In the Matter of the Final and Binding
Interest Arbitration of a Dispute Between

CITY OF OSHKOSH

and

OSHKOSH CITY EMPLOYEE UNION,
LOCAL 796, AFSCME, AFL-CIO

Case 357
No. 66423
INT/ARB-10820
Decision No. 32150-A

Arbitrator: James W. Engmann

Appearances:

Mr. William G. Bracken Labor Relations Coordinator, Davis & Kuelthau, S.C., Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, WI 54903, appearing on behalf of the City of Oshkosh.

Ms. Mary Scoon, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, W5670 Macky Drive, Appleton, WI 54915, appearing on behalf of Oshkosh City Employee Union, Local 796, AFSCME, AFL-CIO.

ARBITRATION AWARD

The City of Oshkosh (City) is a municipal employer which maintains its offices at the Oshkosh City Hall, 215 Church Ave., Oshkosh, WI 53901. Oshkosh City Employee Union, Local 796, AFSCME, AFL-CIO (Union), is a labor organization which maintains its mailing address at W5670 Macky Dr., Appleton, WI 54915, and which, at all times material herein, has been the exclusive collective bargaining representative for all regular, full-time employees of the City employed in the Department of Public Works (Street, Central Garage, Sanitation, Sewage, Water Warehouse, Water Plant Filtration), Parks Department (Forestry, Cemetery, City Parks), and full-time Department of Transportation employees (Transit, Traffic Engineering), excluding only the supervisors and professionals.

The City and the Union have been party to a series of collective bargaining agreements, the last of which expired on December 31, 2006. The parties exchanged their initial proposals and bargained on matters to be included in the successor agreement. On October 30, 2006, the City filed a petition with the Wisconsin Employment Relations Commission (Commission) requesting the Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA). An investigation was conducted by a member of the Commission staff on February 6, 2007, which reflected that the parties were deadlocked in their negotiations. On or before June 28, 2007, the parties submitted their final offers and stipulation on matters agreed upon, after which the Investigator notified the parties that the investigation was closed. The Investigator also advised the Commission that the parties remained at impasse. On July 6, 2007, the Commission certified that the conditions precedent to the initiation of arbitration as required by statute had been met and ordered the parties to select an arbitrator from a panel of

arbitrators submitted by the Commission.

The parties selected the undersigned to serve as the impartial arbitrator in this matter and advised the Commission of its selection. On August 9, 2007, the Commission appointed the undersigned as arbitrator to issue a final and binding award, pursuant to sec. 111.70(4)(cm)6. and 7. of MERA, to resolve said impasse by selecting either the total final offer of the City or the total final offer of the Union. Hearing was held on November 12, 2007, in Oshkosh, WI, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. A portion of the hearing was transcribed. The parties filed briefs and reply briefs, the last of which was received February 1, 2008, after which the record was closed. Full consideration has been given to all of the testimony, exhibits and arguments of the parties in issuing this Award.

FINAL OFFERS

City

1. Wage Schedule.

   A. For new hires (hired after January 1, 2009) the following wage schedule will apply for Transit Operator/Mechanic and Transit Operator:

      Start 1 Year 2 Years 3 Years 4 Years 5 years

      $13.58 $15.04 $16.50 $18.05 $18.36 $28.67

      Wages are shown in 2006 dollars and will be adjusted according to paragraph B of this same section.

   B. 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 pay 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 on 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 relettered accordingly (i.e., insert new step A; A becomes B; 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 or 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.

2. Article XV, Insurance - Medical Benefits Plan. Insert after third paragraph under 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 an Arbitrator's award, employees will contribute 5% up to a maximum of $30 per month toward 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 **EPO With** Health Risk Assessment.

Effective as soon as administratively feasible after a voluntary settlement or an Arbitrator's award, employees will contribute 4% up to a maximum of $18 per month toward 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 an Arbitrator's award, employees will contribute 8% up to a maximum of $48 per month toward 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, 2009, 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 an Arbitrator's award, employees will contribute 8% up to a maximum of $36 per month toward 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, 2009, 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 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.

3. Article XIII, Vacation. Change "20" years to ""18" years for 5 weeks vacation.

(Effective 1/1/07).

Union

1. Article XV – 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 single; $50 per month towards 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 toward single; $55 per month towards 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 toward single; $60 per month towards 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 toward single; $45 per month towards 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 toward single; $50 per month towards 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 toward single; $55 per month towards 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 toward single; $45 per month towards dual and $60 per month towards 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 toward single; $40 per month towards dual and $50 per month towards family premium equivalents.

5. Salary Schedule

General Wage Increase:	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%

ARBITRAL CRITERIA

Section 111.70(4)(cm) MERA states in part:

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

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal 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 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.

POSITIONS OF THE PARTIES

City on Brief

The City argues that its offer best matches the internal settlement pattern and should be selected on that basis alone; that the City's proposed employee contribution to health insurance is reasonable; that Oshkosh must control its health insurance costs and employees must pay their fair share; that the health benefits in Oshkosh are superior to those found in the public and private sector; that the City has proposed a modest one percent increase in the employee's contribution rate in 2008 and 2009 which is amply supported by the internal and external comparables; that, however, given the dollar caps, the actual percentage contribution will be less; that because the comparables overwhelmingly support the City's offer and because of the tremendous increase in health costs, no *quid pro quo* is required; that the City's offer restores the integrity of the original agreement which specified a percentage contribution while the Union's offer undermines the existing contractual language; that

the Union's offer is flawed and inconsistent because it freezes the employee's health insurance contribution rate at 2006 levels for HRA participants, but increases the employee contribution rates for non-HRA participants; that the City's "pay the difference proposal" between the EPO and PPO plans for new hires selecting the PPO plan after January 1, 2009 is reasonable; that the successful operation of the joint labor-management health insurance committee is in everyone's interest; and that the City agrees with its insurance consultant's recommendations regarding employee contributions to health insurance.

In terms of the statutory criteria, the City argues that its offer is in the best interest and welfare of the public because it promotes equity among all employees and promotes accountability; that the City's wage proposal is preferred when viewing the internal and external settlement pattern and wage rates; that the City's final offer is above the cost of living and should be preferred on this objective factor; that the overall compensation factor strongly supports the City's offer; that Winnebago county and the Oshkosh area school district -- two other public sector comparables -- support the City's health insurance offer; that the City's offer is preferred on the other remaining issues; that the transit operator's wage rate is out of line and must be adjusted to reflect market conditions; that the City's improvement in vacation reflects the *quid pro quo* given to other settled City employees; that the City's proposed new wage step is needed to bring its starting wages in line with the comparables'; that the presence of levy limits tips the scale to favor the City's offer under the greatest weight criterion; and that the national, state and local economies are perched precariously between slow growth and recession -- favoring the City's more modest offer.

In conclusion, the City argues that, based on the evidence, testimony and exhibits presented, the following conclusions emerge: that the major issue in this case is the appropriate contribution employees should make to support the two health insurance plans offered by the City; that the City's PPO plan is extremely expensive when compared to the cost of the comparables' plans; that the City's offer seeks to have employees contribute their "fair share" of the costs as measured by what other employees contribute in the City and external comparables; that the Union's offer, by freezing the employee's fixed dollar contribution at 2006 levels, is unreasonable on its face and cannot find any support in the comparables; that the internal settlements reached with police, police supervisors, fire supervisors and non-represented employees prove the reasonableness of the City's offer and provide the best indicator to the arbitrator of where this settlement should be; that these employees have already faced one full year of plan design changes and increased health insurance contributions; that to grant the instant Union more will send a terrible message to any Union that settles with the City first; that the parties are so close on the wage rate increase, either offer is reasonable; that the City has articulated compelling reasons to modify the transit operator wage rate, require new hires after january 1, 2009 who select the expensive PPO plan to pay the difference and add a new hiring step on the pay scale; and that for all of the above reasons, the City respectfully requests that the arbitrator select its offer.

Union on Brief

The Union argues that, in terms of the statutory criteria, the City has the financial ability to fund the Union's final offer; that the greatest weight factor is not leading to the instant case; that the City is

one fastest growing cities of the comparable pool; that the City stipulated at the hearing that ability to pay was not an issue; that external comparables prove more instructive in the instant matter; that as stated in the objections of the Union at the hearing, the package costing data forwarded by the City is flawed and should be disregarded by the Arbitrator; that cast forward costing statistics have been disregarding by other arbitrators; that supervisory units are not comparable; that one unit has settled on the City's terms but five units are in interest arbitration (DPW, Firefighters, Paraprofessional, Professional and Library); that in terms of the number of employees with full bargaining rights, only 74 of 479 (15.4 percent) of the Unionized employees have settled; that this internal comparability is not a pattern; that the Union wage proposal is supported when evaluated against relevant criteria; that the settlement pattern of external comparables strongly support Union offer; and that the comparable settlements more instructive than consumer price index.

The Union also argues that major reconstruction of the wage schedule is unnecessary and unsupported; that given the lack of compelling need, the lack of comparable support for the City's final offer, and fact that these proposals are best left to bargaining, the Union's offer of the status quo is preferred; that the City's final offer will create a two-tiered salary schedule amongst transit employees; that the City as the moving party regarding the salary structure proposals must provide compelling evidence to show the significant changes sought are needed and appropriately address a problem; that the City has not met its burden; that the City provides no *quid pro quo* for this major change; that agreed upon changes by the parties will effectively reduce current and future health care costs; that this significant savings is a result of the parties coming together and agreeing to effectual changes to the health insurance plans; that the City's proposed increase in employee contributions are too excessive; that the cost of health insurance in Oshkosh is not rising at an out of control rate; that there is no compelling need to change the premium share; that the City's proposal lacks an adequate *quid pro quo*; that the overall compensation of the unit's members is modest; wage levels are on the low side of the comparability group even if the relatively favorable longevity provision is factored into the comparison analysis; and that the Union's wage offer is not a catch-up proposal, but an offer far more reflective of the external settlement than the City's.

