STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OSHKOSH PROFESSIONAL
EMPLOYEES UNION
AFSCME, LOCAL 796-C
AFL-CIO

And

Case 355
No. 66416
INT/ARB-10815
Dec. No. 32148-A

CITY OF OSHKOSH
(Professional Employees)

Appearances:

For the Union: Mary Scoon
Staff Representative

For the Employer: William G. Bracken
Davis & Kuelthau

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on November 13, 2007 in Oshkosh, 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 briefs of the parties in reaching his decision.

BACKGROUND

The City of Oshkosh is located in Northeast Wisconsin. One of the Bargaining Units consists of Professional employees. The employees in that Unit are represented by AFSCME, Local 796. In addition to this bargaining unit, there are seven other bargaining units.

The parties resolved most of the issues in their negotiations. The proposals of the parties on the outstanding issues are:

Wages

City	2.25% increase	1/01/07
	2.75% increase	1/01/08
	2.75% increase	1/01/09
Union	2.0% increase	1/01/07
	1.0% increase	7/01/07
	2.0% increase	1/01/08
	1.0% increase	7/01/08
	2.0% increase	1/01/09
	1.0% increase	7/01/09

Health Insurance[1]

City

2007	PPO Non-HRA	8% EE contribution	Cap $48/$86/$119
	EPO Non-HRA	8% EE contribution	Cap $36/$65/$90
	PPO W/HRA	5% EE contribution	Cap $30/$54/$75
	EPO W/HRA	4% EE contribution	Cap $18/$32/$45
2008	PPO Non-HRA	9% EE contribution	Cap $59/$107/$148
	EPO Non-HRA	9% EE contribution	Cap $44/$80/$111
	PPO W/HRA	6% EE contribution	Cap $39/$71/$98
	EPO W/HRA	5% EE contribution	Cap $25/$44/$62
2009	PPO Non-HRA	10% EE contribution	Cap $72/$130/$181
	EPO Non-HRA	10% EE contribution	Cap $54/$98/$135
	PPO W/HRA	7% EE contribution	Cap $51/$91/$128
	EPO W/HRA	6% EE contribution	Cap $33/$59/$81

[1] HRA means Health Risk Assessment. EPO is Exclusive Provider Organization and PPO is Preferred Provider Organization.

Add a Section 3:

All employees hired after January 1, 2009 may select either the PPO or EPO health plan with or without HRA. However, the City's contribution to the selected health plan shall be limited to the appropriate single, dual or family premium equivalent of the EPO Plan with HRA, as indicated above in paragraph 1.b. An employee selecting the PPO plan shall pay the difference between the City's contribution: to the single, dual or family plan with HRA and the corresponding selected PPO plan.

Union

2007	PPO Non-HRA	7% EE contribution	Cap $35/$60/$65
	EPO Non-HRA	7% EE contribution	Cap $25/$45/$55
	PPO W/HRA	5% EE contribution	Cap $30/$45/$60
	EPO W/HRA	4% EE contribution	Cap $20/$40/$50
2008	PPO Non-HRA	7% EE contribution	Cap $40/$55/$70
	EPO Non-HRA	7% EE contribution	Cap $30/$45/$55
	PPO W/HRA	5% EE contribution	Cap $30/$45/$60
	EPO W/HRA	4% EE contribution	Cap $20/$40/$50
2009	PPO Non-HRA	7% EE contribution	Cap $45/$60/$75
	EPO Non-HRA	7% EE contribution	Cap $35/$55/$65
	PPO W/HRA	5% EE contribution	Cap $30/$45/$60
	EPO W/HRA	4% EE contribution	Cap $20/$40/$50

Vacations

City Article XIV Vacations, change 20 years of continuous service equals 5 weeks vacation to 18 years.

Union No Change in contract

Though there are some tangential issues, the parties agree there are two main issues in this dispute, Health Insurance and Wages. The Arbitrator will first address the Greatest and Greater Weight criteria listed in the Statute, as that will apply to both issues. After addressing those factors, the Arbitrator will look at the other relevant criteria first as they apply to the health insurance issue and then as they apply to the wage question.

Greatest Weight

The Statute requires the Arbitrator to give any State Law or Directive "which places limitations on expenditures that may be made or revenues that may be collected" the greatest weight when evaluating the proposals of the parties. The City argues that this factor favors its proposal. The Union disagrees. In Buffalo County[2] this Arbitrator recently found that this factor did favor the Proposal of the County and was the deciding factor. In so doing, the Arbitrator noted:

> The Arbitrator has put forth numerous figures in this Decision. He finds that out of all them, the County is correct that the most significant is that not one of the comparables was limited by law to the minimum raise in levy. Some were able to raise them significantly higher and some only slightly higher, but all were over the 2% minimum. While this County, as all Counties can increase the levy by 3.8% in 2008 there is no reason to believe that this is anything but a one-time benefit. There is also no reason to believe that the County's financial situation versus the comparables will get better in the future. Its new construction as shown in Exhibit 48 remains at the bottom.

