic is \$.62/hour less than the 2007 maximum rate in Oak Creek. Finally, the Union asserts that its wage proposal is a low cost item to the City in that it only costs \$17,680 more than the City's final offer, which is merely .08% of the City's 2007 total budget.

Regarding health insurance, the Union argues that its offer attempts to bring itself into alignment with the settlement the City reached with its Firefighter bargaining unit, while the objective of the City's offer appears to be to shift costs to employees while creating an inconsistent internal settlement pattern. And, it argues that there is no uniformity among the internal comparables relative to the two areas of disagreement – in-network deductibles and out-of-pocket maximums for out-of-network services. The Union concludes that the insurance changes proposed by the County either limits or completely limits an employee's wage increase.

The City has six represented bargaining units and has reached voluntary settlements with four of those units. Those four units are referred to as the Inspectors, City Hall, Clerical/Dispatchers and Firefighters. In this bargaining unit the City's final offer provides for a \$.25/hour increase in 2007 to be effective the first of the month after the award in this case is rendered, in addition to the 3% ATB increases in 2006, 2007, and 2008. The settlement in the City Hall bargaining unit is identical to the City's final offer for this DPW bargaining unit regarding its proposed changes to the health insurance program and its wage offer. The settlement in the Inspectors bargaining unit is identical to the City's final offer for this DPW bargaining unit regarding its proposed changes to the health insurance program, and the wage settlement is the same as the City's final offer except that in 2008 in addition to the 3% ATB increase Inspectors will receive a \$.10/hour wage increase "to reflect an adjustment necessary to address external comparables". In the Clerical/Dispatchers bargaining unit the voluntary settlement is identical to the City's final offer on health insurance in this bargaining unit and the wage

settlement differs slightly from what the City is offering in this bargaining unit in that the Clerical/Dispatchers bargaining unit employees received a \$.20/hour wage increase effective 1/1/07 and \$.05/hour increase effective 1/1/08, in addition to the 3% ATB increases in the 2006, 2007 and 2008 contract years. In the Firefighters bargaining unit the voluntary settlement differs from the City's final offer for this bargaining unit both in terms of its wage offer as well as its health insurance proposal. The Firefighter settlement on health insurance contained no deductible for in-network (PPO) services and a \$220/\$600 deductible for non-network (Non-PPO) services, as well as out of pocket maximums of \$400/\$1200 for in-network (PPO) services and \$1600/\$4800 (Non-PPO) for out-of-network services. The Firefighter settlement also did not contain any additional wage adjustment beyond the 3% ATB increases each year in 2006, 2007 and 2008.

Both parties' final offers in this case provide that the changes to the health insurance program would not be effective until the first of the month after the award is rendered in this case. That also necessarily means that the health insurance changes cannot become effective before February 1, 2008, and if the Employer's final offer is selected its proposed additional \$25/hour increase in 2007 also would not become effective before February 1, 2008.

The Union's final offer maintains the same deductibles that existed under the predecessor contract (0 in-network and \$200/\$600 out-of-network), whereas the City is proposing that there would be a new \$200/\$600 dollar deductible for in-network services and an increase in the out-of-network deductible to \$500/\$1500. With respect to the out of pocket maximums both final offers maintain the status quo (\$400/\$1200) for in-network services, but their offers differ for out-of-network services (City \$1500/\$4500 vs. Union \$1600/\$4800).

The differences in the parties' final offers respecting wages are twofold. In terms of cost to the Employer in 2007, because the City's final offer of a \$.25/hour (\$520/year based upon a work year of 2080 hours) increase would not be effective until the first of the month following issuance of the award in this case it necessarily means there would be no cost impact in contract year 2007 because the increase would not be effective prior to February 1, 2008. However, it would become a cost to the City for the

2008 and subsequent contract years because even though it is not retroactive it would raise the employees' base wage by \$.25/hour. So, employees would enjoy the benefit of the increase, but not in the contract year for which it was proposed –2007. On the other hand, the Union's wage offer of a \$.25/hour increase in 2007 and another \$.25/hour increase in 2008 would be realized by the employees in each year because the increases are to be effective on January 1 of each contract year. And, under the Union's final offer the 2007 \$.25/hour increase is not tied to when the insurance program changes take effect as is the City's. Thus, the City would incur the costs of the Union's proposed increases in the years they are to be effective.

The City's proposed \$.25/hour increase for 2007 has a delayed implementation that coincides with the effective date of its proposed changes to the insurance program. That is because the \$.25/hour wage increase was proposed as a *quid pro quo* for its proposed changes in the insurance program which also would not take effect until the first of the month following issuance of the award in this matter. In that sense its proposal is not unreasonable on its face if the \$.25/hour wage increase is intended as a *quid pro quo* for the changes in the insurance program. The Union, on the other hand, argues that the *quid pro quo* is insufficient for those employees who take the family coverage and incur the \$600 deductible because the *quid pro quo* will only generate an annual increase of \$520. Much has been written about the sufficiency of a *quid pro quo* by other arbitrators and it is not necessary to rehash those comments here. But, depending upon the circumstances of each case the offer of a *quid pro quo* may not even be necessary, and where it is it does not necessarily have to be dollar for dollar as measured against the cost impact of the proposed change to the status quo. The answer to whether the *quid pro quo* is sufficient is necessarily driven by the unique facts of each case.