In conclusion, the Union argues that the record shows that its offer is reasonable and strongly supported by the external comparables both in terms of wage increases and health insurance; that the Union has agreed to a number of insurance concessions: that these plan design changes will result in a substantial savings to the City; that the Union's agreement to the health insurance plan design changes prove the Union's willingness to work with the City in order to control the costs of healthcare; that not only is the City's wage proposal below average, the City is seeking changes to the salary schedule which is a true loss of income and not supported by the record; that the Union's wage offer provides wage rates that better maintain the earnings of City employees relative to the comparables; that the City's *quid pro quo* for the substantial changes in health insurance, the below average wage offer, and the major revisions to the salary structure is outrageous given the Union's reasonableness; that the City fares quite well economically; that its growth has exceeded the growth of all the comparable municipalities; that this growth has brought about a strong growing tax base in terms of both income and property wealth; that the record is void of any evidence to prevent the City from affording the Union's final offer; and that, based upon the reasoning contained herein and the record as a whole, the Union asks the Arbitrator adopt its final offer.

City on Reply Brief

The City argues that the Union misreads and misapplies the statutory factor that requires the arbitrator to give greatest weight to the presence of levy limits for it is the presence of levy limits and not the true inability to pay that is of importance; that the greater weight factor of local economic conditions has deteriorated to the point that the arbitrator should select the city's more modest offer; that the interest and welfare of the public is found in the City's offer; that the internal comparables are more important for resolving the health insurance issue; that the cast forward costing is commonly accepted and is the appropriate way to measure any proposed settlement; that supervisory units are appropriate comparables; that the police settlement is an important precedent; that the wage issue is less important than the health insurance issue; that it is important that the arbitrator keep in perspective which issue is the most important in this proceeding: health insurance premium contribution; that the consumer price index must stand alone as a separate independent statutory factor and is best met with the city's offer; that the city's proposal to add one step is a minor issue; that the new hiring step is warranted; that the transit operator wages must be revised; that "Grand fathering" current employees is a reasonable way to "phase-in" changes; and no *quid pro quo* is required.

In addition, the City argues that the parties' tentative agreement to adopt health insurance plan design changes involves one-time savings and is not a permanent solution; that the city's proposed employee contributions to health insurance are reasonable; that the City has established a compelling need to control health costs; that the Union's proposal does not go far enough in addressing the problem; that a *quid pro quo* by the City is not needed in this case; and that the overall compensation for City of Oshkosh employees is near the top.

In conclusion, the City argues that the critical issue in this case is the level of the employee's contribution to health insurance; that the City's offer addresses the critical need to have employees contribute their fair share of the cost of providing this expensive benefit; that the Union's offer, by maintaining the same employee contribution made in 2006 via dollar caps, distorts the percentage that both parties agreed upon; that the Union's offer will have employees contributing less, on a proportionate basis, than they did before; that this runs counter to the overwhelming trend among the comparables in requiring more, not less, employee contribution towards the cost of health insurance; that the City's offer restores the balance that was originally struck by having employees pay a certain percentage of the premium along with the appropriate dollar caps to protect the employee so that the employee's contribution does not become prohibitive; that the Union is trying to use the dollar caps to destroy the percentage that was originally bargained; that under the "other factors" normally or traditionally taken into account, there is a trend for employees to contribute toward the cost of health insurance benefits and the cost of providing health care; that the City's offer is consistent with that trend; that the City has provided wage increases that are competitive; that neither offer is preferred on the wage rate issue; that what tips the scale to the City's offer is the fact that the Police, Fire and Police Supervisor units and non-represented employees of the City totaling about one-third of all City employees have accepted the exact same proposal the City made to this Union; and that, based on all of the above, the City respectfully requests that the Arbitrator select its

offer.

Union on Reply Brief

The Union argues that Sec. 111.70 contains very objective criteria for an Arbitrator to apply in interest arbitration cases; that no internal settlement pattern has been established; that the external comparables do not support the City's wage offer; that employees in this unit are considerably behind the average of the external comparable units; that the wage rates in this unit could warrant catch-up, but the Union is not asking for that; that, instead, the Union has put in a wage offer that is in line with the external comparables and below average when considering actual take-home pay; that the parties have agreed to numerous changes to the health insurance plan design which will result in significant savings to the City; that the Arbitrator should weigh all the evidence in evaluating the final offers of the parties and not just look at the PPO family plan, as the City advocates; that in terms of the deductibles and coinsurance, Oshkosh employees pay significantly more than the average or median user penalties of the comparables; that when the premiums paid are factored in, Oshkosh employees pay an amount on par with, if not more than, the comparable communities; that the increase in the dollar caps for non-HRA participants serves as an incentive for employees to participate in the HRA; that the City's proposed that employees hired after January 1, 2009, who select the PPO plan, must pay the difference between the two plans, coupled with the City's proposal to institute a new start rate five per cent lower that it is presently is five percent less is outrageous and punitive; that there is no comparable support for such a proposal; that the City is achieving true cost savings vis-à-vis the agreed upon changes to the plan structure; that the City's arguments as to compelling need prove unpersuasive; that the City fails to discuss *quid pro quo* for the changes to the status quo sought; that the salary schedule in Oshkosh mirrors that of the comparables, the starting wage rates in Oshkosh are well within the range of starting pay of comparable employees, and that Oshkosh's starting wage rate has consistently been above average.

In summary, the Union argues the City is seeking a number of concessions with little or no internal or external support: an increase in health insurance premiums that will push the total yearly costs for employees outside the average of comparable communities, a "pay the difference between the EPO and PPO" proposal that will cost new hires out of a comprehensive health plan, and a restructuring of the wage schedule that will result in real losses in wages and the creation of a two-tier system that will be detrimental to employee morale; that the Union's wage offer is overwhelmingly supported by the external comparables; that the Union's health insurance proposal has greater support from the external comparables; that internal comparisons are not determinative because only one unit has settled; that the Union voluntarily agreed to substantial changes in the design of the health plan which will save the City and cost the employees real dollars; that the City's wage offer and minor non-economic *quid pro quo* for the changes it seeks clearly fall short; that based on the foregoing, it is clear the Union's final offer is more reasonable and supported by the evidence in the record; that for these reasons and those offered in the Union's initial brief, the Union respectively asks that the Arbitrator select the Union's final offer for inclusion in the successor Agreement.

DISCUSSION

Introduction

The case involves several straight forward issues:

1. a general wage increase with the City offering 2.25%, 2.75%, and 2.75%, respectively, over the three year period of 2007-2009, and the Union offering 2% beginning with the first pay period and 1% beginning with the fourteenth pay period each of those three years;

2. a change in wage rates and wage schedule for the Transit Operator and Transit Operator/Mechanic for employees hired after January 1, 2009, is proposed by the City while the Union's offer maintains the status quo.

3. inclusion of an additional initial step on the salary schedule that is five percent less than the current initial step starting with the 2009 pay schedule is proposed by the City while the Union's offer maintains the status quo.
4. a change in the requirement for five weeks of vacation from 20 years to 18 years is offered by the City while the Union's offer maintains the status quo.

These are straight forward in the sense that they will not be hard to decide. In addition, the parties achieved tentative agreement on several issues, including some job reclassification issues and incorporating several Memorandums of Understanding into the contract.

The complicated issue, as one might readily guess, involves health insurance. But in terms of health insurance, this is not a bargaining relationship in which the parties are in disagreement that changes need to be made or are unwilling to work with each other to make the changes, such that no changes are ever voluntarily made; indeed, the parties achieved a number of agreements concerning health insurance plan design changes, including:

> Modifying the PPO out-of-network co-insurance from 70%/30% percent to 60%/40% while retaining the same maximum out-of-pocket cost for employees.
>
> Applying the PPO in-network and out-of-network deductibles and co-insurance separately and independently so that employees must satisfy both.
>
> Increasing the prescription drug card co-pays from $5/$10/$25 to $5/$25/$35 in the EPO and from $5/$20/$25 to $10/$25/$40 in the PPO.
>
> Increasing the PPO mail order prescription drug co-pay from 1.5 times to 2 times the co-pay for a three (3) months supply.
>
> Granting employees who participate in the Health Risk Assessment (HRA) the preferred employee health premium contribution rate while requiring employees who do not participate in the HRA to contribute the higher

employee contribution rate toward their health insurance premiums.

Increasing the lifetime maximum health coverage from $1 million to $2 million.

According the Rae Anne Beaudry, Vice-President and Chief Operating Officer with Health Care System Consultants and the City's insurance consultant, once fully implemented by all employees, the plan design changes would save approximately five to six percent of the premium. This is no small feat, and the parties should feel good about what they accomplished at the table.

But this case is to decide what the parties did not accomplish at the table. But before I get to the issues in dispute, I must first deal with what the City calls the major factor in this case: the internal settlement pattern.

Internal Comparables

The City asserts that the major issue in this case is the employees' contribution to health insurance and that the major component of the City's argument is the fact that the police union, fire supervisors, police supervisors and non-represented City employees have all accepted it; indeed, the City labels the internal settlement pattern as the major factor in deciding this matter. The City argues that its offer best matches the internal settlement pattern and, therefore, should be selected on that basis alone.