That same conclusion cannot be reached in this case. In 2006-07 this County showed the largest increase in new construction of all the comparables.[3] The prior year it had the second highest percentage of new construction. The limitation on allowable percentage increases permitted by the State is the same for all communities in the State. The key is whether this limitation has had more of an adverse impact on this community than was true in the comparables. In Buffalo it did. Here, it does not. Unlike the situation in Buffalo County, its allowable increase was greater than the minimum over the last few years. It was not at the bottom in percentage increase as was true in Buffalo County. For these reasons, the Arbitrator finds that this factor does not point in favor of the City.

---

[2] Dec. No. 32181-A (2008)

[3] The agreed upon list of comparables will be set forth when reviewing external comparability.

Greater Weight

The Statute next requires an interest arbitrator to give "greater weight" to the economic conditions existing within the Employer's boundaries. The Employer points to the general economic slowdown in the Country as proof that this factor applies here. It also notes that the average income in the City is less than the average among the comparables. The Union conversely points out that the percentage increase in income was greater in the City than the average among the comparables.

If an economic slowdown around the Country were the only consideration, that would apply, everywhere not just in the locality involved in the dispute. All communities would thus be justified in making a smaller wage or benefit proposal. That is not the key consideration, however. There must be more than a showing that nationally the economy is down. Instead, the key to determining whether this factor is applicable in a particular proceeding is to determine how this locality is faring when compared to other surrounding localities. Is its economy more depressed than others? If it is, this factor applies and this Arbitrator has so found in the past. On the other hand, if the economy in the locality involved is faring better than its comparable neighbors, than this factor cannot be used to justify an offer that would on balance be lower than what was given by its comparable neighbors. In reviewing the data from the exhibits offered by the parties, the Arbitrator does not find that this City has been economically disadvantages when compared to the economy of the comparable communities. While its income is less, that is not a new statistic. The average income in the City was $4500 below the average of the comparables in 2002. It was approximately $3600 below the average in 2005. Its percentage growth exceeded that of the comparables by almost 3.5% over that period. The fact that

income has risen by more than that of the comparables would negate an argument that its current situation has changed or is worse off and warrants the application of this factor to this dispute. On this basis, the Arbitrator finds that this factor also is inapplicable in this dispute.

Health Insurance

The Arbitrator shall now turn to the first of the two remaining issues and examine how each of the relevant statutory criteria applies to that issue. The most important of those factors are internal and external comparability. The Arbitrator shall begin with a look at what the other bargaining units in the City have done or are doing. As has often been noted by interest arbitrators, internal comparability is a most significant factor where benefits are involved. For these comparisons, the figures presented by the City are being used.[4]

Internal Comparability

The other bargaining units in the City are the City Employees, Fire Chief Officers, Firefighters, Clerical-Paraprofessionals, Library, Police and Police Supervisors. The total number of employees in the City, including 93 non-represented employees is 593. Three of the bargaining units have settled agreements. The Fire Chiefs, Police Supervisors and Police Officers all have agreements running through 2009. Each of those units accepted the City offer. They pay the same proportion of the premiums as set forth in the City offer here. That is also true of the non-represented employees.

[4] As noted by the City, Arbitrator R.J. Miller held:

> The Association elected not to present cost figures, which creates the presumption that the Board figures (including its scatter gram) must be correct and accordingly, must be construed as being the best evidence in this case. Greenwood School District, Dec. No. 20350-A, pp. 6 (7/83).

The number of employees in the three bargaining units that have settled is 95. The City has made the same proposal to the remaining units as it has here. All of them are currently in Arbitration. The number of employees in those units total 405.

The City maintains that by implementing the various plan options that it has it was able to minimize the effect on employees if they choose one of the new plans with a HRA. It believes given these efforts and the uniformity of its proposal Citywide that internal comparability favors its position. It contends a pattern has been set and that the Arbitrator should not disrupt that pattern. The City argues: "the Arbitrator can select the City's offer knowing that all employees are being treated the same." The City cited several cases where arbitrators have held that once a pattern is established, the Arbitrator should be loathe to change it.

The Union argues that the general proposition espoused by the City is correct, but that the facts here do not support this proposition. It contends that since the vast majority of represented employees have not accepted the City offer there has as of yet been no pattern set. It contends that when determining if there is a pattern only represented employees should be considered. Non-represented employees do not have the opportunity to proceed to arbitration and are it argues at the mercy of the City. Similarly, two of the units that have agreed to the City offer are supervisory units and also are deprived of the right to interest arbitration. The only unit that has accepted the City proposal that could have gone to arbitration is the Police Officer Unit. This one unit it believes clearly is not a pattern that this Arbitrator must follow.

