
In the Matter of the Interest Arbitration Proceeding Between

**CITY OF OSHKOSH CLERICAL-PARAPROFESSIONAL UNION,
LOCAL 796-B, AFSCME COUNCIL 40, AFL-CIO, CLC**

And

CITY OF OSHKOSH

Case 356
No. 66422
INT/ARB-10810

Decision No. 32149-A

Appearances:

Ms. Mary Scoon, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, CLC, W5670 Macky Drive, Appleton, Wisconsin, appearing on behalf of the Union.

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

This is a matter of final and binding interest arbitration pursuant to Section 111.77(6) of the Wisconsin Municipal Employment Relations Act for the purpose of resolving a collective bargaining impasse between the City of Oshkosh Clerical-Paraprofessional Union, Local 796-B, Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, and the City of Oshkosh, hereinafter referred to as the City. On October 30, 2006, the Union filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it alleged an impasse existed between it and the City. On July 6, 2007, the Commission certified the parties' final offers. On August 9, 2007 the Commission issued an Order appointing the undersigned, Edmond J. Bielarczyk, Jr., as the Arbitrator in the matter. Hearing on the matter was held in Oshkosh, Wisconsin on December 6, 2007. Post hearing written arguments and reply briefs were received by February 11, 2007. Additional facts were submitted to the Arbitrator by the Union on March 17, 2008 and April 28, 2008. Full consideration has been given to the statute criteria and the evidence, testimony and arguments presented in rendering this Award.

FINAL OFFERS

In their respective final offers, hereby incorporated by reference into this decision, the parties disagreed on the following issues:

UNION'S FINAL OFFER

1. Article VIII-Medical Benefits Plan

Employee contributions for PPO without HRA

Effective January 1, 2007, employees will contribute up to 7% up to a maximum of \$35 per month towards the singly; \$50 per month towards the dual and \$65 per month towards the family premium equivalents.

Effective January 1, 2008, employees will contribute up to 7% up to a maximum of \$40 per month towards the singly; \$55 per month towards the dual and \$70 per month towards the family premium equivalents.

Effective January 1, 2009, employees will contribute up to 7% up to a maximum of \$45 per month towards the singly; \$60 per month towards the dual and \$75 per month towards the family premium equivalents.

Employee contributions for EPO without HRA

Effective January 1, 2007, employees will contribute up to 7% up to a maximum of \$25 per month towards the singly; \$45 per month towards the dual and \$55 per month towards the family premium equivalents.

Effective January 1, 2008, employees will contribute up to 7% up to a maximum of \$30 per month towards the singly; \$50 per month towards the dual and \$60 per month towards the family premium equivalents.

Effective January 1, 2009, employees will contribute up to 7% up to a maximum of \$35 per month towards the singly; \$55 per month towards the dual and \$65 per month towards the family premium equivalents.

Employee Contributions for PPO with HRA

Effective January 1, 2007 through December 31 2009, employees will contribute up to 5% up to a maximum of \$30 per month towards the singly; \$45 per month towards the dual and \$60 per month towards the family premium equivalents.

Employee Contributions for EPO with HRA

Effective January 1, 2007, through December 31 2009, employees will contribute up to 4% up to a maximum of \$20 per month towards the singly; \$40 per month towards the dual and \$50 per month towards the family premium equivalents.

2. Salary Schedule

General Wage Increases:	Effective Pay Period 1, 2007:	2.0%
	Effective Pay Period 14, 2007:	1.0%
	Effective Pay Period 1, 2008:	2.0%
	Effective Pay Period 14, 2008:	1.0%
	Effective Pay Period 1, 2009:	2.0%
	Effective Pay Period 14, 2009:	1.0%

CITY'S FINAL OFFER

1. Article VII, Insurance. Medical Benefit Plan. Insert after third paragraph in Health Risk Assessment (HRA):

A. EMPLOYEE CONTRIBUTIONS WITH HEALTH RISK ASSESSMENT.

1. Employee Contributions For PPO With Health Risk Assessment.
Effective as soon as administratively feasible after a voluntary settlement or arbitrator's award, employees will contribute 5% up to a maximum of \$30 per month toward the single; \$54 per month towards dual and \$75 per month towards the family premium equivalent.

Effective January 1, 2008, employees will contribute 6% up to a maximum of \$39 per month toward single; \$71 per month towards dual and \$98 per month towards the family premium equivalent.

Effective January 1, 2009, employees will contribute 7% up to a maximum of \$51 per month toward single; \$91 per month towards dual and \$126 per month towards the family premium equivalent.

2. Employee Contributions For PPO With Health Risk Assessment.
Effective as soon as administratively feasible after a voluntary settlement or arbitrator's award, employees will contribute 4% up to a maximum of \$18 per month toward the single; \$32 per month towards dual and \$45 per month towards the family premium equivalent.

Effective January 1, 2008, employees will contribute 5% up to a maximum of \$25 per month toward single; \$44 per month towards dual and \$62 per month towards the family premium equivalent.

Effective January 1, 2009, employees will contribute 6% up to a maximum of \$33 per month toward single; \$59 per month towards dual and \$81 per month towards the family premium equivalent.

B. EMPLOYEE CONTRIBUTIONS WITHOUT HEALTH RISK ASSESSMENT.

1. **Employee Contributions for PPO Without Health Risk Assessment.**

Effective as soon as administratively feasible after a voluntary settlement or arbitrator's award, employees will contribute 8% up to a maximum of \$48 per month toward the single; \$86 per month towards dual and \$119 per month towards the family premium equivalent.

Effective January 1, 2008, employees will contribute 9% up to a maximum of \$59 per month toward single; \$107 per month towards dual and \$148 per month towards the family premium equivalent.

Effective January 1, 2008, employees will contribute 10% up to a maximum of \$72 per month toward single; \$130 per month towards dual and \$181 per month towards the family premium equivalent.

2. **Employee Contributions for EPO Without Health Risk Assessment.**

Effective as soon as administratively feasible after a voluntary settlement or arbitrator's award, employees will contribute 8% up to a maximum of \$36 per month toward the single; \$65 per month towards dual and \$90 per month towards the family premium equivalent.

Effective January 1, 2008, employees will contribute 9% up to a maximum of \$44 per month toward single; \$80 per month towards dual and \$111 per month towards the family premium equivalent.

Effective January 1, 2008, employees will contribute 10% up to a maximum of \$54 per month toward single; \$98 per month towards dual and \$135 per month towards the family premium equivalent.

C. EMPLOYEES HIRED AFTER JANUARY 1, 2009.

All employees hired after January 1, 2009 may select either the PPO or EPO health plan with or without the 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.A.2. An employee selecting the PPO plan shall pay the difference between the City's contribution to the single, dual or family EPO plan with HRA and the corresponding selected PPO plan.