As noted by the City in its brief in chief, arbitrators have long recognized the significance of following the internal settlement pattern. If the arbitrator's task is to find the settlement at which both parties should have arrived, it makes sense to look to the other employees of the same employer to find what the settlement should be. And once the internal settlement pattern has been established, arbitrators should rely upon it heavily as the best indicator for where the parties should have settled.

And in this case, the City argues that the internal settlement pattern has been clearly established by the police union, two supervisory associations and the non-represented employees. According to the City, there is a clear and discernible settlement trend already established among these City employees, noting that settled employees amount to 179 employees out of 572 total employees or 31 percent. The City's correctly states that the offer to the Union in this case mirrors that settlement pattern.[1]

[1]There are some issues unique to this bargaining unit: the City's proposed change in wage rates and wage schedule for the Transit Operator and Transit Operator/Mechanic for employees hired after January 1, 2009, and the City's proposed inclusion of an additional initial step on the salary schedule that is five percent less than the current initial step starting with the 2009 pay schedule. But in terms of the wages and health insurance issues, the offer by the City to all of its units is the same.

Again, as asserted by the City, arbitrators refrain from accepting offers that introduce preferential treatment for one bargaining unit over others, absent compelling circumstances. The public policy of the statute that encourages voluntary settlements would be jeopardized by the adoption of offers inconsistent with the internal settlement pattern, again, absent compelling reasons. And once an internal settlement pattern has been established, an arbitrator should select the offer that best matches the pattern. This has the believed effect of encouraging settlements and it certainly prevents whipsawing from the established settlement trend.

In addition, there is a fairness issue in the City's desire to have the same settlement pattern established. The City asserts that when it settled with the groups listed above, the City wanted to make sure that Unions settling later did not receive anything more than the groups that settled earlier. According to the City, it tried to be as fair as it could to those groups that did settle earlier and to settle higher with subsequent unions would undermine the City's good faith dealings with the employee groups that settled first. The City's position is strengthened because the City's bargaining units have settled at exactly the same wage rate increase historically. Thus, the City asserts that this unmistakable historical trend to settle at the same wage increase is a strong factor in favor of the City's offer.

The importance of giving significant weight to the internal settlement pattern and maintaining it is well supported by arbitrators, several of whom were cited by the City.

Arbitrator Rice has emphasized the importance of internal comparables:

> The internal comparables are a very important consideration for an arbitrator to consider in matters such as this. Wage increases should be quite similar for all of an Employer's bargaining units in the absence of some unusual circumstance. Uniform fringe benefits for all bargaining units are equally important in the absence of some unique circumstance.

Green Co. (Highway), Dec. No. 26979-A, 03/20/92.

Again, the City notes, in addition to the collective wisdom that is indicated by a widespread pattern, there are other reasons internal comparables deserve significant weight. Equity and stability concerns are raised by such a pattern, as Arbitrator Fleischli has stated:

> On an issue such as the appropriate across the board wage increase which should be granted, internal comparisons (i.e., increases granted to other represented employees of the municipality) should, in the view of the undersigned, carry great weight, regardless of whether the bargaining unit consist of firefighting or law enforcement personnel (subject to the provision of Section 111.77 of the Wisconsin Statutes) or professional, blue collar, of white collar workers (subject to the provision of Section 111.70(cm)6. Wisconsin Statutes). Municipalities understandably strive for consistency and

> equity in treatment of employees. Any unexplained or unjustified deviations from an established pattern of settlements with represented groups, whether achieved through negotiations or an arbitration award, can be disruptive in terms of their negative impact upon employee morale and the municipality's collective bargaining relationship and credibility with other labor organizations.

City of Waukesha, Dec. No. 21299, 08/28/84.

Arbitrator Haferbecker included represented and non-represented employees, stating:

> I agree with the County that in view of the other internal settlements, both union and non-union, the acceptance of the Union final offer would be inequitable for the other bargaining units and would be harmful to bargaining stability within the County.
> If these Sheriff's department employees are to be granted an increase substantially larger than the pattern established by the other employee groups, then there would need to be strong evidence concerning the unique position of these employees. I do not find that the Union has established such evidence.

Jackson County (Sheriff's Department), Dec. No. 21878, 02/85.

Arbitrator Vernon emphasized the significance of an internal settlement pattern:

> The arbitrator believes the fact that the City's Offer is consistent with its wage and insurance settlement with other bargaining units…is quite significant.
>
> First, it is significant because generally arbitrators, where a pattern exists among internal bargaining units, often gives controlling weight to such settlements. This approach is based on a concern for equitable treatment of employees, the negative effect on morale that divergent settlements would have, and the bargaining instability that would result in the face of such a pattern where an arbitrator would award something to one unit that others were unable to secure voluntarily.

City of Madison (Firefighters), Dec. No. 21345, 11/84.

Indeed, it is well established that once an internal settlement pattern has been proven, arbitrators give great weight to it. The City argues that it offer falls in line with that pattern and that the Union's offer does not.

The Union, on the other hand, asserts that there is no settlement pattern, that only one unit with right of arbitration has settled, that the two supervisory associations, while they may negotiate with the City, do not have the recourse of arbitration should they reach impasse,

and that the non-represented employees have no rights to bargain, much less arbitrate, the terms and conditions of their employment.

As the Union notes, Arbitrator Roberts disregarded non-represented employees who have their terms of employment unilaterally imposed as internal comparables and determined that one out of three bargaining units did not constitute a pattern:

> The Village vigorously argues that an internal settlement pattern has been set for health insurance premium payments and wage increases and that it is imperative that this bargaining unit follow that pattern. The undersigned agrees that it is important that an internal settlement pattern be respected, unless a compelling, unique circumstance can be demonstrated. A single, rogue bargaining unit should not be rewarded when a clear internal pattern has been established.
>
> The question remains, though, whether a clear pattern has developed. Of the three bargaining units, only one has settled. For the non-represented employee group, the wage increase for 2006 and the employees' contribution toward the premium have been unilaterally imposed. Two of the three represented groups of employees have not yet settled. The Police bargaining unit is not holding out as a lone, rogue unit. Under the circumstances presented here, one must conclude that no pattern has developed at the present time.

Village of West Milwaukee, Decision No. 31648-A, 11/14/06.

In regard to the three employee groups which have "settled" but which have no recourse to arbitration, the Union argues that comparisons to these groups is not compelling, citing Arbitrator Chapman in a prior award between these very parties:

> The Union's contention that the internal comparables should not include employee groups who do not have the option of bargaining collectively is valid. This Arbitrator shall exclude all consideration of any uncovered supervisory personnel (Police Supervisor, Fire Chiefs) in the resolution of this dispute.

City of Oshkosh, Dec. No. 27273-A, 06/07/93.

In terms of the police unit which has settled, the Union notes it is only one of six represented units that has settled, with the other five bargaining units in arbitration over issues similar or identical to the issues in this matter. In a situation where only one voluntary settlement exists and the rest of the municipal units are in arbitration, the Union argues that the one voluntary settlement should not hold much weight when analyzing a wage proposal, quoting Arbitrator Haferbecker:

> Internal Comparisons. I agree with the Union that no pattern has yet been established. The Sheriff's Deputies have settled for a package offer similar to what the Employer proposes here but four units, including this one, have not settled. The wage increase for the non-represented employees cannot be given much weight since they have no real alternative to accepting the County's wage offer. The one negotiated settlement does favor the County's position but it cannot be given much weight because of the four unsettled contracts. The fact that four of the bargaining units have gone to mediation-arbitration would seem to indicate that large numbers of employees do not feel that the County's wage offer is reasonable.

Outagamie County, Dec. No. 20417-A, 08/16/83.

Terms and conditions imposed upon its non-represented employees by an employer cannot, by themselves, determine the outcome of an arbitration, nor can settlements with associations which do not have the recourse of arbitration, by themselves, compel a finding for an employer. That is not to say that decisions regarding the wages, hours and conditions of employment of unrepresented employees and settlements with employees organized but with no right to arbitration have no impact on an arbitration decision. Certainly if the offer imposed upon unrepresented employees and agreed to by employees without recourse to arbitration is consistent with settlements of some of an employer's bargaining units, this can be a factor an arbitrator can rely upon as being the best barometer of where the parties should have settled and can add to the employer's argument that a settlement pattern has been established.[2]

So for sake of argument, let us give the City these employees and these employee groups; nonetheless, the Union still argues that they do not constitute an internal pattern. And to that end, the Union cites a case in which it asserts this very arbitrator "ruminated" over what might constitute an internal settlement pattern. Indeed, this arbitrator "ruminated" in part as follows:

> The City bases its argument regarding an internal pattern on the fact that three unions have settled for exactly what the City is offering the Union in this matter: two percent each July 1.
>
> The City has ten bargaining units, so three units amount to 30 percent of the units. The number of members in these units vary, depending of whether you use the City's or the Union's numbers….In any case, the percentage ranges

[2]Consistently, the City frames the wages, hours and conditions of employment it imposed upon the non-represented employees as a settlement. Absent some arbitral precedent and strong persuasion, the arbitrator does not accept it as such. For the sake of argument, I will continue to use the City's definition of settlement such as to give it the benefit of the doubt.