The Arbitrator agrees with the Union that a pattern is only shown when everyone or almost everyone in the other represented units has agreed to a proposal. Here, three of eight units have accepted and five have not. The three units comprise only

19% of the total represented workforce. Two of the three units are the smallest units and as the Union notes did not have the chance to arbitrate if they disagreed. In reality, of the six units who have or had the chance to oppose the City by taking the matter to arbitration, only one has settled rather than taking that route. Five others, including the Firefighters, who are represented by the IAFF, rather than AFSCME, have rejected the City proposal. The Union offer in all five of those units is the same as is proposed here. If Union offer in all five were accepted by each arbitrator the pattern would point toward the Union side rather than the City's. The fact that they all remain open negates any argument that a pattern has been set that this Arbitrator must or should follow.

The attempt by the City to maintain uniformity is understandable. It is a goal that many employers wish to attain. That is why once a pattern is set it should be followed. However, that goal is not enough standing by itself to justify a finding that this factor favors the City when there are so many units that remain opposed to that goal. As Arbitrator Krinsky noted in City of Wautoma[5]:

> The arbitrator recognizes the validity and important of the City's desire to provide all of its employees with the same health insurance benefit opportunities. The fact remains, however, that only one of its three bargaining units, representing a very small number of employees, has agreed to its HMO proposal. There is no pattern internally which the arbitrator views as compelling a change in the HMO structure.

Based on these facts and prior holdings in similar cases, the Arbitrator finds this factor does not, as argued by the City, favor its proposal.

External Comparables

The parties both agree as to which communities make up the appropriate comparables to this City. Appleton, Fond du Lac, Green Bay, Menasha, Neenah and

[5] Dec. No. 31477 (2006); See also City of Madison Dec. No. 31217

Sheboygan are the comparables. In attempting to compare the premiums paid by this City and by the comparables and by the employees in each, it should be noted that given the large number of plans each offers the comparison can never be exact. Exact costs depend on the number of employees utilizing the less expensive plans and the number using the more expensive plans in each of the comparables. It is also impossible to know what percentage of employees in this unit will choose the EPO with the HRA and which will choose the PPO with the HRA and which ones will choose neither. At present, a higher percentage of the employees have chosen the PPO rather than the EPO.

Employer Exhibit 51 lists the premiums paid by each of the comparables and the percentage of that premium that is paid by the Employer. For purposes here, the Arbitrator will compare the premiums only using a PPO since many of the comparables do not have an EPO and because most of the employees in this unit have chosen the PPO plan. The Arbitrator will also assume for this comparison that employees will choose the PPO plan with the HRA since its percentage and cap are lower while still providing the employees the choices they appear to have wanted when they chose the PPO. The Arbitrator will also only compare single and family coverage, as it does not appear that dual coverage is offered extensively in the comparables. Figures for 2007 have been used since not all of the figures for the comparables in 2008 were available at the time of the hearing.

City	Total Premium Single/Family	Employer/EE Portion	EE %age/dollars
Appleton	$430/$1114	$405/$1064	7%/8% /$25/$50
Fond du Lac	$385/$990	$365/$ 940	5% /$25/$50 (cap)
Green Bay	$539/$1307	$499/$1207	7.5% /$40/$98
Menasha	$452/$1464	$416/$1347	8%/$36/$117-$125 cap
Neenah[6]	$385/$1067	$366/$1014	5% /$19/$53
Sheboygan	$570/$1425	$541/$1353	5% /$28/$71
Average	$460/$1227	$432/$1154	6.25%/$29/$73
Oshkosh[7] (City)	$597/$1492	$567/$1417	6% /$39/$98
(Union)			5% / $30/$60

The chart reveals that the City is correct when it notes that the premiums it pays are the highest among all the comparables. The single premium is $155 over the average and $25 over the next highest rate among the comparables. The family rate is $263 over the average and $64 over the next highest comparable. The percentage paid by the employee would be in accordance with the average for single coverage under the City proposal and below average under the Union's proposal. In actual dollars, the City is $10 over the average for single coverage paid by the employee and the Union is right at the average. For family coverage, the City offer is $25 over the average paid by employees elsewhere and the Union proposal is $13 under.[8]

This disparity would increase under either proposal in 2009. The jump proposed by the City is greater here than will likely be accepted in the other communities. The freeze proposed by the Union will likely be lower than what is accepted among the

[6] Middle plan is used here. It is a POS Plan with a "standard deductible."
[7] The percentages and dollar figures used for Oshkosh were for 2008 since this is the year when whatever changes are adopted will be implemented.
8 It is not as easy to do a comparison for 2008 as not all of the comparables have agreements covering this year. Fond du Lac and Green Bay have contracts still open. Of those that have settled, Appleton actually lowered the percentage paid by employees. Menasha increased by 1% the amount to be paid by employees and Sheboygan raised the percentage by 2%. Everyone else was status quo.

comparables. This is naturally an assumption as there is little or no data from the comparables for 2009 to judge.