2. **Wage Schedule.**

E. Increase wage rates by 2.25%, 2.75%, and 2.75% effective pay period one in

2007, 2008 and 2009, respectively.

Add the following to the wage schedule:

Movement On The Pay Schedule

Employees shall progress from one step to the next on an annual or semi-annual basis depending on the job classification, based upon their anniversary date of hire.

Note: The 2009 pay schedule shall include a new step A that will be 5% less than the current step A on the 2009 wage schedule. All steps will be re-lettered accordingly (i.e. insert new step A; A becomes B; becomes C; etc.). Existing employees' movement on the pay schedule shall not be affected by the insertion of the new step A (i.e., one step for one year of one-half year of experience depending on the job classification). Movement from new Step A to new Step B shall be the same as under the previous pay schedule.

3. Article XV, Vacation, Section 2.

Change "20" years of continuous service to "18" years to receive 5 weeks' of vacation. (Effective 1/1/07).

TENTATIVE AGREEMENTS

The parties also agreed to a number of provisions/changes to the collective bargaining agreement. These are as follows:

1. Wage Schedule: A. Change the Maintenance Coordinator pay range from range 10 to range 11 with the following amounts for 2006:

2006	A	B	C	D	E
Bi-weekly	\$1387.43	\$1453.15	\$1519.69	\$1590.87	\$1666.61
Monthly	\$3006.10	\$3148.49	\$3292.66	\$3446.89	\$3610.99

The parties also agreed to three classification title changes.

2. Article VII, Insurance. Medical Benefits Plan. Delete and Insert:

The Employer shall provide health coverage equal to a level of benefits available to employees under the City of Oshkosh Medical Benefit Plan Master Document(s) effective January 1, 2007. The Employer agrees not to reduce the benefits during the life of the Contract. Changes in the participation of care providers listed on any preferred provider list shall not be viewed as a reduction in benefits.

The City may, from time to time, change the medical benefit plan administrators, PPO provider,

or method of funding for health coverage if it elects to do so. At least 30 days advance notice of any change in the medical benefit plan administrator, PPO provider or method of funding shall be provided to the Association. Whenever the City is considering any of these changes, the Association may provide input into a decision. This input is limited to advisory only and will not affect the City's responsibility to select a provider or administrator.

The City will implement a dual choice health plan: a PPO and an EPO.

Health Risk Assessment (HRA): Employee participation in the City's Health Risk Assessment (HRA) program is voluntary. To receive the preferred premium contribution rate, the employee must participate in the HRA. Participation by the employee's spouse in the HRA is encouraged but not required. Participation in the follow-up coaching program is recommended and is offered on a voluntary basis.

The City reserves the right to offer an HRA and select the HRA administrator in its sole discretion. The City shall pay for the costs to provide the HRA. In the event the City elects to discontinue the HRA program, employees shall contribute the preferred employee health insurance rates.

The City shall not be entitled to nor shall it receive individual participant HRA reports or information. The information received by the City concerning the HRA or participants shall be limited to an aggregate summary report which does not include individually identifiable information.

Not in Contract: Changes to Master Plan Document.

The following items are not in the Contract but will be changed in the Master Plan Document:

Health Insurance.

- A. The PPO out-of-network co-insurance will change from 70%/30% to 60%/40%.
- B. Both PPO in-network and out-of-network deductibles and co-insurance will be applied separately and independently (i.e., must satisfy both).
- C. Prescription Drug Co-Pays.
 - 1. EPO currently \$5/\$10/\$25 to \$5/\$20/\$35
 - 2. PPO currently \$5/\$20/\$25 to \$10/\$25/\$40
- D. Lifetime Health Maximum.
 - Change \$1,000,000 to: \$2,000,000 EPO/PPO in-network:
\$1,000,000 PPO out-of-network.
- E. To ensure compliance with WFTRA, the language defining dependent shall be changed as follows:

“Dependent children to the end of the calendar month in which they turn 19. After age 19, until the end of the calendar month in which they turn 24 or through age 23 if they are a full-time student.”

F. PPO Mail Order 2 x drug co-pay.

G. An employee must participate in the HRA for the employee to receive the preferred employee health premium contribution rate.

H. Employees who do not participate in the HRA will contribute the higher employee contribution rate for the remainder of the calendar year. The employee is not eligible to receive the preferred employee premium contribution rate until the following January 1.

Note: For implementation purposes, Article VII above and changes to the Master Plan document shall be effective as soon as administratively feasible after an arbitrator’s award or voluntary settlement.

3. Article XXIX, Duration. Change the dates to provide for a three year agreement from January 1, 2007 to December 31, 2009.
4. Agreement. Add to the second paragraph: “... existing harmonious relations between the Employer and its employees, to promote the morale, well being and security of said employee, to maintain a uniform minimum scale of wages. (No changes to remainder of provision).
5. Article IX, Section 2. Add: Employees who are required to work after being scheduled to do so by his/her immediate supervisor on an established holiday shall receive double (2x) their regular rate of pay for all hours worked in addition to the Holiday Pay.

STATUORY CRITERIA

Section 111.70(4)(cm) of the Municipal Employment Relations Act states in part:

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

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

7r. ‘Other factors considered.’ In making any decision under the arbitration procedures

authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

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

POSITION OF THE PARTIES

The parties submitted extensive and comprehensive briefs and reply briefs. Below is a summary of their arguments.

UNION'S POSITION

The Union argues the City has the financial ability to fund the final offer of the Union. The Union asserts the greatest and greater weight criterion are not principal to the instant matter except to note that the economic growth of the community in terms of the comparables supports adoption of

the Union's final offer. The Union also asserts there is no evidence in the record that demonstrates any State of Wisconsin imposed expenditure or revenue restriction. The Union also points out Oshkosh is one of the fastest growing communities in the comparable pool. The Union also avers evidence surrounding the financial state of the City is limited and points out the City stipulated at the hearing that "ability to pay" was not an issue.

The Union contends that in light of the lack of internal settlements external comparisons should carry more weight with the major issues in dispute, wages and health insurance. The Union argues the costing data supplied by the City is flawed and should be disregarded. The Union objects to the data on the following basis: (1) the data does not take into account turnover costs savings, (2) the data assumes health insurance participation by employees is static which it is not (Union Ex. 16.1), (3) the City costs step increases, (4) package costs statistics of the comparable communities are not included, and (5) the parties have not historically bargained on a package cost basis. The Union points out that amongst the nine distinct City of Oshkosh employee groups, two have only *meet and confer rights* (Police Supervisors and Fire Chiefs), one is the non-represented, and one, law enforcement employees, is settled. The Union argues that employees who only have meet and confer rights are not a valid comparable and points to *City of Oshkosh*, Dec. No. 27273-A, 6/7/1993, Chatman in support of its position.

The Union contends that of the six (6) bargaining units only one is settled. The other five (5) are in interest arbitration. Thus, only 74 of 479 employees (15.4 %) are settled. Therefore the Union argues one internal comparable does not carry weight in the instant matter and that the external comparables prove more instructive. The Union also asserts one settlement does not establish a settlement pattern.