> from 28.3 (Union) to 34.6 (City). Giving the benefit of the doubt to the City, that amounts to just a bit over one-third of the permanent employees.
>
> On the other side, seven units or 70 percent of the units and somewhere between 65.4 percent (City) and 71.7 percent (Union) of the employees have not settled. When does a pattern take hold? Certainly, if a majority of an employer's bargaining units have settled at the same pay rate, that gives the employer a strong argument that a pattern has been established. If the majority of the employer's employees have settled at a certain wage increase, most would agree that certainly looks like it might be a pattern. When a majority of the employer's bargaining units incorporating a majority of the employer's employees agree to a wage proposal, that certainly sounds like a pattern.
>
> But those are not the cases here. We have a minority of bargaining units representing a minority of represented employees who have settled at what the City is offering this unit...The City certainly wants to protect its relationship with the three units that have settled, as well it should; indeed, the policy behind supporting internal patterns is the preservation of employee morale and continued bargaining success, both of which I as an arbitrator want to support. But settling three units of ten comprised of 34.6 percent of the employer's employees does not make a binding internal pattern that can now be enforced upon the seven bargaining units comprised of 71.7 percent of the City's employees. Therefore, the City's main argument fails.

City of Madison, Dec. No. 31217-A, 09/23/05.

Let us apply the "rumination" of that case to the present situation. Note that in the case cited above, this arbitrator did not give any significance or notice to non-represented employees or organized employees without the right of arbitration but, giving the City the benefit of the doubt on this issue, I will do so in this case. Thus, the City has "settled" with four of its employees groups: non-represented, police union, police supervisors association and fire supervisors association. It has not settled with the Firefighters, Library, Paraprofessional, Professional and, this unit, the Department of Public Works, all of whom are represented for purposes of collective bargaining and one of which, the Firefighters, is represented by a union different from the one involved in this case.

Four of nine employee groups is 44%; as noted above, the number of employees settled is 179 employees out of 572 total employees or 31 percent. Note that the Union claims 593 employees, which would bring the settlement down to 30%. But, again, let us give the benefit of the doubt to the City. So it has settled 44% of its employee units comprising 31% of its employees. If I find an internal settlement pattern, that pattern could be imposed upon 56% of the employee units and 69% of the City's employees. The numbers become more skewed if we only consider the organized employees with the right to arbitrate. Then we have one of six units settled, or 17%, and, using numbers provided by the Union, only 74

out of 479 employees, 15 percent.

As I stated in the case above, the City in this case certainly wants to protect its relationship with the employee groups that have settled, as well it should; indeed, the policy behind supporting internal patterns is the preservation of employee morale and continued bargaining success, both of which I as an arbitrator support.

There is another aspect to internal settlements to which the City points: consistency of health insurance plans and contributions rates among all of an employer's employees. I agree with the City that this is a critical consideration. As noted by the City, Arbitrator McAlpin recognized this in a previous case involving the City of Oshkosh and the DPW and Library units:

> This Arbitrator has found in other interest arbitrations that where there are separate bargaining units, those bargaining units do have the right to bargain for terms and conditions which would take into account their unique status and different job duties and responsibilities. This is particularly true when comparing police and fire units with other City employees. However, in the area of health insurance, with the significant costs demonstrated and with the burdens of health care falling upon employer and employee, it seems to this Arbitrator that it is appropriate for the Employer to seek out consistency among its represented employees and indeed all of its employees. Therefore, the internal comparables are an important consideration, and they do favor the Employer.

City of Oshkosh, Decision Nos. 28284-A and 28285-A, 12/02/95.

Arbitrator McAlpin will find no argument from this arbitrator on the importance of consistency regarding health insurance. But even when consistency of health insurance plans and premiums are at stake, one settlement does not hold much weight, according to the Union, citing Arbitrator Grenig:

> In this case, the external comparables support the Union's proposal that the parties maintain the status quo with respect to premium contributions. On the other hand, the internal comparable provides some support for the Village's proposal. While arbitral authority establishes the principle that internal settlements are to be given "great weight," such internal settlements are not conclusive. It is still necessary to examine the other criteria, including external comparables. Although relevant to a determination of the reasonableness of offers, the single comparable is of little probative value. The settlement involves a single bargaining unit of less than ten employees. The single settlement involving a single bargaining unit does not establish a pattern of settlement. See City of Glendale (Police), Decision No. 30084-A (Dichter 2001) (rejecting internal comparable of one bargaining unit). Compare Rock County (Deputy Sheriffs), Decision No. 20600-A (Grenig

1984) (pattern of settlement of nine bargaining units given great weight).

Village of McFarland, Dec. No. 30149-A, 01/02/02.

That even where the issue is insuring that an employer's employees have the same health insurance benefits, the Union argues that a single internal settlement still does not constitute a settlement pattern, citing Arbitrator Krinsky:

> 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.

City of Wauwatosa, Dec. No. 31447-A, 04/06/06.

In this case before the arbitrator, no matter how you crunch the numbers, the City has not shown an enforceable settlement pattern. As noted above, the City asserts that the internal settlement pattern is the major factor supporting its case. This does not bode well for the City. So let us turn our attention to what the City asserts is the major issue in this case: health insurance.

Health Insurance: Percentages and Caps

The City has a partially self-funded plan in that it buys an insurance policy at a specific stop loss level of $100,000 per individual insured under the plan. The City offers an Exclusive Provider Organization (EPO) plan which requires employees who choose this plan to remain in the Aurora Health System to obtain coverage.

The City also offers a Preferred Provider Organization (PPO) which allows employees to choose between those hospitals and physicians in a particular network or those that are outside of that network. Under the PPO there are different deductibles, co-insurance levels and out-of-pocket maximums that are applied to encourage employees to obtain benefits within the network. The City's PPO plan realizes greater discounts from the regular rates charged by providers by steering employees toward in-network providers such that employees pay more if they go out-of-network for covered services because the City's plan is not able to capture discounted fees.

The City's health insurance program has evolved since the mid-90's. In the 1995-97 contract, the City offered employees two options: 1) employees could choose between a $250 single/$500 family deductible plan, in which case the City would pay 100 percent of the premium; or 2) employees could choose the no-deductible health plan and contribute $27.75 per month toward the single premium and $76.75 per month toward the family premium.

In 1998 the no-deductible plan was phased out, leaving employees with the $250/$500 deductible plan, which stayed in effect through 2001. In 2002, the PPO was implemented with the City paying the full cost. In 2003, the employees agreed to contribute 3% percent of the premium subject to dollar caps of $15 for the single, $30 for the dual, and $45 for the family plans.

In the 2004-2006 contract, the City again offered a choice, adding the EPO plan which was more economical. The parties agreed that employees should contribute a higher percentage toward the more expensive PPO to offer an economic incentive for employees to utilize the less expensive EPO.

Thus, the contribution rate for EPO plan was 3%-4%-4% for the three years. The dollar caps on the contribution were $15-$20-$20 for the Single Plan, $25-$35-$40 for the Dual Plan, and $30-$50-$50 for the Family Plan for the three years. See **CHART 1** below.

CHART 1 – STATUS QUO: EPO

Contract Year	Contribution Rate	Single Cap	Dual Cap	Family Cap
2004	3%	$15	$25	$30
2005	4%	$20	$35	$50
2006	4%	$20	$40	$50

The PPO employee contribution rate was 4%/5%/5% with the Single Plan capped at $20/$25/$30, the Dual Plan at $35/$40/$45, and the Family Plan at $50/$55/$60 for the three years of the contract. See **CHART 2** below.

CHART 2 - STATUS QUO: PPO

Contract Year	Contribution Rate	Single Cap	Dual Cap	Family Cap
2004	4%	$20	$35	$50
2005	5%	$25	$40	$55
2006	5%	$30	$45	$60

Through negotiations for the contract covering 2007-2009, the one in dispute here, the parties agreed to add the option for employees to participate in the Health Risk Assessment (HRA) in both the EPO and PPO plans so that now there are four options for insurance

plans: EPO, EPO plus HRA, PPO, and PPO plus HRA. The parties also agreed, at least in practice, that premiums for the HRA plans would be less than those plans without the HRA.

But two major areas of disagreement could not be resolved. They involve the percentage of contribution rate for each plan and the dollar cap for each level of coverage – single, duel, and family.

In its final offer, the Union has the EPO + HRA contribution rate at 4%, the same contribution rate as the status quo (2006) rate for EPO, for all three years of the contract. The Union has the PPO + HRA contribution rate at 5%, the same contribution rate as the status quo for PPO, again for all three years of this contract.

In addition, the Union specifies the dollar cap for EPO + HRA at $20 Single, $40 Dual, and $50 Family, the same as the status quo for the EPO, again for all three years of the contract. The Union has the PPO + HRA at $30 Single, $50 Dual, and $60 Family which is, again, the same as the status quo for the PPO for all three years of the contract. See **CHART 3** and **CHART 4** below and compare to **CHART 1** and **Chart 2** above.

CHART 3 - COMPARISON OF EPO OFFERS

EPO + HRA	% Union	% City	Single Union	Single City	Dual Union	Dual City	Family Union	Family City
2007	4%	4%	$20	$18	$40	$32	$50	$45
2008	4%	5%	$20	$25	$40	$44	$50	$62
2009	4%	6%	$20	$33	$40	$59	$50	$82
EPO Only	**% Union**	**% City**	**Single Union**	**Single City**	**Dual Union**	**Dual City**	**Family Union**	**Family City**
2007	7%	8%	$25	$36	$45	$65	$55	$90
2008	7%	9%	$45	$44	$50	$80	$60	$111
2009	7%	10%	$55	$54	$55	$98	$65	$135

In 1999, the monthly premium for the single health insurance plan was $236. In 2008, the single premium is $533 for the EPO, a 126% increase since 1999, and $710 for the PPO, a 201% increase. The premium for family coverage has risen from $620 in 1999 to $1332 for the EPO in 2008, a 115% increase, and to $1775 for the PPO in 2008, a 186% increase. The City notes that the Consumer Price Index (CPI) rose 24% during that time period. If the family premium rate had increased at the same rate, it would be only $782. This confirms what we all know – health insurance costs has increased dramatically.