The above information shows two different extremes. The City has had the financial burden of paying higher premiums. While that has occurred, the employees have not been paying less than their counterparts for insurance coverage. They are no better nor are they any worse than the employees in the comparable communities. The Arbitrator in better understanding the history has looked back to the figures for 2005 and 2006 to see if the City premium increase was so much more than in the other communities that it went from the middle or bottom to the top. In 2005, the average family premium for the comparables was $1113. Oshkosh paid $1386 for family coverage. It paid $273 over the average. In $2007 it was $263 over the average. In 2006, the average paid for family coverage was $1167. In Oshkosh it was $1455. That is a difference of $288. Thus, the differential increased from 2005 to 2006 by $15 and fell by $25 from 2006-07. What is significant is that the differential has remained relatively constant during the period. Unfortunately, not all of the information was available for 2008. The premium in Fond du Lac actually increased more than here. Sheboygan and Menasha showed a decrease. Regardless, the fact remains that the City negotiated its last agreement with this Union facing roughly the same disparity yet it agreed to the terms that it did. There is an insufficient showing there has been a change in circumstance no matter the numbers for 2008 that would warrant disrupting this pattern among the external comparables. If the Arbitrator adopts one of the arguments of the City that he should try to put the parties where he believes they would have been had they reached agreement on their own, then the

agreement in the prior contract would seem to justify keeping that pattern in this contract.

The parties also argue that the Arbitrator should consider other aspects of insurance coverage when making comparisons with other Cities. What are their deductibles and co-pays? The City believes that its plan is among the best and that the Arbitrator must recognize that fact when evaluating its plan versus others. The Union believes that even with that comparison that these employees do not have benefits above and beyond that of others. It is not the Cadillac Plan that the City would argue that it is. The Arbitrator has reviewed the Chart provided by the City showing what those costs and benefits are in the other communities. Appleton and Neenah do have higher deductibles than here. Sheboygan has no deductible. The amount of deductible in the other Cites depends upon the choice of plan as it does here. That is also true for the maximum out-of-pocket expense. It varies by Plan. The co-pay for prescription drugs is in line with others and again varies depending on the plan chosen. The Union is correct that dental coverage is missing here and is provided in the others. On the whole, the Arbitrator finds that adding this factor into the mix does not change anything. It is better in some respects and not as good in others, and like was just noted it has not changed appreciably since the last contract.

The Arbitrator has considered all of the above. Based on these facts, the Arbitrator finds that this factor favors the Union.

Other Factors

The parties have argued that where health insurance is concerned that other factors come into play. The City points to the financial strain being placed upon it by these costs. The Arbitrator will set out some of the arguments of the parties as they

relate to the issue of health insurance independent of the external and internal comparability factors.

Position of the City

The cost of health insurance has continued to rise. In 2008, premiums increased by 19%. The current agreement provides a percentage to be paid by employees, but with a cap on the maximum dollar figure to be paid by the employee in each month. Those caps became effective for the first time in 2006. As a result, the percentage of the total premium paid by the employee was less than the percentage set forth in the contract. The Union proposal contains no increase in the percentage or the cap for the duration of the contract. That means the percentage paid by employees will continue to decrease as premiums increase.

The City's offer: "restores the integrity of bargaining the percentage rate defining the employees' contribution. The Union's final offer moves in the opposite direction." The City has shown that in the past the cap has risen from year to year and only in this contract does it remain constant. The Arbitrator needs to make the percentage realistic given the rise in costs. The cost to the City if the Union offer is adopted would be significant given the failure of the Union to increase the percentages or cap for the term of the contract.

The Union claims credit for the areas where it made concessions during these negotiations. It points to the inclusion of the HRA component. The Union does not note that this is really a one-time concession that will not be realized in succeeding years. This concession is not enough to justify its freeze on the percentages and cap.

Position of the Union

The Union made several concessions to the City as part of the give and take of bargaining. It agreed to increase the percentage paid by employees who go out of network under the PPO Plan. It made several other cost-saving changes as well. The Plan design was changed to include Health Risk Assessment as part of the Plan. It gives incentives to the employee to participate by lowering the employee's share of the premium cost. Studies have shown that these types of changes are extremely beneficial to both the employee and the employer. All of these changes will result in a savings to the City of approximately $600,000 per year. Thus, it cannot be said that the Union has not been a partner in helping to lower health care costs.

The proposal of the City is simply too excessive. To get this type of increase in employee costs, the City must show that a need exists, that the proposal reasonably addresses this need and that a quid pro quo has been offered. The Employer has not met any of these criteria.

Discussion

The City argues that the Union is not doing its share in addressing the rising health care costs, especially since the cap remains constant throughout the agreement. The Union correctly points out that it has not ignored the plight of the City during these negotiations. It has agreed to incorporate several significant changes to the plan. Adding the Health Risk Assessment aspect will save the City money. The Arbitrator must disagree with the City that this is a one-time concession. The HRA remains a part of the Agreement. If it disappeared in later years, the City would be correct, but it does not. Each year that this component is in the Contract the City is realizing savings from those employees availing themselves of this option.