The Union argues its wage proposal is supported when evaluated against the relevant criteria. The Union points out that the City's wage offer in 2007 and in 2008 ranks last when compared to the external comparables of Appleton, Fond du Lac, Green Bay, Menasha, and Sheboygan. The Union concludes that there is no reason the Union should have to accept a substandard wage increase and substantial changes in health insurance contributions given the external comparables.

The Union argues that the settlement pattern of the comparables better reflects changes in the cost of living than the Consumer Price Index (CPI). Particularly, herein, where there is a clear external pattern of settlements.

The Union also argues there is no compelling need to change the salary schedule for employees hired after January 1, 2009. The Union avers there is no external comparable support for the change and that the City did not offer a quid pro quo. The Union argues the current structure of 3 or 5 steps mirrors that of other public sector employees performing similar work. Of the comparables only one, Fond du Lac, has a six-step schedule and none require more than 48 months to reach the schedule maximum. The Union concludes its offer of the status quo is preferable.

The Union also points out agreed to changes in the health insurance plan will reduce current and future health insurance costs. The Union recognizes that health insurance costs are an ongoing and mutual problem that the parties need to jointly address. The Union stresses its willingness to

adopt plan design changes demonstrated a readiness to agree to solutions that will effectively reduce costs. However, the Union contends the City's proposed increases in employee contributions are too excessive and will do nothing to curb health insurance costs. The Union argues the City is seeking to change both the percent and dollar caps of the employee premium contribution and that it has failed to demonstrate a compelling problem exists, that the changes it seeks will address the problem and has failed to offer a quid pro quo. The Union points out that over the last four years the increases for the PPO and EPO have been minimal. The Union also argues that the lack of compelling need is demonstrated by the fact the 2007 EPO single and family premiums are less than they were in 2003. The Union also argues the premium share paid by employees is similar to that of the comparables. The Union also avers the City's Health Insurance fund balance currently represents 33% of expenditures and has grown so that the City did not increase premiums to the amount suggested by its health insurance consultants. Given the agreed to plan changes that will reduce health costs, the Union questions the need for other drastic measures.

The Union, concluding that the health insurance costs are not growing at an exponential rate, argues the City's proposal of shifting the cost of premiums to employees does not address such a problem. The Union asserts cost shifting does not contain rising health insurance costs. The Union argues the agreed to changes in the deductibles and co-pays do impact rising health insurance costs.

The Union, in acknowledging that there is a debate as to whether there should be a quid pro quo when health insurance changes are sought, avers the only quid pro quo offered by the City is to reduce the time necessary to reach twenty-five (25) vacation days. The Union points out this will only impact nine (9) employees of the sixty-four (64) employees in the bargaining unit. The Union concludes such a quid pro quo is inadequate. Particularly when some employees will see a 125% to 201% increase in their premium contribution while at the same time receiving a below average wage increase.

The Union also contends the overall compensation of employees is modest. The Union argues that wages are mid range even if the relatively favorable longevity provision is factored into comparison analysis. The Union does point out that the comparables offer premium pay for second and third shift work and for work on Saturday and Sunday. The Union also points out that vacation and holiday amounts fall within the comparable range. While the sick leave accrual is above average, the sick leave pay out is below average and the payout cannot be applied towards health insurance. The Union also points out Oshkosh is one of two of the comparables that does not have dental insurance. The Union concludes the "overall compensation" criterion supports selection of the Union's final offer.

CITY'S POSITION

The City contends the role of the Arbitrator is to put the parties in the same position as that which they would have achieved had the parties reached a voluntary settlement. The City argues that when the parties' offers are viewed in their entirety, the City's offer matches the pattern established by the other represented and non-represented employees. The City further argues that the Union's offer, as a whole, is unreasonable because it freezes the employees' contribution to health insurance premiums at the 2006 level. The City points out it reached voluntary settlements with the police employees, police department supervisors and fire department supervisors and

stresses non-represented employees received the same offer the City has made to the Union. The City contends that as this is one-third of its employees, this is a sizable number.

The City contends the major issue in the instant matter is the employees' contribution to health insurance with the City having the highest or second highest PPO premium amongst the comparables. The City also argues that while there were agreed to plan design changes, these changes will only have a modest impact on the cost of the premium. The City acknowledges that during the last round of bargaining, the parties agreed to a percentage and dollar cap amount for premiums. However, because the premium cost is so high, the dollar cap is kicking in. Thus, the percentage of the premium employees are paying is falling. The City argues the flaw in the Union's final offer is that it maintains the same percentage and dollar caps for all three years of the collective bargaining agreement. The City avers the partnership the parties created to make plan design changes needs to carryover to sharing the cost of the health insurance premium.

The City contends the major factor, herein, is the internal settlement pattern. The City argues the three settlements demonstrate where this voluntary settlement should be. Further, that equal treatment of all employees will ensure positive employee morale. The City also points out that since 2001 the employees have all settled at the same wage rate increase. The City avers this is a very important "other factor" under the statutory criteria. The City argues it has a good faith bargaining obligation not to exceed the deal struck with the police. The City also points out the settled employees are already undergoing the plan design changes while the instant bargaining group is not and, therefore, the Union should not expect a higher increase than the other employees.

The City contends the appropriate wage increase is a minor issue. The City argues that realistically the parties are not far apart on wages and points out that neither offer changes the ranking of salaries. The City avers the City's wage offer is competitive with the external comparables. The City also contends the other issues, salary schedule change, requiring new employees to pay the difference between the PPO and EPO plans and improvement in the vacation schedule are not as important as the health insurance and wage issues.

The City contends more money is devoted to benefits than to salaries. The City also points out that in 2008 while salaries under its offer increases 2.75%, benefits increase 9.3%. The City compares this to the Union's offer of 3.1% for salaries and 10.6% for benefits. The City concludes more money is being spent to maintain benefits than salaries. The City also points out the City's final offer package cost for 2008 is 5% or \$2,656 per employees and in 2009 the package costs is 4% or \$1,523 per employee while the Union's 2008 package costs is 5.6% or \$2,996 per employee and in 2009 the package costs is 4.5% or \$2,552 per employee. Over the life of the collective bargaining agreement the City's offer increases wages 8.2% and benefit costs increase 18.6% for a total package costs of 11.7%. The Union's increases wages 8.9% and benefit costs increase 21.1% for a total package cost of 13.1%. The City also stresses that even under its offer the amount of monies allocated to fringe benefits raises from 50% to 56%. The City notes here that the Arbitrator should accept the City's costing figures as the Union relies on the City's figures and they are the only ones submitted as evidence. The City also argues the cast-forward methodology is the most common and universal method of gauging the cost of a settlement.