According to the City, the history of health insurance between the Union and itself outlined above is important for two reasons: first, it shows that employees had to contribute to participate in the "richer" health plan;[3] and second, it shows that employees contributed 17.8% of the single premium and 12.4% of the family premium. The City notes that the dollar amounts agreed to by this Union in 1995 are higher than the Union is proposing in 2009, 14 years later. The City argues that the fact that the Union's proposed dollar amounts in 2009 are less than those in last year of the 1995-1997 contract does not make sense, given the fact that health costs have increased over 200% since 1995. The City asserts that this alone shows the unreasonableness of the Union's position on health insurance.

CHART 4 - COMPARISON OF PPO OFFERS

PPO + HRA	% Union	% City	Single Union	Single City	Dual Union	Dual City	Family Union	Family City
2007	5%	5%	$30	$30	$45	$54	$60	$75
2008	5%	6%	$30	$39	$45	$71	$60	$98
2009	5%	7%	$30	$51	$45	$91	$60	$126
PPO	**% Union**	**% City**	**Single Union**	**Single City**	**Dual Union**	**Dual City**	**Family Union**	**Family City**
2007	7%	8%	$35	$48	$50	$86	$65	$119
2008	7%	9%	$40	$59	$55	$107	$70	$148
2009	7%	10%	$45	$72	$60	$130	$75	$181

And it shows to this arbitrator that the Union has a huge problem with its final offer here. Not only is it freezing the contribution dollar cap for the two HRA plans at the status quo or 2006 rate, it is freezing the contribution percentage rate at the status quo rate, as well.

[3]This argument is more important in the City's proposal that employees who choose the more expensive plan pay the difference in cost between the two plans, a proposal I will address later.

In the previous contract, the parties dealt with the huge increases in insurance premiums, in part at least, by increasing the percentage contribution rate in two of the three years and by increasing the cap each of the years.[4] The Union does not do that in its offer. The Union's freeze of both the percentage rate of contribution and the dollar caps for all plans that include the HRA, in this time of escalating insurance premiums, is contrary to the way the parties have been dealing in part with the issue of rising health insurance costs. The problem is compounded in that the Union freezes the contribution rate for the non-HRA plans, for the three years of this contract at 7%, again, inconsistent with the pattern shown in the previous contract. The Union, indeed, has a problem here.

The great concern I have with this part of the Union's offer is remedied in part in that, one, the offer does increase the percentages for the EPO and PPO to 7%, up from 4% and 5%, respectively, a substantial increase of 2 or 3%; that, two, it increased the dollar caps for the EPO and the PPO at the same rate of increase in the previous contract, that is, $5 per year; and that, three, its proposal structure strongly encourages employees to select an HRA plan and financially rewards them when they do.

While all of these points have some positive impact, I have grave doubts that freezing some percentage rates and dollar caps for three years is the approach that will work well for the parties down the road. Thus, this does not bode well for the Union.

On the other hand, the City keeps the percentage contribution rate for the EPO + HRA and the PPO + HRA plans in 2007 at the status quo rates for the EPO and PPO plans, that is, 4% for EPO + HRA and 5% for the PPO + HRA. The City's offer raises the rate 1% each of the following two years to 6% for the EPO + HRA and 7% for the PPO + HRA. This is somewhat consistent with the previous contract which saw a percentage increase in the second year, though the City's offer increases the rate the last two years. On its face, this seems like a reasonable approach to increasing contribution rates if the parties are going to use increased premium contributions by employees to curtain insurance costs or, at least, to relieve the City of some of these costs.

But while the City actually lowers the dollar amount caps for the EPO + HRA plan in 2007 (from $20 to $18 for Single, from $40 to $32 for Dual, and from $50 to $45 for Family), the City also raises most of the caps for both the EPO + HRA and PPO + HRA plans by more than the $5 per year increase that the previous contract contained. The end result of the raises in the dollar caps is that in 2009, the caps for the three EPO + HRA plans and the three PPO + HRA plans will have increased from147% to 210% over the 2006 rates. The average increase is 176%. WOW.

[4]The one exception is the dollar cap for Single EPO which remained the same for 2005 and 2006 at $20.

The problem compounds because, as with the Union's Offer, the City's offer has given the preferred rate to those who take the HRA plan. For those that do not take the HRA plans, the percentage of contribution jumps from 5% in 2006 under the previous agreement to 8% in 2007, 9% in 2008, and 10% in 2009, a 100% increase over the 2006 percentage contribution. To make matters worse, the dollar caps, which were $20-$40-$50 for the EPO in 2006, jump to $54-$98-$135 in 2009. This is an increase of 270-245-270% over the three years. An even greater increase is found in the PPO, which jumps from $30-$45-$60 in 2006 to $72-$130-$181 in 2009, an increase of 240%-288%-302%. Double WOW.

The concern I have for the substantial increase in both the contribution rate and the dollar caps on the contribution under the City's offer is remedied in part in that, as does the Union's offer, it provides great financial incentive for employees to take the more economical (and healthier?) HRA plans. In addition, the increases in the dollar caps in the City's final offer restores some of the integrity of the percentage concept with dollar caps that are reflective of that percentage, whereas the Union's freeze of both the percentage rate and the dollar caps in parts of its offers in many ways nullifies the concept of the percentage contribution.

While both of these points have some positive impact, I have grave doubts that raising the percentage rates and, more so, the dollar caps at such high rates the last two years of the agreement is the approach the parties want to take in regard to these two issues. This does not bode well for the City.

In sum, freezing the contribution percentage and the dollar caps is a huge problem for the Union. Greatly increasing the contribution percentage and the dollar caps is a huge problem for the City. On their face, neither offer is reasonable, though the City's may be a bit more so. Let us look at the comparables for guidance.

Comparables on Health Insurance

The City did not show a binding internal settlement pattern, but it does have one settlement with a bargaining unit. So the internal comparable, though only one, is one more than the Union has and so the internal comparables, though not controlling, favor the City.

The parties agree on the external comparables: Appleton, Fond du Lac, Green Bay, Menasha, Neenah, and Sheboygan. But knowing the comparables and being able to make comparisons about health insurance plans are two different things. Because there are so many variables with the different types of plans, different coverages, EPOs, HMOs, HRAs, PPOs, HSAs, dollar contributions, percent contributions, contribution caps, deductibles, and co-pays, and because there are so many ways of analyzing the data, it is impossible to find an apple to apple comparison. Indeed, this arbitrator has spent more time analyzing charts and data in this case than in any other case I can remember. In any case, I will use numbers as best I can, sorting out and selecting those I view as most important.

CHART 5: CITY AND EMPLOYEE COSTS FOR PPO PREMIUM

Comparable City	City Single	City Family	Employee Single	Employee Family
Appleton	$410	$1065	$ 0	$ 0
Fond du Lac	$365	$ 940	$20	$ 50
Green Bay	$499	$1209	$40	$ 98
Menasha	$416	$1347	$36	$117
Neenah	$386	$1068	$31	$ 87
Sheboygan	$542	$1354	$29	$ 71
Average	**$437**	**$1164**	**$31**	**$ 71**
City Proposal	$567	$1417	$30	$ 75
Union Proposal	$567	$1432	$30	$ 60

The City notes that it had the highest single and family PPO premiums among the comparables.[5] See **CHART 5** above. And there is no doubt that City pays more for employee insurance that the comparables: $130 more than the average per month for Single and $253 more per month for Family in 2007. It is harder to determine for 2008 and 2009 because of the numerous unsettled contracts. Because the City's proposal so greatly increases the employee contributions, it is also hard to project how this will affect its place among the comparables.

CHART 6: EMPLOYEE COSTS FOR HEALTH INSURANCE PART 1

Comparable Cities	Contribution Single	Contribution Family	Deductible Single	Deductible Family
Appleton	$300	$ 600	$250	$500
Fond du Lac	$240	$ 600	$200	$400
Green Bay	$486	$1177	$100	$300

[5]The City also has Dual coverage. It is unclear if any of the comparables do; in any case, the parties do not discuss it, focusing on the Single and Family plans, so that will be my focus as well.

Menasha	$435	$1406	$ 0	$ 0
Neenah	$373	$1032	$250	$500
Sheboygan	$342	$ 855	$ 0	$ 0
Average	**$363**	**$ 945**	**$133**	**$283**
2007 Offers[6]	$358	$ 720	$150	$400

The Union takes the reverse approach and looks at how much the employees pay, not only for premiums but for deductibles (See **CHART 6** above) and co-insurance (See **CHART 7** below) and looks at the total cost for employees. And from the Union's point of view, these employees are paying $137 above the average of the comparables for Single coverage and only $8 below the average but $32 above the median for Family coverage.

Many arbitrators acknowledge legitimate employer efforts to introduce cost-sharing plan design changes to underscore the mutuality of the problem. As Arbitrator Petrie noted:

> The dramatic and ongoing escalation in public and private sector health care costs, nationally, state wide, and within the Mellen School District is beyond dispute, and significant numbers of private and public sector labor negotiators are addressing reduced levels of coverage and/or employee cost sharing in their attempts to address this situation.

Mellen School Dist. (Support Staff), Dec. No. 30408-A, 03/03.

CHART 7: EMPLOYEE COSTS FOR HEALTH INSURANCE PART 2

Comparable Cities	Co-Insurance Single	Co-Insurance Family	Total Yearly Costs Single	Total Yearly Costs Family
Appleton	$500	$1000	$1050	$2100
Fond du Lac	$300	$ 600	$ 740	$1600
Green Bay	$ 0	$ 0	$ 586	$1477
Menasha	$ 0	$ 0	$ 435	$1406

[6]In the first year of the contract, the offers of both parties are close enough not to have to differentiate.