The premium is lower with the HRA and thus the savings continue to accrue. The disincentive to reject this option also remains. Employees failing to elect this option will be faced with paying a higher share of the premium cost for the duration of the contract. For those employees, the percentage is 7% instead of 5% and the cap in 2009 would be $15 more a month. In addition to the addition of the Health Risk Assessment the Union agreed to change the co-insurance rate for out-of-network doctor costs from a 70/30% split to a 60/40% split. The co-pay for prescription drugs also rises. For both formulary and non-formulary drugs it goes up $10. Under the PPO plan, the co-pay for generic drugs also rises. It goes from $5 to $10. Thus, the Union has not ignored the problem, as the City implies, but the question is whether it has done enough. It believes it has and City believes it has not.

The Union argues that to obtain the change the City is seeking it must show that a need has arisen, that the proposal reasonably addresses that need and that a quid pro quo has been offered. The City argues that because the Union has in effect nullified the percentage paid by the employee for health insurance by maintaining a status quo on the cap that it is changing the contract and it must offer a quid pro quo. Interestingly, this Arbitrator recently also addressed this issue in Buffalo County. Both parties there cited several cases to support their positions on the question of a quid pro quo. The predominant holding in those cases was that when rising costs for insurance were the issue under discussion that no or very little quid pro quo was required. This Arbitrator in that case agreed with that line of thinking. Here, the City has shown especially in the last year that costs have risen dramatically. In 2008, premiums rose by 19%. That is even with the addition of the HRA component. Single coverage went from $597 to $710. Family coverage increased

to $1775 from $1492. Given this fact, the Arbitrator finds that the needs are such that they fall under the line of cases in which no quid pro quo is required.

The Union in the previous contract agreed to raise the cap during the term of the contract. In 2005, it was increased by $5. It went up by that amount again in 2006. This new agreement will take effect in 2007, although insurance changes will not become effective until July of 2008. The Union proposal has no increase in cap or percentage for last year, this year or next year. It is the same that existed in the expired contract. Given the rise in premiums and the figures for 2006, which show that the cap has finally been triggered, it is here that the Employer has legitimately expressed concern over the Union proposal. In reality, the employees choosing the HRA option will see no increase in what they pay since the cap will be the controlling factor for the duration of the contract. To obtain that benefit for the most part all they had to do was agree to add the HRA, which is a benefit to them anyway. Under the Union proposal, the City will be paying more than the contractual percentages for its employees every year. For family coverage in 2008 it will cost the City an additional $28.77 and in 2009 $37.65 for family coverage under the PPO. The EPO cost would also exceed the cap in 2008 and 2009, although by not as much as for the PPO.

The Arbitrator agrees that this is the most troubling aspect of the Union proposal. While the concessions it made are important, they do not go far enough. The $600,000 that the Union points out it saved the City by its concessions would be enough if it meant that the City would now pay less or virtually the same for insurance than it did previously. That is not the case. Premiums rose dramatically even with the concessions. While it could be argued they would have rose even more without the concessions this does not negate the fact that the City expenses still were

well above where they had been. It is on that basis, that the City believes and this Arbitrator agrees that what the Union did does not suffice.

The Union's explanation for the freeze that the increase in percentage and cap for those rejecting the HRA will help steer parties towards the HRA may be true, but that explanation does not justify its proposal. Even a modest increase in the cap and percentage would still leave a substantial differential between those accepting and those rejecting the HRA. The City is not far off the mark when it argues that to some degree it is the Union that is changing the status quo by failing to increase the cap as it has done in the past. Had the Union in its proposal adopted some sort of cap increase its proposal would have been more in line with what had been done in the last contract and what needed to be done in this contract. The Arbitrator finds that the cost to the City despite the changes to which the Union has agreed have outstripped the concessions of the Union and in so doing the Union has not fully addressed the problems increased health costs have imposed on the City.

The Arbitrator has criticized the Union for its freeze. The proposal of the City has its own problems. It goes the other way. The increases are considerable. The City is now asking the employee's to absorb more of an increase under this contract than they ever could have absorbed in the past. Under the City Proposal the cap increases by $21 for single coverage and $68 for family coverage with the HRA over the term of the contract. The employee share more than doubles. Obviously, it is much less for those using the EPO with an HRA. It is true that the increases are even worse for those rejecting the HRA than those accepting it. Presumably, these rates are set to gain steerage to the EPO with the HRA, but like the Union proposal it is steering

much too far. The Union proposal puts the ship off course in one direction and the City proposal puts off course in the other direction.

The Arbitrator noted above that under the last contract the Union increased the cap each year. The percentage also went up, but not every year. The percentage increases yearly under the City proposal. Last contract the cap went up $5 each year. As noted, it goes up much more under this proposal. The Arbitrator understands that the cap has been hit already and will be hit during the duration of this contract no matter which proposal is adopted. Despite that, the fact of the matter is that a cap has been part of the agreement for years. The parties must have understood that there would be a limit to how much of an increase employees must absorb regardless of how much premiums rose by adopting a cap. The City argues that the Union wants to change the percentage paid by employees by freezing the cap. The City on the other hand, wants to almost effectively nullify the cap. The City estimates a 10%-12% increase in premiums for 2009. At 12%, the family PPO with a HRA would be $1988. 7% of that is $139. The cap would be $128. Currently, it is $60. Thus, the Arbitrator finds that while the Union proposal does not go far enough, the City proposal goes too far. What a dilemma for the Arbitrator. How this all balances out will be addressed after the discussion of wages.