The City asserts the City's offer best matches the internal settlement pattern and should be

selected on that basis alone. The City contends the settlement in the police union, two supervisory associations and the non-represented employees have established this pattern. The City points out this is 31 % of the City's employees (179 out of 572). The City argues that fairness dictated that once it reached a voluntary settlement the same offer be made to other unions. The City avers it is necessary to seek out consistency among represented employees, particularly in the area of health insurance with its significant costs. The City argues the Union's final offer upsets the delicate balance reached by the City with other employee units. The City asserts it is good public policy and a major consideration in contract negotiations to maintain an internal settlement pattern. Maintaining such a pattern also provides equity and stability.

The City also contends the City's proposed employee contribution to health insurance is reasonable. In support of this argument the City points to the testimony of the City's insurance facilitator Rae Anne Beaudry (Tr. pp. 12-16). The City has a partially self-funded plan with a stopgap loss of \$100,000 per employee. The City points out that in the 1995-97 collective bargaining agreement employees contributed 17.8% of the single premium and 12.4% of the family premium. The City stresses the dollar amounts paid by employees (\$27.75 single, \$76.75 family) were higher than the Union is proposing in 2009; 14 years later. The Employer argues this fact demonstrates the unreasonableness of the Union's final offer. The City points out it is only proposing 6% for the EPO and 7% for PPO in 2009. The City also argues this concept is the rationale for requesting new employees pay the difference for the richer PPO plan commencing with new hires in 2009. In 2002 the PPO was added and the City paid the full cost. In 2004 the EPO plan was added and an agreement reached that the employees would pay a higher percentage for the more expensive PPO plan. In the last collective bargaining agreement, the parties agreed employees would pay 4% for the PPO plan and 3% for the EPO plan with the following dollar caps:

PPO

Year	Single	Dual	Family
2004	\$20	\$35	\$50
2005	\$25	\$40	\$55
2006	\$30	\$45	\$60

EPO

Year	Single	Dual	Family
2004	\$15	\$25	\$30
2005	\$20	\$35	\$50
2006	\$20	\$40	\$50

The City points out that since 1999 the single PPO plan has increased 201% and the single EPO plan has increased 126%. The PPO family plan has increased 186% and the EPO family plan has increased 115%. The City points out health insurance cost increases have far exceeded the CPI over this same time frame. The City acknowledges in 2007 it tapped its reserve fund to keep increases in health insurance to 3% (PPO) and 2% (EPO). In 2008 both plans will increase 19% and in 2009 the

City estimates a 10 to 12 percent increase. In the instant bargaining unit 42 of the 55 employees (76%) select the more expensive PPO plan. The City also points out that in 2007 the PPO premium cost ranked highest amongst its comparables. The City contends PPO premium is significantly above the average and demonstrates the need to have employees pay a greater portion of the premium. The City stresses the PPO plan is an exceedingly rich plan. The City argues the Union's final offer, by maintaining the same dollar cap, fails to recognize the tremendous increase in health insurance costs. The City also stresses that the health benefits in Oshkosh are superior to those found in the public and private sector.

The City concludes the City's modest one percent increase in 2008 and 2009 and adjusted dollar caps to truly reflect the relevant anticipated premium cost, is amply supported by internal and external comparables, and, with the dollar caps, the actual percentage contribution will be less. The City avers the dollar caps become operable in 2008 and in 2009. The City contends the comparable employees are paying more towards health insurance premiums than in Oshkosh. The City also contends the trend is for employees to pay more towards the premium cost rather than less as the Union proposes. The City also notes the comparable communities have adopted plans with higher deductibles requiring more employee contributions with the City's two plans are the best plans found amongst the comparables. Here the City points out that in 2008 employees will only pay 5.5% of the PPO plan because of dollar caps. The City also points out that because of the Section 125 Plan, the after tax impact for employees is reduces the cost of their contributions.

The City also argues because the comparables overwhelmingly support the City's final offer and because of the tremendous increase in health insurance cost, no quid pro quo is required. Particularly when health insurance costs are rising so rapidly. The City argues the Union needs to shoulder some of this burden. The City contends given the comparables, the ten (10) year increase in health costs and the recent 19% premium increase, a mutual problem exists and, therefore, no quid pro quo is necessary. However, the City asserts because the Union is freezing employee contribution levels, the Union must provide a quid pro quo. The City concludes that were a quid pro quo required, the totality of its offer, improvement in wages, vacation and lifetime health maximum is ample quid pro quo.

The City also argues the City's final offer restores the integrity of the original agreement that specified a percentage contribution while the Union's final offer undermines the existing language. The City points out in the previous agreement the parties increased the dollar caps each year and notes the parties have done so since 2003. The City avers the Union's final offer in effect changes the status quo without a quid pro quo.

The City also argues that the Union's final offer is flawed because it freezes the employee's health insurance contribution rate at 2006 levels for HRA participants but increases the employee contribution rate for non-HRA participants. The City points out it increases the contribution rate for employees who do not participate in the HRA to 8% in 2007, 9% in 2008 and 10% in 2009. The Union increases the contribution rate for employees who do not participate in the HRA to 7% but also increases the dollar caps while not doing so for employees who do participate in the HRA. The City concludes this is flawed rationale.

The City also contends the City's "pay the difference" proposal for new hires after January

1, 2009 is reasonable given the fact the PPO plan has the highest premium of all the comparables. The City argues this allows the City to position itself for the future and to bring health costs under control. The City avers it is only fair to have employees who opt for a more expensive plan to pay the difference. The City also avers "pay the difference" is not a new concept is reasonable when current employees are grandfathered. The City points out the internal comparables agreed to this concept.

The City contends the City's offer is in the best interest and welfare of the public because it promotes equity among all employees and promotes accountability. The City also argues that if the Union's final offer is selected this will lead to whipsawing by other employee groups in the future and send a message not to settle voluntarily but to go to arbitration.

The City also contends the City's final offer is preferred when compared to internal and external comparables. The City points out the total package increase for the police was 10.5% while the City's final offer is 11.7% and the Union's is 13.1%. The City argues there is no reason why this unit should receive a total package increase that is 2.6% above the police settlement. The City also argues that when viewing the external comparables wages and health insurance must be linked because external settlements included changes in health care contributions and plan design. The City further argues the City's 2007 wage offer is slightly lower than the comparables because the parties were unable to reach a settlement to implement the plan design changes and thus thousands of dollars of savings have been lost. The City argues it should not have to offer a 3% lift when no health changes are being implemented and when the internal comparables accepted the 2.25% wages, plan design changes, and an increase in their contribution to the health premium cost. The City further argues the difference between the City's final offer of 2.75% and the Union's 2%-1% split is minimal but the Union's offer does defer the lift cost to the following year. The City concludes neither is preferred over the other when all of the factors in the instant matter are taken into account.