Neenah	$250	$ 500	$ 873	$2032
Sheboygan	$ 0	$ 0	$ 342	$ 855
Average	**$175**	**$ 350**	**$ 671**	**$1578**
Union Offer	$358	$ 720	$ 808	$1570

Similarly, in a recent decision Arbitrator Eich succinctly stated:

> In times such as these, common sense alone dictates that municipal employers and employees must share the burden of rising health care costs.

Oshkosh Area School Dist. (Paraprofessionals), Dec. No. 31279-A, 10/21/05.

Arbitrator Gil Vernon observed:

> The staggering cost of health care is a grim reality. It is also generally accepted that employees must help shoulder the burden of this benefit through various means (premium sharing, co-pays, deductibles, etc.).

Monroe County (Rolling Hills), Dec. No. 31381-A, 12/01/05.

The City argues that its final offer with its modifications to health insurance reflect the norm. As Arbitrator Jay E. Grenig stated:

> The evidence shows that the Employer has experienced, as have other private and public sector employers, dramatic increases in health insurance costs. This creates a major financial problem for both employers and employees, with no satisfactory solution in sight. In the meantime, employees in the public and private sectors are assuming an increased portion of the cost through co-insurance, deductibles and co-pays.

Monroe County (Courthouse), Dec. No. 31383-A, 12/17/05.

In addition, the City asserts that Arbitrator Oestreicher's conclusions in the 1993-94 interest arbitration with its police unit are still applicable today:

> The only evidence in the record indicates that the city of Oshkosh provides a very expensive and comprehensive health insurance plan; and that, its employees share a lesser percent of the cost than comparable employees. Under the dual choice plan, the employee's exposure for costs may be contained during the term of this contract. The City's health insurance proposal appears to be more reasonable than the Association's offer in this

proceeding.

City of Oshkosh (Police), Dec. No. 27569-A, 08/93.

Arbitrator McAlpin's notes that the analysis must move beyond a review of the contribution rate to all of the costs of the insurance:

> A review of the contributions required for health insurance of the comparable cities shows that the Union's position would be favored in that most of the cities do not require contributions either for single or for family coverage. However, health care is merely a matter of dollars. As noted above, claims form the major component of health care costs, and if the plans to do not provide benefits or if they require contributions, the employee must necessarily fund the difference. Therefore, merely comparing contribution levels is not appropriate. The Parties must look at the entire benefit, and the current plan provided by the City to these bargaining units if by far the most beneficial and, therefore, the most expensive to any comparable city.

City of Oshkosh, Decision Nos. 28284-A and 28285-A, 12/02/95.

In terms of a *quid pro quo*, the City argues that one is not necessary as it relates to health insurance. Indeed, many arbitrators do not require a *quid pro quo* when there is such an overwhelming practice found among comparables.

Arbitrator Vernon has written:

> On the merits of the Employer's proposal, both Parties discuss the necessity or non-necessity of a *quid pro quo*. Essentially, the Association says that the changes sought by the Employer are too great and costly to expect that they should be bargained away for nothing in exchange. On the other hand, the District makes an argument with which, in principal, the Arbitrator must agree. They contend that when the comparables fully support the position of the Party seeking the change, the need for a *quid pro quo* is minimized, if not eliminated.

Rhinelander S.D., Dec. No. 27136-A, 09/92.

Arbitrator Tyson concurs:

> The undersigned agrees with Arbitrator Vernon when he indicated that a "blockbuster" *quid pro quo* should not be necessary to have the parties agree to an Employer's proposal which receives nearly universal support among the comparables, and when there are enough "sweeteners" such as a higher than average wage increase and other benefits.

Sturgeon Bay S.D., Dec. No. 30095-A, 12/29/01.

Arbitrator Weisberger also states that there may be no need for a *quid pro quo*:

> The county's argument is particularly effective since it is made against the background of external public sector comparability data which generally support the County's proposal and the County's related argument (supported by substantial arbitral authority) that increasing health are costs paid by an employer reduce significantly or even eliminate the usual burden to provide special justifications and a *quid pro quo*.

Pierce County. Dec. No. 28186-A, 04/95.

The City believes that the cost of health insurance is a mutual problem that must be faced by both parties, quoting Arbitrator William Petrie:

> [T]he spiraling cost of providing health care insurance for its current employees is a *mutual problem for the employer and the association* . . . in line of the *mutuality of the underlying problem* the requisite *quid pro quo* would normally be somewhat less than would be required to justify a *traditional arms-length proposal to eliminate or modify negotiated benefits or advantageous contract language*.

Village of Fox Point, Dec. No. 30337-A, 11/07/02.

In the previous arbitration case involving the City of Oshkosh and the DPW and Library unions, Arbitrator McAlpin noted that the City's "dual choice" option did not require a *quid pro quo*. He reasoned:

> It is the Employer that wishes to alter the status of the collective bargaining relationship in this case. However, we are not in a situation where the Employer is proposing health care contributions for the first time. The bargaining units involved in this case have had a history of making contributions both to single and to family plan coverages. While the Arbitrator finds that the Employer must fully justify its position and provide strong reasons, this is not a situation of making contributions or not, but only of the appropriate levels of contributions.

City of Oshkosh, Decision Nos. 28284-A and 28285-A, 12/02/95.

I will discuss the *quid pro quo* in more detail later, but it is possible that City could prevail on its argument that one is nor required. If this was all there was, the City would succeed in this arbitration. But there is more in dispute and we continue by looking at the other health issue before us.

Health Insurance: Payment of Difference between Plans

In its final offer, the City includes a proposal that employees hired after January 1, 2009, who select the more expensive PPO plan pay the difference between the cost of that plan and the more economical EPO plan. From the City's point of view, it offers the EPO as the basic plan with benefits and premium costs typical of those found in the external comparables.

It is not unreasonable for an employer to pay for the basic health insurance plan and have employees pick up the rest of the cost. Indeed, the City notes that the parties had a similar system in 1997 when the City offered deductible and no-deductible plans, with employees selecting the no-deductible plan responsible for 18% of the single premium and 13% for the family premium. The City further notes that this dual choice option was accepted by several arbitrators in cases in which the City was a party. In fact, paying the difference between the basic plan and a more expensive plan is nothing new in the City which asserts that employees were doing it in Oshkosh 30 years ago.

I see no problem with parties agreeing to having a dual choice option. I believe people can best look out for their own and their family's best interest by having choices, weighing the possibilities, and making a decision. But I have two problems with this proposal.

First, the parties are not agreeing with this change and arbitrators are loath to make these kind of changes, believing such changes should be accomplished at the bargaining table. This will come into play more importantly when I look at the changes in the wage structures proposed by the City.

Second, the "dual choice" is accomplished by establishing a dual system of benefits among the employees of this unit. It does so by "grandfathering" employees hired before January 1, 2009, such that those who choose the PPO option will not incur the added cost of the difference between that plan and the more economical EPO. Only those employees hired after January 1, 2009, would be contractually required to pay the difference in premiums.

As the City is using grandfathering in two of its other proposals, thereby establishing other dual systems of benefits, let me bring them into the discussion.

Change in Pay Structure: Transit Operators

For the positions of Transit Operator and Transit Operator/Mechanic, the City argues that the rates of pay are out of line with the comparables, as are the number of steps and amount of time required to reach the maximum.

CHART 8: MINIMUM HOURLY RATES: TRANSIT OPERATOR

Comparable Cities[7]	2006	2007	2008	2009
Appleton	$13.83	$14.83	$15.28	Not Settled
Fond du Lac	$15.77	$16.20	Not Settled	Not Settled
Green Bay	$13.66	Not Settled	Not Settled	Not Settled
Sheboygan	$14.58	$15.01	$15.50	$16.05
Average	**$14.46**	**$15.35**	**$15.39**	**$16.05**
City Offer	$18.05	$18.46	$18.96	$13.58
$ to average	$ 3.59 +	$ 3.11 +	$ 3.57 +	$ 2.47 -
% to average	24.8% +	20.3% +	23.2% +	15.4% -
Union Offer	$18.05	$18.59	$19.16	$19.74
$ to average	$ 3.59 +	$ 3.24 +	$ 3.77 +	$ 3.69 +
% to average	24.8% +	21.1% +	24.5% +	23.0% +

It is clear from **CHART 8** above that the minimum hourly rate for these employees was $3.59 above the average of the comparables in 2006. And even though one of the comparables has not settled for 2007 and two of them for 2008, it appears that this unit will continue to have a minimum rate in the $3 plus range over the average of the four comparables, regardless of which offer is chosen. On the maximum end, this unit is closer to the average. See **CHART 9** below.

But in 2009, the picture changes dramatically for the minimum rate. While under the Union's offer, the unit rate is $3.69 or 23% above the average, this unit falls to $2.47 below the average under the City's offer. This is a reduction of $5.38 brought on by the change in the salary schedule contained in the City's final offer. This amount may very well increase as only the third best paying comparable has settled because once the other three comparables settle, the average may very well increase, thereby further distancing it from the City's offer. We will come to the salary issue once we have discussed the change in pay schedule.

[7]Menasha and Neenah have a private transit system: Valley Transit. The wage rates of these two comparables were not included in the record.