Wages

The City has proposed a wage increase of 2.25% in 2007 and 2.75% in 2008 and 2009. The Union seeks a 2% increase each January 1 and a 1% increase on each July 1. According to the costing of the City the total cost of the proposals including built in increases in longevity and in benefits is $54,000 more under the Union offer

than under the City offer. For wages alone, the difference is $26,000. Total costs under the City proposal are $7.171 million and $7.236 million. The difference in the proposals is .7% of total compensation costs. If wages alone were considered, the percentage difference between the two offers is .5% of the total wage cost. With these figures in mind, the applicable criteria will now be applied to this issue.

The City in presenting data on both internal and external comparability has utilized the cast-forward method of costing, which includes step or longevity increases, as well as the traditional rollup costs. The Union maintains that such a method is improper and that only the base percentages proposed by the parties should be compared. This Arbitrator was coincidentally faced with this argument in Buffalo County, as well. In that case the cast-forward method was not being utilized for comparison purposes but only to show the total cost that would be incurred. It was used by the County to support its argument that to the Greatest Weight factor favored its proposals. The County conceded that when it comes to comparability that costing method should not be used. This Arbitrator quoted from several cases cited by the Union and held:

> It is based on these decisions that the Arbitrator agrees with the Union and the County that for purposes of comparability step increases and the cast-forward method have no place.

That finding applies equally here. Therefore, only the basic percentage increases proposed by the parties will be compared to the basic increases given to employees both internally and externally and not the total costs incurred.

Internal Comparability

It is not surprising that the wage increases accepted in the settled units is identical to what the City proposes for this unit. It is also not surprising that the

proposals of both the Unions and the City in the units that are not settled are the same as the proposals made here. All of the Unions are seeking the same 2/1 split that is sought by this unit. This Arbitrator indicated when discussing the health issue that he was not satisfied that a pattern had been set because of the number and size of the units that remain unsettled. For those same reasons, the Arbitrator does not find a pattern with regard to the wage settlements. The City notes its history of obtaining identical wage settlements in each unit. That has been the pattern over several contracts. That is important. However, it cannot be the deciding factor when, as here, there are so many units that have rejected the terms offered by the City. The Units that have settled cannot dictate the terms to those who have not settled where the vast majority of units and employees have declined to accept those same terms. Only where the pattern is indelibly set can the settlements in the Units that have signed contracts compel a similar finding in the unit that remains adamantly opposed to those wage terms. Since there is no pattern, that situation does not exist here despite the history to which the City points. Should the proposals of the Unions be adopted in all of the units that remain in dispute would that not then be more appropriately considered the pattern rather than what the smaller units decided to accept. Thus, the Arbitrator finds that this factor does not favor the City, nor for that matter the Union. It is factor neutral.

External Comparability

All of the external comparables have settled their agreements for 2007, except Green Bay. In 2008, Green Bay and Fond du Lac have not settled. Only Sheboygan has settled for 2009. The Union exhibits included a chart showing the percentage increases granted in the other communities. That is attached here:

Municipality	Unit	2006	2007	2008	2009
Appleton	City Hall	3.00%	2.75%	2% January 1 1% Oct 1	
	Eng/Tech	3.00%	2.75%	2% January 1 1% Oct 1	
	Health Dept Pro	3.00%	2.75%	2% January 1 1% Oct 1	
	Inspectors	3.00%	2.75%	2% January 1 1% Oct 1	
Fond du Lac	Comb	3.50%	2.75%		
Green Bay	Assessors	2.80%			
	City Hall	2.80%			
	Inspectors	2.80%			
Menasha	City Hall	3.00%	2% January 1 1% July 1	2.5% Jan 1 1.5% July 1	
Neenah	Public Health Nurse	2% January 1 1.5% July 1	2% January 1 1% July 1	3.00%	
Sheboygan	City Hall	2.50%	3.00%	3.25%	2%January 1 1.5% July 1
	Professional	2.50%	3.00%	3.25%	3%January 1 1.5% July 1
AVG YEARLY LIFT		**2.95%**	**2.86%**	**3.19%**	
Oshkosh- UN Offer	Professional	*2.75%*	2% January 1 1% July 1	2% January 1 1% July 1	2%January 1 1% July 1
Oshkosh- ER Offer	Professional	*2.75%*	2.25%	2.75%	2.75%

This chart shows that the average wage increase in 2007 was 2.95%. Sheboygan had the smallest increase. It was 2.5%. Here, the Union has proposed a 2% and 1% split. The cost for the year given the split is 2.5%, although the lift is 3%. The City has proposed 2.25%. Clearly, the City proposal is at the bottom of all comparables. In

2008, the average rose to 3.19%. The Union proposal of a 2% and 1% increase is actually less costly in 2008 than the City offer. A comparison for 2009 cannot readily be made given only 1 other City in the comparable pool has settled.