The City also points out that the City's final offer is above the cost of living and, therefore, should be preferred on this objective factor. The City points out over the last ten years the average wage increase has been 3.1% while inflation has averaged 2.5%. The City also points out the CPI increased at 5.5% over 2006 and 2007 and that it's 7.7% total package in 2007 and 2008 exceeds the CPI. The City concludes there is no doubt the employees will receive wage and fringe benefit gains in excess of the cost of living under the City's final offer and, therefore, the City's final offer is the most reasonable under this criteria.

The City also contends the overall compensation factor strongly supports the City's offer. The City believes that on a total package basis in comparison with other internal settlements, as well as the cost of living, the City's offer emerges as the most reasonable. The City, in acknowledging it does not have dental insurance, still provides a lucrative wage and benefit package to employees. The City argues providing these benefits to employees has a cost and that this cost is captured by the City's total package approach. The City urges the Arbitrator to accept this approach as the best way to meet the statute's total compensation criteria.

The City also asserts Winnebago County and the Oshkosh Area School District support the City's health insurance offer. The City acknowledges that both are larger employers than the City,

however, the City points out the employees are public sector employees and they live in the same geographic area. The City also points out the employees of these two employers pay more towards the health insurance premium, have lower total premium costs and school district employees have to pay the difference if they select a higher cost insurance plan.

The City also contends the City's final offer is preferable on the other issues in dispute. The City avers the increase in the vacation benefit was offered to all City employees and that this was part of the quid pro quo. The City argues the vacation improvement affects 14 of the 64 employees (22%) and argues this a significant number of employees. The City also points out it has provided double-time for work performed on holidays as another part of the quid pro quo.

The City contends the new wage step is needed to bring starting wages in line with the comparables. The City points out the new wage step will not impact any current employees.

The City also argues the presence of levy limits tips the scale to favor the City's final offer under the greatest weight criterion. The City argues the State of Wisconsin's expenditure restraint program and levy limits are having a significant impact on the City's ability to meet increasing demands for services. The City points out the levy limit was 2% for 2006, 2.783% for 2007 and 3.86% for 2008. The City argues a levy limit in 2009 of 2% will severely impact the City. The City also notes residents overwhelmingly rejected a referendum to impose a fee for refuse collection and to exceed levy limits.

The City also contends National, State and Local economies are perched precariously between slow growth and recession. Little or no job growth, high energy costs, sub-prime housing loan fiasco, foreclosures, declining home prices, shortage of mortgage and business credit, falling individual production and fears of inflation. The City argues this information demonstrates the City's more modest final offer is preferred when measured by the greater weight statutory factor. The City also points out Oshkosh's median household income ranks last amongst the comparables demonstrating ability to pay is much less than the comparables.

UNION'S REPLY BRIEF

The Union argues that contrary to the City's claim, the role of the Arbitrator is to determine which of the final offers is more reasonable, regardless of whether the parties would have agreed to that offer, by applying the statutory criteria. The Union also asserts that despite the fact there is one voluntary settlement and the Union's final offer differs from that settlement, the Union's final offer should not be deemed unreasonable, but that unreasonableness is determined by application of the statutory criteria.

The Union also disputes the City's assertion there is an internal settlement pattern. The Union does agree in general that arbitrators should follow internal settlement patterns. However, in the instant matter the Union asserts no internal settlement pattern has been established. The Union points out that of the City's 593 employees, 405 (over two-thirds) of the employees are proposing the same wage increase and health insurance offer as the Union. The Union claims that while this alone would debunk the claim of an internal settlement pattern the Union also points out over half of the claimed settled employees are non-represented employees. The Union

stresses only one (1) of six (6) represented bargaining units has accepted the City's offer (15% of the represented employees). The Union argues that one (1) settlement does not demonstrate a pattern exists.

The Union also argues the City has attempted to downplay the external comparables. The Union claims this because the external comparables do not favor the City's final offer. The Union maintains that the Union's final offer is supported by the external comparables and is to be preferred as the more reasonable. The Union asserts its wage proposal prevents the relative wage rate position of Oshkosh from eroding.

The Union also disputes the City's claim that wage rates and health insurance cannot be viewed separately. The Union points out the City's 2007 wage offer is the lowest of the external comparables, in 2008 it has the lowest lift, and in 2009 only Sheboygan is settled with a 2%/1.5% settlement. The Union argues the City proposes this low wage offer even though the Union has agreed to plan design changes that will save the City an estimated \$600,000 per year.

The Union points out there are six health insurance options available to employees and only 27% of the employees are enrolled in the high cost PPO plan. The Union argues the City has focused on this high cost plan to imply the cost is for all employees. The Union also asserts that when out-of-pocket costs paid by employees are factored in, Oshkosh employees pay an amount on par with, if not more, than the comparables. The Union concludes Oshkosh employees are within the range of the comparables and therefore the Union's offer is more preferable.

The Union also asserts that the City presented national information on private sector health insurance and stresses that *Criterion f* calls for information from the same and comparable communities. Therefore the Union argues the City's argument concerning that this criteria is unconvincing. The Union, in acknowledging that some employee paid premiums are lower today than historically, notes that today employees have pay deductibles and co-pays. Therefore, employees have higher out-of-pocket expenses. The Union also avers there is nothing flawed about its freezing health insurance premiums for HRA participants. The Union contends this serves as an incentive to encourage the non-HRA employees to participate.

The Union also argues the City's "pay the difference" proposal for employees hired after January 1, 2009 is a fatal flaw in the City's final offer. In effect, new employees would be paid a 5% lesser starting rate and a higher contribution rate for the PPO plan. The Union concludes such an effect is punitive and has no comparable support. The Union points out the City is asking employees to pay 62% increase in the premium EPO plan and a 110% increase in the PPO plan for those employees who participate in the HRA and 125% for the EPO plan and 201% for the PPO plan for those employees who do not participate in the HRA while at the same time offering a below average wage increase. The Union points out plan design changes are saving the City money, shifting premium costs do nothing to curtail health insurance costs.

The Union also argues the "pay the difference" proposal would be detrimental to the bargaining unit for years. The Union points out the EPO is similar to an HMO with limited coverage for out-of-network services. This would impact employees with students at out-of-

state colleges and retirees. The Union avers the real attempt of the City is to phase out by cost the PPO plan.

The Union also claims the City's salary structure change is substantial and would have a significant negative impact on employees. The Union argues that the burden is on the City to demonstrate a need for this change and avers that the City has failed to do so. The Union also argues such a change should have a quid pro quo and there is none offered by the City. The Union asserts that because this proposal only impacts future employees it does not, on its face, demonstrate reasonableness. The Union points out this will result in a two tiered wage schedule and new employees will question why they have a longer time frame to reach the schedule maximum while performing the same duties as other employees.

The Union questions the City's costing of both offers because it fails to take into consideration turnover and because the City failed to present total package costing of any of the comparables. The Union also questions the validity of the City's costing of the internal police settlement because the costing took into account premium savings that did not occur resulting in the instant bargaining unit being portrayed as having a higher package cost.