The Union is correct in its determination that an employee could incur the \$200/\$600 in-network and \$500/\$1500 out-of-network deductibles in any plan year depending upon the family's need for medical services. And, it is true that in such a case the deductible might eat into the employee's 3% ATB increase if the employees wage rate is equal to or less than the 2005 bargaining unit's weighted average wage of \$19.82 inasmuch as the 3% increase on that wage rate is \$520/year, whereas the in-network

deductible could reach \$600 and the out of network deductible could reach \$1500. It is also the case that the out of pocket maximums will increase under both offers. But, while the employee's out of pocket expenses may exceed the value of the *quid pro quo* and thus diminish his/her annual increase that impact is not across the board like it would be were the proposal to be for employees to pay a greater share of the monthly premiums. In this situation the cost to the employee is based upon usage rather than being based solely upon being a covered employee. And, the six employees electing the single coverage will only incur a maximum \$200 deductible depending upon usage. Furthermore, the five employees who have not enrolled in the health insurance program will receive the full value of the \$520/year *quid pro quo*. Thus, the fact that for some employees the *quid pro quo* may not cover the entire cost of the changes proposed does not, in the undersigned's opinion, mean the offer is flawed.

In this case the City argues that its offer is supported by the voluntary settlements it has already reached with four other bargaining units for the 2007 and 2008 contract years. And, arbitrators have placed great significance upon internal voluntary settlement patterns when evaluating an Employer's final offer. As noted earlier, the City has reached settlements with four of its six bargaining units. In two of those units, Inspectors and City Hall Clerical, the employees agreed to the same health insurance changes and wage increases as are contained in the City's final offer to this bargaining unit. The Dispatchers bargaining unit accepted the same health insurance program changes but the \$.25/ hour increase was split between the 2007 and 2008 contract years - \$.20/hour in 2007 and \$.05/hour in 2008. The City explained the deviation from the settlement in the Inspector and City Hall clerical units and its final offer to this bargaining unit was due to the fact that Dispatchers received an increase to their longevity benefit. The Firefighter bargaining unit is the fourth settled unit. The City agreed with the Firefighters bargaining unit that its insurance program would not include the \$200/\$600 deductible for in-network services as is the case in the other three unit and what is contained in its final offer to this bargaining unit. Also, in the Firefighter bargaining unit the out-of pocket maximums increased to \$400/\$1200 for in-network services and \$1600/\$4800 for out-of-network as compared to the City's final offer to this bargaining unit of \$400/1200 for in-network services and \$1500/\$4500 for out-of-network services.

Contrary to the Union's assertion, the undersigned is persuaded that the City's settlements with the other three bargaining units are consistent. All three agreed to the insurance program changes that are contained in the City's final offer to this bargaining unit. And, in the undersigned's opinion, the City's settlement with the Firefighters is consistent with its final offer to this bargaining unit because while it agreed to allow that bargaining unit to not have a deductible for in-network services, it offered no *quid pro quo* for the other insurance program changes that the Firefighters agreed to which were the same as the changes agreed to in the other three bargaining units. Thus, if the bargaining unit agreed to the deductible for in-network services it received a *quid pro quo* of \$.25/hour in 2007. The only deviation from that *quid pro quo* was a split \$.25/hour in the Clerical/Dispatchers bargaining unit. The Inspector bargaining unit received the same *quid pro quo* as the City's final offer in this bargaining unit, and employees in that bargaining unit also received an additional \$.10/hour increase in 2008 that was characterized in their contract as catch-up, not part of the *quid pro quo*.

The DPW bargaining unit, in the undersigned's opinion, has not made a persuasive case that catch up is warranted at this time. Also, no basis has been provided as to why this bargaining unit is entitled to receive a larger *quid pro quo* than the other bargaining units received for voluntarily agreeing to the same insurance changes contained in the City's final offer. And, clearly, in the undersigned's opinion no persuasive case has been made to support this bargaining unit's final offer for the *quid pro quo* it proposes (\$.25/hour in 2007 and \$.25/hour in 2008) while only agreeing to the changes agreed to in the Firefighter bargaining unit which did receive a *quid pro quo*.

An examination of the other settlements makes clear that the *quid pro quo* was offered in return for agreeing to the deductible for in-network services, which this bargaining unit is not agreeing to. It is also important to note that the Union's final offer proposes a \$.25/hour increase effective January 1, 2007 which arguably is the equivalent of the *quid pro quo* offered by the City. But, the reality is that it is quite different from the City's final offer. The City's final offer proposal for a \$.25/hour increase in 2007 is not effective until the insurance changes become effective which cannot now occur before February 2008. No persuasive arguments have been presented as to why the Union offer should be preferred over the City's offer which makes the *quid pro quo*

effective when the insurance changes that generated the offer of a *quid pro quo* become effective.