CHART 9: MAXIMUM HOURLY RATES: TRANSIT OPERATOR

Comparable Cities	2006	2007	2008	2009
Appleton	$19.24	$19.77	$20.43	Not Settled
Fond du Lac	$19.76	$20.30	Not Settled	Not Settled
Green Bay	$16.91	Not Settled	Not Settled	Not Settled
Sheboygan	$17.15	$17.66	$18.24	$18.88
Average	**$18.27**	**$19.24**	**$19.33**	**$18.88**
City Offer	$18.67	$19.09	$19.62	$20.15
$ to average	$ 0.40 +	$ 0.15 -	$ 0.29 +	$ 1.27 +
% to average	2.2% +	0.8% -	1.5% +	6.7% +
Union Offer	$18.67	$19.23	$19.82	$20.42
$ to average	$ 0.43 +	$ 0.01 -	$ 0.49	$ 1.54 +
% to average	2.4% +	0.0%	2.5% +	8.2% +

In terms of the pay schedule, the status quo is that, in addition to the start step, it takes two six-month steps to reach the maximum; in other words, including the start step, it takes three steps and a year to reach the maximum. In reviewing **CHART 10** below, it is clear that the status quo is the least number of steps among the comparables and is tied with one comparable for the shortest amount of time to reach the maximum wage.

Effective January 1, 2009, the City's proposal increases the steps to six, tied with two of the four comparables for most steps. So the City changes the ranking from being lowest in the comparables to being tied for the highest among the comparables in terms of number of steps to the maximum pay step. As the average number of steps is 5.25, the end result of the City's proposal is closer to the average than the status quo Union offer and certainly within what any one would call reasonable, but the drastic change is anything but reasonable.

CHART 10: TRANSIT OPERATOR WAGE SCHEDULE

Comparable Cities	Steps to Max	Months to Max

Appleton	6	30
Fond du Lac	6	30
Green Bay	4	12
Sheboygan	5	15
Average	**5.25**	**21.75**
Status Quo - Union	3	12
City Proposal	6	60

But the City's proposal for the number of months to reach the maximum changes the status quo of 12 months to 60 months. This is a 500% increase and is twice or 30 months or 2½ years more than the current highest amount. So the City's proposal takes the status quo, which is tied for the least number of months, and turns the number of months into the highest by far. In terms of the average number of months, the status quo is much closer to the average.

Basically, the City has deleted the two six month steps and inserted five one year steps, two of which, along with the starting salary, are placed before the current status quo wage rates and steps. See **CHART 11** below. So the starting salary drops from $18.05 to $13.58. At the one year mark, the wage rate drops from $18.67 to $15.04. To get back to the original start rate, new hires must work three years. And to get to what is now the one year step, the maximum rate, takes five years, 2½ years longer than any of the comparables take to get to the maximum step.

And in terms of salary, the status quo rate starting rate is higher than the others comparables, as noted by the City, but the City's proposal makes it lower than the other comparables. In fact, the City's offer for 2009 or $13.58 is lower than the lowest comparable of 2006: Green Bay at $13.66. WOW.

This is drastic. When a union argues that it is last in the comparables and needs catch-up, such catch-up does not take the unit to the top of the comparables in one contract. This would be unreasonable as the parties have bargained these rates over time, and they will need to be changed over time. The same is true here. You can not move the highest paid employees among the comparables to the lowest paid in one contract. It is unreasonable on its face.

CHART 11: TRANSIT OPERATORS PAY SCHEDULE

Step	Status Quo	Proposal

Start	$18.05	$13.58
6 Month	$18.36	
1 Year	$18.67	$15.04
2 Years		$16.50
3 Years		$18.05
4 Years		$18.36
5 Years		$18.67

But this would only apply to employees hired after January 1, 2009, the City argues, thus grandfathering the current employees. But it creates another dual system of benefits for this bargaining unit.

Change in Pay Structure: Overall Pay Schedule

In terms of the Overall Pay Schedule, the City proposes adding a new step A to the Pay Schedule that will be 5% less than the current step A for those employees hired on or after January 1, 2009. The City states that this step needs to be included because the beginning wage rates have drifted above the comparables by a significant margin and adding this step will bring them back in line. Looking at the comparables, I am not convinced that the City's position is supported to the extent that such a drastic change is necessary.

Again, though, the City argues that this will not impact current employees who will be grandfathered. Again, this creates another dual system for this bargaining unit.

The Grandfather Clauses

The City states that arbitrators have relied upon "grandfather" clauses as a reasonable way to remedy long standing problems, citing the *Racine Water Works Utility*[8] and *Racine Wastewater Commission*[9] decisions, one of which this arbitrator issued. Let me focus on that decision.

In *Racine Wastewater Commission*, at issue was the contractual requirement that the employer provide employer-paid life-time health insurance coverage for its retirees. Let me repeat: employer-paid life-time health insurance coverage for its retirees. This benefit was not employer-paid health insurance coverage until Medicare qualification; this was a life-

[8]Dec. No. 31232-A, Honeyman, 12/05.

[9]Dec. No. 31231-A, Engmann, 12/05.

time benefit, entered into in good faith by the parties who wanted to take care of and reward employees who retired from the Commission but agreed to in a day and age when health insurance was just another benefit, not the costly benefit that drives and determines and complicates collective bargaining today.

It was absolutely clear from the record that no external comparable, none, not one, had a life-long employer-paid retiree health insurance benefit. Indeed, none of the comparables but one had any employer-paid retiree health insurance benefit. In the one contract that did, the benefit was not life-long nor any where even close to the benefit offered in Racine.

In that case, the employer showed an actual and significant problem in that the post-medicare costs of such coverage were substantial and would soon approach astronomical, both in terms of actual cost and percentage of total costs. And the problem was not going away by itself; indeed, it would only worsen as more employees retired and as more retirees age and become more involved in the health care system.

In that case, the employer framed its offer such that no current employee would lose the benefit of life-long employer paid retiree health insurance; in other words, the employer grandfathered the current employees. But for those employees who were to be hired on or after the grandfather date who would not receive the life-long employer-paid retiree health insurance coverage, they would still receive fully-paid employer-paid retiree health insurance coverage under the employer's proposal, though said coverage would end when the employee becomes eligible for Medicare. The amazing thing was the benefit of employer-paid health insurance until Medicare eligibility was still far better than any of the external comparables.

I noted in that case that if the employer had proposed to eliminate the life-long benefit for all employees, a position which would not be totally unreasonable on its face considering the huge financial costs of the benefit, it would have given this arbitrator more pause in coming to a decision in this matter. But the employer was not finished. Even though it argued that it did not need to provide a *quid pro quo* as the moving party to this change in contract language, the employer offered a 1% increase the first year above the Union's wage offer and a one-half percent wage increase in the second year above the Union's wage offer. The employer did not limit the *quid pro quo* only to those future employees whose benefit would be capped, but extended it to current employees, as well, who would benefit from this change for the rest of their work days while retaining the employer-paid life-long retiree health insurance coverage they presently have. As the union's offer was very consistent with the settlements of the comparables, it was a true *quid pro quo*, not just an offer that looks higher because the Union came in low to fight the change.

In essence, "grandfather clauses" are related to the analysis on the burden on a moving party in its effort to change a contractual clause which is being resisted by the other party. In such a situation, the moving party faces the burden of both producing evidence and persuading the decision maker. Many arbitrators have formulated such burden in many somewhat similar ways. In *Racine Wastewater Commission*, I framed the mover's burden

as follows:

> to show that there is an actual, significant and pressing need for change of the status quo; that the proposed change addresses the need in as limited a manner as possible; that comparables are consistent with and supportive of the proposed change; and that a proper *quid pro quo* is offered to compensate, at least in part, the party resisting the change.

In applying a *quid pro quo* analysis in the *Racine Wastewater Commission* case, I found that the employer has shown an actual and significant need for a change in the status quo, a need that would grow larger with each passing year; that the employer's proposed change addressed its concern in as limited a manner as possible among affected employees; that external comparables were consistent with and supportive of the proposed change; and that the employer has offered a appropriate *quid pro quo* for the change.

The "grandfathering" came in under the second part of the analysis: "that the proposed change addresses the need in as limited a manner as possible." The 'grandfathering" of present employees limited the impact of the change sought by the employer and therefore supported that part of the analysis.

The City's Grandfather Clauses

So turning to the City's final offer, in terms of the PPO proposal that employees hired on or after January 1, 2009, pay the difference in premium if they select the PPO plan over the EPO plan, the City has shown an actual and significant problem in terms of the escalating cost of health insurance that could rise to the level of changing the status quo. So the City has met this requirement.

In terms of the second requirement, that the proposed change addresses the need in as limited a manner as possible, the City realizes that one way of dealing with costs is to structure benefit packages such that employees choose the least costly option available, such as its proposal that new employees pick up the entire difference in cost between the PPO and the EPO. But the City, and the Union, for that matter, is already doing that in that its insurance offer raises the percentage of contribution and the caps on employee contributions to health insurance for those who select the PPO. In this regard, the proposal appears to be overkill and possibly not addressing the change in as limited a manner as possible.

In terms of the comparables, it does not appear as if any require employees to pay the entire difference between the base plan and the premium plan. The need for a *quid pro quo* will be discussed later.

In terms of the structural change in the salary schedule for the Transit Operator, again, the City show a need in that the initial rate of pay for this position is severely out of line with the comparables. But has the City proposed changes that are limited to resolving the problem?

Not at all; indeed, the City's offer is as skewed one way as the status quo is skewed the other. Not only does it lower the highest initial wage rate, it makes it the lower initial wage rate and lower by far. It takes the lowest number of steps and changes it to the most number, though it is tied with two comparables. And it takes a tie for the shortest time to reach the maximum and makes it the longest by far, five times the status quo, two times more than any comparable.