The Union also argues the cost-of-living argument should be compared to wage proposals not total package. The Union argues this is so because it is wages, not the City's total cost, that insulate employees against the erosion of the dollar caused by inflation. The Union notes the CPI is based upon a sampling of the prices of food, clothing, shelter, fuel, transportation, and other goods purchased by consumers for day to day living. The Union concludes this factor therefore supports either final offer.

CITY'S REPLY BRIEF

The City contends the fundamental dispute, herein, is the employee's contribution to health insurance. The City avers the parties are relatively close on wages and argues the new salary schedule step, increased vacation and "pay the difference" proposals are not as important. The City also argues the plan design changes are a "one-time" savings and will not reoccur. The City again stresses the City should not have to bare alone the problem of containing health insurance costs. The City asserts the City's final offer strikes a balance between having employees contribute a reasonable amount as measured by what comparable employees do.

The City claims the Union misleads the greatest weight statutory factor because this criteria requires the Arbitrator to take into account the presence of levy limits. The City argues it is the presence of levy limits that impacts the City's ability to pay. The City asserts it only has so much money and when more funds are allocated to fringe benefits it is at the expense of something else in the budget.

The City, acknowledging that the income level in Oshkosh has grown by a higher percentage than other communities, stresses that Oshkosh's adjusted gross income is 9.2% below average. The City argues current economic conditions demand a moderation in wage and

benefits. The City also stresses that it is in the interest and welfare of the public to ensure employees pay their fair share of expensive fringe benefits.

The City again stresses the internal comparables are more important for resolving the health insurance issue. The City is not asserting it has an inability to pay argument, but arguing it will have difficulty paying the Union's offer. To demonstrate this, the City has used cast forward methodology to costs the parties proposals and the City asserts close attention must be given to total costs when such information is available. The City also asserts supervisory units, as well as non-represented employees, are appropriate comparables. The City urges the Arbitrator to give weight to the internal comparables, as they comprise one-third of the City's employees. The City also asserts the Police settlement is an important precedent.

The City also contends that because the increase in the cost of benefits exceeds the increase in salaries by a significant amount and because the Union's final offer fails to contribute more towards health insurance, the Union's final offer unreasonable. The City argues health insurance is not a given. Scarce dollars must be divided appropriately. The City avers integrity must be put back into the system that recognizes that as health costs escalate so does the employee contribution towards payment of the premium. The City also asserts the CPI criteria must stand alone as a factor and argues that used to judge the reasonableness of the parties offers. The City also avers the addition of one new step for employees hired after July 1, 2009 and the "pay the difference" proposal is a fair way to implement a change that will have no impact on current employees.

The City also argues that the Union's claim that the agreed to plan design changes results in no need to increase employee contributions is faulty for two reasons. First, the savings are a one-time savings. Second, dollar caps are preventing the City from realizing the deal that was originally struck, 4% and 5% employee contributions. The City argues that while plan design changes are important, the City must turn to premium contributions as a way to moderate the cost of health insurance. Particularly when comparable employees are paying more towards the premium cost. The City asserts health insurance must be addressed on an annual basis. The City concludes the City's proposed employee contributions to health insurance are reasonable. The City does acknowledge the EPO is closer to the comparable average but stresses this is why the City needs employees to contribute more towards the more expensive PPO plan. The City also argues other public and private sector benefit data is relevant and should not be dismissed by the Arbitrator. The City concludes both public and private external comparables support selection of the City's final offer. Particularly since the comparables have employees increasing their share of the cost of the health insurance premium, and, when the Union's final offer would have the parties moving in the opposite direction.

The City also asserts it has demonstrated a compelling need to control health insurance costs. The City points out there is a 19% increase in 2008, a 10% to 12% increase anticipated for 2009 and health insurance costs are a significant part of the total budget. The City concludes the Union's final offer does not go far enough to address the problem, and, in effect, ignores the problem by regressing with frozen dollar caps. The City asserts this regression results in the need for the Union to provide a quid pro quo, which it does not. The City stresses any quid pro quo requirement it faces is satisfied by the improved vacation schedule.

The City points out the overall compensation of City employees are near the top and exceed the average. The City concludes the City's final offer addresses the critical need to have employees contribute their fair share of the cost of providing health care. The City would have the Arbitrator find the City's final offer more reasonable.

DISCUSSION

The Municipal Employment Relations Act states arbitrators shall consider and give the greatest weight to any enactment that places limitations on expenditures that may be made or revenues that may be collected by the municipal employer. This is the primary factor an Arbitrator is to consider. It is not an ability to pay argument. It is a question of whether the State imposed limitations prevents the employer from paying the Union's final offer. The City has not claimed it cannot pay the Union's final offer. The City has argued that selection of the Union's offer will force it make changes in services to maintain its budget and presented arguments that over the life of the three-year collective bargaining agreement the parties are approximately \$85,000.00 apart. Over three years this amounts to less than one tenth of one percent of the City's budget. Given this small difference, the Arbitrator concludes the limitations imposed by the State do not have an impact on either final offer and, therefore, the greatest weight factor favors selection of neither final offer.

The Municipal Employment Relations Act also states the Arbitrator shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the other factors. If economic conditions do not have an impact on either final offer then the greater weight factor favors selection of neither offer. Here, again, we are talking about a relatively small difference between the costs of the two final offers. While the City has demonstrated that the residents of Oshkosh have the lowest median household income, \$48,504 (City Ex. 39) the Union has demonstrated Oshkosh is the fastest growing community in population, per capita value, and adjusted gross income (Union Ex. 9). Again, given the small difference in cost between the two final offers, the Arbitrator concludes the greater weight factor favors selection of neither offer.

The Municipal Employment Relations Act identifies ten other factors the Arbitrator is to consider. The Arbitrator finds that there is no dispute that the District has the lawful authority to implement either offer (Factor a).

The parties dispute the relative weight to be given to Factor b, the stipulations of the parties. The City believes the stipulations should carry little if any weight. For the most part the stipulations are minor: a change to one classification's wages, some job title changes, duration, and double time for work performed on Holidays. However, the agreed to changes in the Health Plan will save the City an estimated \$600,000. This is a permanent change in the Health Plan and contrary to the City's claims, not a one-time event. Once the change becomes effective, the City will maintain the savings in future years, thus slightly slowing the continued escalating costs of health insurance. The Union, pointing to the plan design changes and the savings, believes this factor favors selection of the Union's final offer. However, as the City has pointed out, these changes have a minimal impact on the employees and the savings do not commence

until all employee groups have been settled. Therefore, the Arbitrator finds that while Factor b favors selection of the Union’s final offer, it only does so slightly.