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Also, the City's wage offer as measured against the wage increases received among the external comparables is supported by those external settlements. The settlements among the agreed upon external comparables are as follows:

	<u>2006</u>	<u>2007</u>	<u>2008</u>
Cudahy	2% & 2%	2%	NS
Greendale	3.25%	3.25% 7/1	NS
Greenfield	3%	3%	3%
Hales Corners	3%	3%	3.4%
Oak Creek	3.25%	3.25%	3%
St. Francis	2.9%	2.9%	NS
South Milw.	3%	2.5% 7/1	NS
West Allis	1.5% 7/1	1.5 7/1	NS
West Milw.	2.5%	2%	NS

The City final offer provides for 3% ATB in each year in 2006, 2007 and, 2008 and \$.25/hour effective when the insurance program changes become effective. Whereas the Union's final offer provides for the same annual 3% ATB increases, and \$.25/hour increase effective January 1st in each year in 2007 and 2008. In 2005 the weighted average wage in this bargaining unit was \$19.82/hour. When the 3% ATB is applied to that weighted average wage it rises to \$20.41/hour in 2006 and \$21.03/hour in 2007 after the 3% increase. Thus, the \$.25/hour is the equivalent of a 1.22% increase on the 2006 weighted average wage and 1.14% increase on the 2007 weighted average wage. The additional \$.25/hour the Union proposes for 2008 amounts to a 1.10% increase.

The median ATB increase in terms of wage lift among the comparables in 2006 was 3% and 2.9% in 2007. In 2008 there were only three settlements among the comparables and two were at 3% and one was at 3.4%. Thus the City's offer of 3% is at or above the median of settlements among the comparables in all three years. The

Union's offer on the other hand is at least 1% above the comparables in 2008 when its proposed \$.25/hour is taken into account.

The wage rates of the Heavy Equipment Operator, Custodian and Mechanic classifications at the schedule maximum rates, in the undersigned's opinion, do not warrant catch-up when compared with the maximum classification rates of the same classifications among the external comparables. The City's Heavy Equipment Operator maximum rate ranked 3rd in both 2006 and 2007 among the comparables. The maximum rate for the Mechanic ranked 6th in 2006 and moved up to 4th in 2007 among the comparables. The Custodian maximum rate ranked 5th in both 2006 and 2007 among the comparables.

The Union argues that Franklin is the most affluent and prosperous community among the comparables and thus inferentially contends that its wages should be among the highest. The City argues that it has improved its rank among the comparables over the past seven years. The comparisons reflect that during the term of this contract the City will continue to improve its ranking for the Mechanic classification and maintain its ranking for the Heavy Equipment Operator and Custodian classifications. Thus, the City with its final offer wage increase will remain in the top tier of external comparables at least through 2007.

In comparing the City's offer to the changes in the Consumer Price Index (CPI) it is clear that its final offer compares favorably to the changes in the CPI for the affected period. The record evidence is that for the period 2000 through 2005 the City has increased bargaining unit wages by 3.3%, 4.4%, 4.3%, 4.2%, 4.2%, and 3.38% respectively while the CPI increased as follows in those years 3.3%, 2.8%, 1.58%, 2.28%, 2.68%, and 3.38%. In 2006 and 2007 the City is proposing to increase wages by 3% in each year and the CPI increased by 3.2%, and 2.5% respectively in those years.

As I have stated in earlier decisions an established internal settlement pattern should receive considerable, if not controlling weight, in the deliberation of which final offer to select. In this case, the City was able to negotiate the same insurance changes it has included in its final offer to this bargaining unit with three of four units with which it reached voluntary agreements. It also reached agreement on many of the changes that were agreed to in this unit with the fourth bargaining unit, Firefighters, with which it

reached a settlement. In the Firefighter bargaining unit because the employees were not willing to agree to the deductibles for in-network services no *quid pro quo* was offered or granted by the City. Yet, this bargaining unit wants to agree to only the insurance changes agreed to in the Firefighter bargaining unit but receive the *quid pro quo* granted to the other three bargaining units that agreed to the in-network deductibles, and receive the *quid pro quo* before the insurance changes take effect. Additionally, this unit desires an additional \$.25/hour in 2008, which no settled bargaining unit received.

As also has been discussed, no persuasive case has been made that other considerations such as external comparables, CPI, or a need for catch-up wage increases distinguishes this bargaining unit from the four out of a total of six bargaining units including this one that have already reached voluntary settlements with the City. Thus, I am persuaded that the internal settlement pattern should hold sway in this case and the City's final offer should be selected.

Therefore, based upon the evidence, testimony, arguments, and application of the statutory criteria contained in Section 111.70(7) Wis. Stats. to the facts of this dispute the undersigned enters the following

AWARD

That the City's final offer is selected and it along with the tentative agreements of the parties shall be incorporated into the parties' 2006-2008 collective bargaining agreement.

Entered this 28th day of January 2008.

Thomas L. Yaeger

Thomas L. Yaeger
Arbitrator