This offer goes as far in reverse as it avers that the status quo is going in the other direction. In terms of the number of months it takes to reach the maximum and the rate of pay, the City could have done what it did in terms of the number of steps: make it even with the comparable with the most months and, in term of salary, have it match the only settled comparable. It did not do this. The City could have brought the two in line by offering the average. It did not do this. One or both of these may have accomplished the City's goal in as limited a manner as possible; instead, the City's offer skips right past the average and goes far beyond what was necessary and, therefore, is not supported by the comparables. Indeed, if the City's overall offer is accepted, the Union would have a good argument for this position to receive catch-up pay in the next round of negotiations, a strange position to be in after being the wage leader among the comparables. The fact that the City grandfathers current employees is not enough to save this proposal from this arbitrator finding that the Union is strongly and completely favored on this proposal

In terms of the overall structural change of adding a new initial step, the City has failed to show that a significant and pressing need for such a change exists. Yes, this unit is above the average in its initial rate of pay. Some comparables are above the average, and one is usually above the average more than the others. Here, however, there is not the discrepancy that is easily seen with the Transit Operators initial wage rate, so I do not find that the City has shown an actual and significant need for a change in the status quo; thus, the analysis stops right there. Again, grandfathering the current employees cannot save this proposal which this arbitrator finds totally favors the Union.

Quid pro quo

Finally, the City, if it offers anything in terms of a *quid pro quo*, offers the change in vacation requirement for five weeks of vacation from 20 years to 18 years. This is nice, but not a significant enough give back to serve as an adequate *quid pro quo* for any one of its proposals. The City also argues that the fact that the settled "units" have had these changes for over a year while this unit did not is a sufficient *quid pro quo*. This is a very interesting argument but totally unpersuasive. Indeed, the City also argues it does not need a *quid pro quo* at all for these changes to be approved.

There are times when a lesser *quid pro quo* or even no *quid pro quo* is needed for a change to be made. Such cases include the situation of when a contract clause or benefit has caused or will cause a significant problem, unseen at the time of agreement, to one or both parties, or the clause or benefit is so significantly out of line with the comparables as to be an aberration, or the clause or benefit is of such a nature that there is a mutual

interest and benefit to changing it because it no longer serves the parties well, but only one party has offered a reasonable resolution.

Based upon that formula, I might have been able to be convinced that the City needs a small *quid pro quo* or maybe none at all for the PPO proposal that new hires pick up the difference in costs in choosing the more expensive plan because of the escalating cost of health insurance. But in terms of the significant changes proposed both in the Transit Operator and the over unit's wage schedule, there is no reason not to expect the City to provide a *quid pro quo* for such major changes. Even if I found that the wage structure for the Transit Operator was so out of line with the comparables as to be an aberration, I could just as easily find that the City's proposal to be an aberration as well.

Agreement vs. Arbitration

But in addition to the creation of dual benefits in these instances, I have another problem with these proposals: the fact that they are being imposed by arbitration rather than agreed to by the parties.

The City views the proposals to change the Transit Operators wage schedule and to add one step to the entire wage schedule as minor issues. I respectfully disagree. As noted by the Union, arbitrators are reluctant to adopt extensive changes to a salary structure via interest arbitration when need is not shown by the moving party. Arbitrator Kessler wrote:

> This Arbitrator has dealt with situations in which a structural change is contained in one final offer but not the other. Structural contract changes have not been favored by this Arbitrator. Those are the types of changes which should be the result of bargaining between the parties. In a recent decision involving The School District of Potosi, this Arbitrator rejected a final offer by the Potosi Education Association because it contained a structural change involving the addition of another salary lane. In Dane County and the Dane County Attorney's Association decision, although the percentage increase in each offer was identical, this Arbitrator rejected a proposal that added three lanes each to the top and the bottom of the wage schedule because it structurally altered the existing salary schedule.
>
> This view has been stated by other arbitrators in other cases. Zel Rice, in Madison VTAE, and in Oak Creek-Franklin Joint School District No. 1, declines to adopt final offers in which a structural change in the contract salary schedule was proposed by only one side of the dispute. Edward Krinsky in Chilton School District, Case No. 22891-A, took a similar position and observed:
>
> > ...the association's offer is preferable overall because it does not disturb the previously bargained structure of the parties salary schedule. Such a change should come about through bargaining and

> voluntary agreement....
>
> . . .
>
> This arbitrator has stated in many prior interest arbitration decisions his view on major changes in the parties' contracts should be bargained rather than accomplished through arbitration....
>
> This Arbitrator agrees with the positions articulated by Arbitrators Rice and Krinsky. The District offer is a structural revision of the contract and, consequently, inappropriate to impose by arbitration.

Weyauwega-Fremont School District, Dec. No. 23159-A, 09/23/86.

This is especially true when the current salary structure is comparable to other wage structures, as Arbitrator Honeyman has found:

> Furthermore, the Union's proposal to add four new steps departs sharply not only from the parties' previous wage structure, a thing not lightly modified by arbitrators generally, but also from most of the comparable counties' wage structures.

Monroe County, Dec. No. 29585-A, 11/03/19

If the City wants these changes, it needs to go to the table and bargain for them. It will not get them through this arbitration.

Wages

In this case, the wage proposals are almost an afterthought. The City argues that they are not really that far apart. The big battle is with the proposed insurance changes and the proposed changes in wage structures. In terms of wages, the City argues the support of internal comparables, but it is to no avail. The Union has shown that its wage proposal is closer to the external comparables.

Statutory Criteria

Using the statutory criteria factors, let me summarize my findings :

In terms of the factor given greatest weight, the City is not arguing it cannot pay the Union's wage offer; instead, it asserts that under the levy limits, something else has to give if the Union's offer is accepted. But the record is clear that new construction has increased the past couple years, allowing for a greater increase under the caps. As noted above, the wages are not that far apart. The real burden is that caused by the health insurance increases, which is also true of the comparables. In any case, there are caps so there is a

slight preference for the City in terms of the factor given greatest weight, not so much that it determines the outcome by itself but, if the balance is close, it would tip the scale to the City.

In terms of the factor given greater weight, both parties have statistics to show, one, the City is in dire financial straights, as argued by the City, or, two, the City is growing and prosperous. I find that this factor favors neither party.

In terms of the stipulations of the parties, the record is clear that the parties made some progress through negotiations in trying to curtail the rising cost of health insurance. Many of these stipulations require more out-of-pocket money from the unit members. This appears to be a unit willing to make the necessary changes, some of which occurred in this bargain. So this factor strongly favors the Union.

The interests and welfare of the public, as in most cases I have found, cuts both ways as the public has an interest in keeping its taxes low while also having a competent and properly paid City employees. In terms of the ability of the City to meet the costs of the Union's proposals, I have already mentioned that the Union's wage proposal is not that far from the City's. Indeed, the City asserts this, as well, in one of its briefs.

In comparing the wages, hours and conditions of employment of the these employees with other employees, the external comparables favor the Union's wage proposal. The City's attempt to correct what appears to be a problematic initial wage rate of the Transit Operators, while it would find support among the comparables, is sabotaged by the City's proposal which also does not have support of the comparable. As mentioned above, the City's attempt to change the entire wage structure does not find support among the comparables. Therefore, this factor favors the Union.

In comparing the wages, hours and conditions of employment of the these employees with other employees, the City can point to its settlement with the police and with the two supervisory associations, even though these did not form a binding internal settlement pattern. In terms of wages, it is difficult to compare these employees as there are not many other employees doing similar work, though in terms of health insurance, it appears that these employees have a greater benefit than other public employee who are not direct comparables, such as the school district, and employees in the private sector, though there is not enough in the record to make a strong preference here. In any case, the slight preference goes to the City.

The average consumer prices for goods and services, commonly known as the cost of living, supports the City, though the Union argues that external comparable settlements are a better view of the cost of living, and it is able to quote much arbitral support, to which I agree, thus favoring the Union.

In terms of 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, this unit does not appear to be any better or any worse than any of the others that were brought into this record.

There were no changes in any of the foregoing circumstances during the pendency of the arbitration proceedings so this criteria carries no weight. The same is true of the lawful authority of the municipal employer as neither party raised this as an issue. Nor were there any 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, that impacts this decision.

Health insurance costs are rising. Employers and their employee units need to work together to reduce costs as best as possible. The City and this bargaining unit did much of that during this bargain. But both sides took positions in terms of contribution percentage and dollar caps which are hard to defend. If I had to pick one based on that alone, I would pick the City's position, though the call is close. The problem with the City's final offer, in this arbitrator's judgment, is that it tried to accomplish too much. In health insurance, it wanted to raise the percentage contributions over 100% in some cases over the three years and the dollar caps over 300% in one instance. It wanted to fix what it perceived as an inequity with the Transit Operators by moving them from first in the comparables to last, a much too drastic of a change. It wanted to fix a perceived problem with the overall salary schedule and bring it in line with the comparables by adding a step to the salary schedule, an initial step at 5% less than the status quo step, but found little support in the comparables and it did not provide a sufficient *quid pro quo*. Its wage offer, while in the ball park and relatively close to the Union's, came up short in comparison to the external comparables. If these parties had not made some of the health insurance agreements they did, perhaps, the City's insurance proposals would have appeared more reasonable. Perhaps if the City had focused only on health insurance, this outcome would have been different. If the City's proposals for restructuring the was schedules had been reasonable, a different result might have occurred.

The City argued many more points to which that I have not responded here. The lack for the City was not its arguments – its side was told well and in depth – but in its positions on these issues. I did review all of the City's arguments at great length and those I have not discussed were found wanting in some way.

Based upon the facts and reasoning stated above, this arbitrator finds

AWARD

That the final offer of the Union shall be incorporated into the collective bargaining agreement between the parties for the 2007-09 term.

Dated at Madison, Wisconsin, this 25th day of April 2008.

By _____
James W. Engmann, Arbitrator