Factor c, interests and welfare of the public, requires the Arbitrator to give weight to the interests and welfare of the public and the financial ability of the City to meet the costs of the proposed settlement. At the hearing and in its brief the City has acknowledged the instant matter is not an “ability to pay” issue. In effect, the City has acknowledged it has the financial ability to fund either offer. Thus, this portion of Factor c does not favor selection of either final offer. The City has claimed the interests and welfare of the public is promoted by maintaining the integrity of earlier settlements, restoring integrity to the percentages paid by employees towards health insurance premiums, ensuring all employees receive the same wage increase thus preventing whipsawing by employee groups in the future, and ensuring employees pay their fair share of the expensive health insurance premium similarly to what the comparables pay. All of these efforts keep costs down and lower costs are in the interest and welfare of the public. However, the interests and welfare of the public is also served by maintaining a qualified, productive workforce. Herein, the City is also proposing changes in the wage schedule and a “pay the difference” proposal that will only impact new employees thus creating two distinct groups of employees, those grandfathered and those who are not. The Union argument that this can lead to future morale and bargaining problems is not without merit. Therefore, given the small difference in the costs of the two final offers, the Arbitrator concludes Factor c does not favor selection of either final offer.

Factors d, e and f are the comparability factors. Both parties acknowledge the health insurance is a major issue in the instant matter with the City claiming it is the primary issue and the Union arguing health insurance and wages are the primary issues. In 2006 fifty-five (55) bargaining unit employees participated in the health insurance plans (City Ex. 12):

	<u>PPO</u>	<u>EPO</u>
Family	17	6
Dual	12	1
Single	13	6
Total	42	13

The parties do not dispute that the external comparables are Appleton, Fond du Lac, Green Bay, Menasha, Neenah and Sheboygan. Only Oshkosh has a Dual option (employee plus one). Both Appleton and Neenah offer three (3) plan options to employees, Menasha offering two (2) and with the remainder of the comparables offering only one option. In 2007 they had the following premium costs and employee contributions (City Ex. 50):

		Employer Contribution	Premium Cost		Employee Contribution
			Single	Family	
Appleton	Plan A	100%	410.51	1065.39	\$0
	Plan B	S 93% F 94%	430.08	1114.48	S \$25 F \$50
	IPlan	100%	388.20	1010.76	\$0

Fond du Lac		S 95% F 95% Em Max S \$20 F \$50	385.00	990.00	S \$20 F \$50
Green Bay		92.5%	539.74	1307.49	S \$40.48 F \$98.06
Menasha	HMO	S 95% F 95% Em. Max \$60	399.01	1290.81	S \$19.95 F \$64.54
	POS	S 92% F 92% Em Max \$125	452.59	1464.14	S \$36.21 F \$117.13
Neenah	NU	92.5%	417.00	1155.09	S \$31.28 F \$86.63
	SP	95%	385.48	1067.78	S \$19.27 F \$53.39
	HD	100%	346.96	961.07	\$0
Sheboygan		95% Em. Max \$40	570.03	1425.08	S \$28.50 F \$71.25
City Offer	PPO	95% Em Max S \$30 D \$54 F \$75	597.00 Dual	1492.00 1076.00	S \$29.84 F \$74.60
	EPO	96% Em. Max S \$18 D \$32 F \$45	448.00 Dual	1119.00 807.00	S \$17.92 F \$44.76
Union Offer	PPO	95% Em Max S \$30 D \$45 F \$60	597.00 Dual	1492.00 1076.00	S \$29.85 F \$60.00
	EPO	96% Em. Max S \$20 D \$40 F \$50	448.00 Dual	1119.00 807.00	S \$17.92 F \$44.76
Average		96%	431.53	1162.93	S \$19.89 F \$53.03

The City concentrates its arguments on the cost of the PPO plan rates, stressing it is traditionally the highest amongst the comparables. As noted above, seventeen (17) employees take the family plan and thirteen (13) take the single plan, however, twelve (12) take the dual option. This option reduces the cost of the family premium by \$445. As the Union has noted, the result is only approximately 30% of the employees are enrolled in the most expensive option, the PPO family plan. A careful review of the comparables demonstrates that the City's employees who participate in the EPO plan have the fourth lowest family premium and that the average employer contribution is 96%. Herein, the City is proposing to increase the employee contribution for EPO participants who enroll in the HRA one percent in 2008 and one percent in 2009 and for those who do participate in the HRA to eight percent in 2007, nine percent in 2008 and ten percent in 2009. While the arbitrator recognizes the need for incentives to have employees participate in the HRA, the comparables clearly do not support the increases sought by the City. The Arbitrator would note that the Union has proposed that those employees who do not participate in the HRA contribute seven percent towards the premium. The Union has also

proposed freezing the dollar caps for those employees who do participate in the HRA, effectively, as the City pointed out, reducing the percentage of the premium paid by employees. The City has argued that this is unreasonable. However, two of the comparables, Appleton and Neenah, offer plans that require zero contribution by employees.

While both offers provide incentive for employees to participate in the HRA, the City’s proposal would have employees paying up to ten percent of the premium if they do not do so. This is clearly not supported by the comparables. The City is also proposing that a new employee hired after January 1, 2009 pay the difference between the PPO plan and the EPO plan. This would amount to a (\$1492 - \$ 1119 = \$373) twenty-five percent employee contribution. None of the above comparables have such a requirement. Therefore, while the Arbitrator notes there are flaws in the Union’s Health Insurance proposal, and, as the City has argued, the Union final offer does not go far enough, the City’s final offer goes too far. The Arbitrator finds the above comparables favor selection of the Union’s final offer.

The City has also asserted that the internal comparables favor selection of the City’s final offer. While the City has applied the City’s final offer to non-represented employees, unilateral actions do not establish a settlement pattern. Similarly, two of the groups identified by the City only have only *meet and confer rights*. Therefore, they do not establish a settlement pattern. Of the City’s six (6) bargaining units only one has settled voluntarily. The other four, like this one, are in interest arbitration. While the City has also argued the City has traditionally treated all employees in a similar way, in particular with regards to wages and health insurance, and acceptance of the Union’s final offer will alter what the parties have traditionally done, one bargaining settlement does not establish a settlement pattern. Therefore, the Arbitrator finds no merit in the City’s claim there is an internal settlement pattern.

Similarly, the City has pointed to Winnebago County and the Oshkosh Area School District as external comparables that support selecting the City’s final offer. However, both are larger employers than the City. At most they demonstrate a sharing of premium costs and contribute to the argument that the trend is for employees to shoulder a greater part of the costs for health insurance. As does the private sector data supplied to the Arbitrator by the City. The private sector data also demonstrates that the Union’s offer does not go far enough. The City offer, as noted above, goes too far. The Arbitrator therefore concludes Factors d, e and f favor selection of the Union’s final offer on health insurance.