The City in its exhibits has argued that these employees are at the top in the positions in question of all the comparables and that the difference is growing. In 2006, the Housing Inspector wages were actually $2.15 below the average. The Building Inspector was $.39 below. Its exhibit actually shows the Building Inspectors wage ahead in 2007. The problem is that calculation excludes Green Bay since it has not settled its contract. In 2006, the Building Inspector in Green Bay made $2.37 more than was earned by the Inspector here. Leaving Green Bay out is like comparing apples with oranges. Certainly, it is not expected that they will take a decrease in wages. If it were assumed even a raise like that proposed by the City here, the differential would actually be a bit greater that it was the year prior. Thus, there is no need for these employees to either catch-up or slowdown versus the comparables. It is the percentages that will dictate.

The Union proposal clearly is closer to the average in 2007 than the City's. The same can be said for 2008. The Arbitrator when discussing the Greatest Weight Factor noted that this City does not fare any worse than its counterparts under the statutory formula. Therefore, there is no financial justification for the disparity. The Arbitrator finds that this factor unquestionably favors the Union proposal. There is no justification for the lower increase offered by the City.

COLA

The Cost of Living increased 5.5% from January 1 of 2006 to December 31, 2007. The City argues using total package costs that it is offering a 7.2% increase for 2007

and 2008. The Union asserts that only the base wage should be considered and that using that figure the two offers are almost identical. It is proposing a 6% increase and the City is proposing a 5% increase for those two years. The Arbitrator agrees with the Union that only base wage should be compared. When that is done, this factor does not favor either party given the different manner in which increases are granted under each side's proposal.

Summary

The only factor that has any real relevance for this issue is external comparability.[9] This factor, as noted, strongly favors the Union. Therefore, the Arbitrator finds that the Union wage proposal is favored.

OTHER ISSUES

The City in its proposal would also amend Article XIV, Vacations, to lower time required to attain the maximum five weeks of vacation earned each year from 20 years to 18 years. It points out that this should be considered another factor in its favor.[10] Conversely, the Union argues that the provision that new hires electing a PPO would have to pay the difference between the EPO rate and PPO is "outrageous and punitive." To counter that argument, the City notes that all current employees, who are the only people represented by the Union, are grandfathered under the provision. Both parties concede that these issues carry far less weight than the others.

The proposal regarding vacations only impacts one person during the term of the Agreement. It is not a major concession. As far as the rate for new hires, it hardly

[9] The City believes that both its wage and insurance proposal are favored under the Best Interests of the Public Criteria. While it is true that lower costs benefit the City, so too does a workforce that is well paid. The Arbitrator simply does not see this factor favoring either side.

[10] City Exhibit 20 is the seniority roster for this Unit. According to that roster, there is one employee who during the term of the contract would reach the maximum solely due to the change.

uncommon today, especially in the private sector, for there to be two scales of wages or benefits for new hires. The advantage of imposing greater costs on new hires is that they will know going in what to expect. Clearly, the proposal goes even one step further in attempting to steer employees into the cheaper plan. The record reveals many employees use Aurora Health Systems. It is in both the EPO and PPO, although the rate charged varies dependent upon whether the employee is under the EPO or PPO. Even employees and their families currently under the PPO Plan go to Aurora. If this proposal included current employees, the Union argument that it was punitive might have some merit. It does not include them and affects no one currently in the bargaining unit. It is a concession by the unit, albeit a forced one, but it is not a deciding factor. The main issues will control the outcome.

CONCLUSION

The City believes: "This dispute is not dependent on the appropriate wage increase but rather the employee's contribution to health insurance." The Union argues that the City is not justified in seeking to impose greater costs on the employee for health insurance while offering its employees less of an increase than was received by the employees in the comparable jurisdictions. It believes, therefore, that wages must carry the day. To bring home that point it cited a case by Arbitrator Petrie who was faced with a similar situation. Arbitrator Petrie stated in City of Marinette[11]

> If the Employer's final offer is accepted in these proceedings, its proposed levels of HRA and dental insurance contributions would have been retained, and the Union would be saddled with beginning negotiation with wage rates below the levels clearly justified by the application of the

[11] Dec. No 30771 (2004):

> statutory arbitral criteria for 2003 and 2004. It is one thing to conclude that reasonable modification of a mutual problem in the area of health care insurance need not be accompanied by a significant quid pro quo, but quite another to determine that such health care insurance changes should be accompanied by a lower than otherwise justified wage or salary increase.