The parties are fairly close on wages. A review of the external comparables demonstrates the following:

Wages:

Municipality	Unit	2006	2007	2008	2009
Appleton	City Hall	3%	2.75%	2%/1%	
	Parking	3%	2.75%	2%/1%	
Fond du Lac	Comb	3.5%	2.75%		

Green Bay	City Hall	2.8%			
	Assessors	2.8%			
Menasha	City Hall	3%	2%/1%		2.5%/1.5%
Sheboygan	City Hall	2.5%	3%	3.25%	2%/1/5%
Ave Lift		2.94%	2.85%	3.31%	
Union		2.75%	2%/1%		2%/1%
2%/1%					
City		2.75%	2.25%	2.75%	2.75%

The above data demonstrates the City's final offer is low in the first and second year. The data also demonstrates there is only one settlement in 2009, which is higher than both the Union's and City's final offer, there being insufficient data to reach a conclusion. The City has argued it has a low offer in 2007 because it was unable to achieve the plan design savings and low wage offer in 2008 because it will not achieve plan design changes until all collective bargaining agreements have been resolved. However, even if the Arbitrator were to accept the City's argument that no *quid pro quo* is necessary for the City's health insurance proposal, a less than comparable wage increase is not justified when an employer is seeking significant health insurance concessions. The Arbitrator notes he has concluded above there is no internal settlement pattern. Therefore, the Arbitrator finds Factors d, e and f favor selection of the Union's final offer.

The City is also proposing to increase each range of the salary schedule one step by making a new step five percent below the existing entry-level wage. The Union is proposing the status quo be maintained. The Current ranges are as follows (Union Brief Table 5):

Range 1	3 steps	12 months to maximum
Range 2 & 3	5 steps	24 months to maximum
Range 4 to 10	5 steps	48 months to maximum
City's proposal		
Range 1	4 steps	18 months to maximum
Range 2 & 3	6 steps	30 months to maximum
Range 4 to 10	6 steps	60 months to maximum

The comparables have the following step systems (Union Brief Table 4):

Appleton	City Hall	5 steps	48 months to maximum
	Parking	3 steps	18 months to maximum
Fond du Lac		6 steps	30 months to maximum

Green Bay	City Hall	2 steps	6 months to maximum
	Assessors	3 steps	12 months to maximum
Menasha		5 steps	43 months to maximum
Sheboygan		5 steps	42 months to maximum

Only Fond du Lac has a six-step system, taking 30 months to reach the maximum. None of the comparables require 60 months to reach the maximum. Clearly there is no comparable support for the City's final offer. There is also no compelling evidence in the record as to why the City needs to lengthen the amount of time needed to reach the maximum of the salary range (e.g., significant turnover in the first 60 months of employment). Further, as the Union pointed out, there is *no quid pro quo* for this change. The Arbitrator notes here the change in vacation for employees with eighteen years of service impacts a few employees and is insufficient to justify lengthening the salary schedule to sixty months and reducing the starting pay by five percent. Therefore, the Arbitrator concludes Factor d, e and f favor selection the Union's position.

Factor g, the cost of living is generally tied to the consumer price index (CPI). Both parties' offers exceed the CPI and over the past decade the CPI has been stable, running around two to three percent per year. In one aspect the employees are safeguarded from the CPI because they have employer provided health insurance. In another aspect an employer is not safeguarded because the CPI, while including certain medical costs, does not include the increasing costs of health insurance premiums. Further, because of the escalating cost of energy prices and the effect that will have on the purchasing of other goods and services, it is unclear what the cost of living will be like for the remainder of the collective bargaining agreement. Therefore the Arbitrator finds Factor g does not favor the selection of either final offer.

Factor h, the overall compensation received by municipal employees. Reviewing the information received from the parties it is evident the City's employees receive comparable wages and benefits. The City's employees do have a better longevity program. However, four of the six comparables provide dental insurance (City Ex. 56). Generally they have the same vacation, holidays and sick leave benefit. The City has also argued the Union has refused to look at total costing of the package. However, this is not unusual for unions to do because of the employer's costing of step increases. Unions view step increases as an item brought and paid for and assert there is actually a cost savings for an employer because most employees in clerical positions have mastered the job in a short period of time. In addition, as the Union pointed out, there is no comparable total package data. Thus, while the Arbitrator is neither accepting nor rejecting the City's total package costing, the Arbitrator does not have any data to compare it to. It is evident that Oshkosh employees have a better longevity program that commences after an employee has five years of service at \$ 2.77 bi-weekly (Union Ex. 3, City Ex. 2). The dental plans of the comparables in 2006 ranged from \$71.00 monthly paid by the employer to \$106.71 paid by the employer (City Ex. 56). While the dental plan is a far better benefit, the Arbitrator concludes because of the similarity of most of the wages and benefits Factor h does not favor the selection of either offer.

Factor i, changes in circumstances. Since the close of the hearing the Arbitrator has received three arbitration awards involving three of the City's five bargaining units that have gone to interest

arbitration. Dec. No. 32153-B, Union final offer selected; Dec. No. 32150-A, Union final offer selected; and Dec. No. 32148, Union final offer selected. While the Arbitrator may not necessarily agree with all of the rational used in rendering the decisions, the Arbitrator concludes that Factor i favors selecting the Union's final offer.

Factor j, other factors traditionally taken into consideration. Under Factor j arbitrators are to take into consideration other factors traditionally taken into consideration in determining wages, hours and conditions of employment. Herein, the City has pointed to bargaining history and argued that the Union is negating the historical integrity of employee contributions to health insurance. The Arbitrator agrees this is a flaw in the Union's final offer. The Union proposal freezes employee contribution caps for PPO and EPO participants that enroll in the HRA. This is clearly contrary to what the parties have done in the past and contrary to what the comparables are doing. The net effect is PPO with HRA participants will pay much less than 5% of the premium and EPO with HRA participants will pay much less than 4% of the premium. However, the Arbitrator finds this to be the only flaw in the Union's final offer and, therefore, concludes that Factor j slightly favors the City's final offer.

Having found that only Factor j favors selection the City's final offer and that Factors b, d, e, f, and i favor selection of the Union's final offer the Arbitrator concludes the Union's final offer is the more reasonable. The City's final offer is unreasonable in attempting to change too much of the health insurance contributions at one time, with a low wage offer, and a salary schedule change. Therefore, based upon the above and foregoing the Arbitrator concludes, after full consideration of the testimony, exhibits and arguments of the parties and their relevance to the statutory criteria of 111.70(4)(cm)7, that the Union's final offer shall be incorporated into the 2007-2009 collective bargaining agreement.

AWARD

Having considered all the statutory factors, and all the evidence, testimony and arguments presented by the parties, the Union's final offer is more reasonable than the City's final offer. The parties are directed to incorporate the Union's final offer into their 2007-2009 collective bargaining agreement.

Dated at Sun Prairie, Wisconsin, this 12th day of May 2008.

Edmond J. Bielarczyk, Jr., Arbitrator

EJB/mmb