The Arbitrator finds this argument of the Union and the Decision of Arbitrator Petrie to be most poignant. It is indeed problematic to this Arbitrator that the concessions sought in health insurance are tied to wage increases that are less than average. The amount paid by employees in the Unit accepting the HRA would be over the average for both single and family coverage, yet their wage increase would be below the average. On the other hand, it has also been troubling to the Arbitrator as discussed earlier that the Union has made its proposal on wages absent any increase on the cap for insurance. Its proposal would have been enhanced had that been incorporated into its last offer, and the absence of that increase detracts from its offer. Similarly, the proposal of the City would have been enhanced had it included a more modest increase in the cap and percentage or wage increases more in line with the comparables. Thus, the Arbitrator finds fault with both proposals. Nether full offer is what the Arbitrator would include in a final package if he had a choice. He is faced with two almost equal or equally deficient proposals. Both sides argue that the area where their proposal is preferred is more important than the area where its proposal may lag behind the other side's proposal. If one area of the proposal, such as wages or insurance, is indeed more important than the party whose proposal is preferred on that issue must prevail. To try to determine which facts should carry more weight the Arbitrator has prepared his own chart using some of the data from the City's chart. It is hoped by the use of this chart that it would become clear which issue is truly the dominant one.

WAGE INCREASES PER EMPLOYEE USING CHART 1 IN REPLY BRIEF

	Total Dollars		Average increase per EE	
	City	U	City	Un
2007	42036	46063	1356	1485
2008	43432	47830	1401	1533
2009	46402	51051	1496	1646

ADDITIONAL PREMIUM COST PER EMPLOYEE-ANNUALLY**

		Single		Dual		Family	
		Er	U	Er	U	Er	U
2007	PPO W/HRA	12	12	0	0	0	0
	EPO W/HRA	12	0	12	0	0	0
2008	PPO W/HRA	54	0	156	0	228	0
	EPO W/HRA	30	0	24	0	72	0
2009*	PPO W/HRA	144	0	132	0	360	0
	EPO W/HRA	96	0	180	0	228	0

*Assumes that each plan reaches the cap each year
**Multiplies the monthly amount per plan times 12 for 2009 and by 6 for 2008 as adopts assumption of City that changes will not occur until 7/1/08

ANNUAL COST FOR BARGAINING UNIT***

		Single	Dual	Family
2007	(PPO)	$48 (4 EEs)	$0	$0
	(EPO)	$36 (3 EEs)	$12 (1 EE)	$0
2008	(PPO)	$216	$312 (2 EEs)	$3420 (15 EEs)
	(EPO)	$ 90	$ 24	$ 72 (1 EE)
2009	(PPO)	$576	$264	$5400
	(EPO	$288	$180	$ 228

***Uses Current Breakdown contained on Chart 2 of City Reply Brief

NET GAIN

	Employer Proposal		Union Proposal	
	Total/	Av.Per EE	Total/	Av. Per EE
2007	$42024/	$1355	$46051/	$1485
2008	$42868/	$1382	$47830/	$1533
2009	$45462/	$1460	$51051/	$1646
Totals	$130544	$4197	$144932	$4664

Difference between proposals is $467/EE for three-year contract
Additional Cost to Employer for Insurance under offers is $8227 or $265 per EE because of Cap and %age differences.

After looking at the chart, the Arbitrator must still conclude that even this method does not clearly pinpoint which of the proposals should be given more weight. There are costs and benefits to the employees and the City under either one. The one thing the chart does reveal is that over a three-year period the difference in costs is not overwhelming. The average cost to the employee for insurance if the City offer is accepted is $467 and to the City is $265 per employee if the Union offer were accepted. That is not a great difference. On balance, the two proposals are very close. If this were baseball the Arbitrator's choice would be easy. The tie would go to the runner. Unfortunately, there is no runner here or to put it another way, the Arbitrator must determine which side represents the runner.

This is not an easy choice. As noted, neither offer is "best". It is the cap that is particularly troublesome no matter what proposal is accepted. The freeze on the cap is totally contrary to what was done the prior three years. On the other side of the coin, asking the employees to almost negate the cap that has been included as a safety valve for years is unfairly onerous on them. Insurance the one area where the City proposal matches well against the Union is at best only slightly favored if not simply a wash given the deficiencies noted. Thus, the answer as to who should prevail will have to come from an examination of the rest of the proposals.

The Statutory criteria favor the Union wage offer. The City in addition to its lower wage offer is also seeking to impose tougher policies on new employees. Its vacation offer is a benefit, but is realized by only one employee in this contract. Therefore, these other issues, especially the wage issue, tip the scale towards the Union despite the major deficiency in the Union's insurance proposal. The findings of Arbitrator

Petrie in Marinette are equally applicable here and this Arbitrator finds for the Union on a similar basis.

The solace for the Arbitrator is that as shown in the chart the cost differential over three years is not great. It is also some consolation to the Arbitrator that since over 1½ years have already elapsed the parties will have a chance next year to adjust any problems caused by the statutorily compelled adoption of one proposal or the other.

AWARD

The proposal of the Union together with all tentative agreements shall comprise the parties 2006-2009 agreement.

Dated: March 18, 2008

_____
Fredric R. Dichter,
Arbitrator