In the Matter of the Petition of

CITY OF SEYMOUR (DPW)

Case 25
No. 66962
INT/ARB – 10942
Decision No. 32228-A

To Initiate Interest Arbitration
Between the Petitioner and

SEYMOUR EMPLOYEES UNION, LOCAL 455-A,
AFSCME, AFL-CIO

APPEARANCES:

Davis & Kuelthau, s.c., Attorneys at Law, by Mr. James R. Macy, appearing on behalf of the City

Mr. Mark DeLorme, Staff Representative, AFSCME Council 40, appearing on behalf of the Union

ARBITRATION AWARD

City of Seymour, hereinafter the City or Employer, and Seymour Employees Union, Local 455-A, AFSCME, AFL-CIO, hereinafter the Union, reached impasse in their bargaining for the 2007 – 2009 collective bargaining agreement. The Union filed the subject interest arbitration petition on May 11, 2007. The Wisconsin Employment Relations Commission's staff investigator conducted an investigation of the petition on July 19, 2007 and by September 24, 2007 the parties had submitted their final offers to the investigator. The Commission, on October 5, 2007, certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the captioned matter was held on February 12, 2008, in Seymour, Wisconsin. The parties submitted post-hearing briefs and reply briefs that were received by May 6, 2008.

BACKGROUND:

This dispute is concerned with the terms of the parties' 2007-2009 collective bargaining agreement in the bargaining unit of the Department of Public Works. The parties reached several tentative agreements during their negotiation for a successor agreement to their 2003-2005 collective bargaining agreement. Those tentative agreements dealt with language pertaining to management rights – layoff, promotion and job posting, longevity, disciplinary procedure, and pay period language. Also, their final offers are identical on two items – the duration of the agreement being three years, and d pay increases of 3% effective 1/1/07, 1/1/08 and 1/1/09.[1] The final offer item that remains in dispute pertains to the level of Employer and employee contribution toward the employees' health insurance premium costs.

There are 9 employees in the DPW bargaining unit, in 2008 all were enrolled in the City's health insurance program, and all are enrolled for family coverage. The Employer participates in the Wisconsin Public Employers' Health Insurance program, hereinafter State Program. Under that program there were three providers in the City's service area – Outagamie County. The providers were Network Health Plan, United Healthcare Northeast, Humana Eastern, and Arise Health Plan (formerly WPS Prevea). In 2008, the most recent enrollment year, 3 employees were enrolled in Network Health Plan for family coverage and the other 6 employees were enrolled in the United Healthcare Northeast for family coverage. Under the State Program an employer can contribute from 50% to 105% of the premium cost of the lowest cost qualified plan in the service area (county). The State Program requires that to be a "qualified" plan

> "a plan must meet minimum provider availability requirements (based on primary care providers, hospital, chiropractor, and dentist if dental is offered by the plan".

If the State Program designates a plan offered in the employer's service as "not a qualified" plan "it means that the plan has at least one primary care provider in that county (service area). The State Program also requires that

> "For employers who use the '105% Formula' to determine premium

[1] It appears from the Employer's exhibit #7 that the 3% increase is on the base rate and not applied to each individuals rate of pay.

contributions, the low cost qualified plan is considered when determining the employer's maximum allowable premium contribution in that area".

The calendar year 2008 monthly premium for family coverage under the Network Health Plan is $1219.30/month, for the United Healthcare Northeast it is $1340.80, for Arise Health Plan it is $1427.10, and for Humana Eastern it is $1984.80.[2] Of the 4 plans all but the Arise Health Plan are considered "qualified" plans in the Outagamie County service area. The single plan premiums have not been shown and will not be discussed because all of the bargaining unit employees elected family coverage in 2008, the most recent selection period.

FINAL OFFERS ON THE ISSUE IN DISPUTE:

Employer/Employee Health Insurance Premium Contribution Levels

Union's Offer:

1. Article 21 – Group Insurance, revise as follows:

A. Coverage – The following shall be effective upon the City's admission to the Wisconsin Public Employers' Group Health Plan. The City will pay up to 105% of the single premium rate of the lowest cost qualified plan in the employers' service area for employees eligible for the Single Plan. The City will pay up to (105%) of the Family premium rate of the lowest qualified plan in the employer's service area for employees eligible for the Family Plan. Effective January 1, 2008, the City will pay ninety-two and one-half percent (92.5%) of the premium rate of all qualified plans in the employer's service area for employees eligible for the Single or Family Plans. Effective January 1, 2009, the City will pay ninety percent (90%) of the premium rate of all qualified plans in the employer's service area for employees eligible for the Single or Family Plans. The City shall not be responsible for more than (100%) of the premium of the plan selected by the employee. If the cost of the plan selected by the employee is more than one hundred five percent 105% of the lowest cost qualified plan the~~, as indicated above,~~ employee shall pay the difference.

City's Offer:

2. Article 21 – Group Insurance – Modify Section 21(A) to read:

~~The following shall be effective upon the City's admission to the Wisconsin Public Employers' Group Health Plan.~~ Effective January 1, 2007, the City will pay up to one hundred ~~five percent (105%)~~ one hundred (sic) percent (100%) of

[2] Premium rates for the 2009 plan year were not available at the time of the hearing in this matter.

the single premium rate of the lowest cost qualified plan in the employers' service area for employees eligible for the ~~Single~~ Plan. Effective January 1, 2008, the City will pay up to ~~one hundred five percent (105%)~~ ninety-five percent (95%) of the ~~family~~ premium rate of the lowest qualified plan in the employer's service area for employees eligible for the ~~Family~~ Plan. Effective January 1, 2009, the City will pay up to ninety-two and one-half percent (92 1/2%) of the premium rate of the lowest cost qualified plan in the employer's service area for employees eligible for the Plan. ~~The City shall not be responsible for more than (100%) of the premium of the plan selected by the employee. If the cost of the plan selected by the employee is more than one hundred five percent 105% of the lowest cost qualified plan the, as indicated above, the employee shall pay the difference.~~

DISCUSSION:

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

Section 11.70

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

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

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

a. The lawful authority of the municipal Employer.

b. Stipulations of the parties.

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

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact–finding, arbitration or otherwise between the parties, in the public service or in private employment.

The first issue that must be resolved is what is the appropriate set of external comparables to be utilized in resolving this dispute. The parties agree upon all but two external comparables. Those they are in agreement on are Brillion, Clintonville, Combined Locks, Kimberly, New London Oconto, Oconto Falls, Pulaski and Suamico. However, the Union argues that the City's inclusion of Bonduel and Gillett is inappropriate inasmuch as the employees of those employers are unrepresented. It cites several prior interest arbitration awards wherein arbitrators have concluded that non-represented employees are not suitable for purposes of comparison with represented employees. The City argues that arbitrator Michelstetter, in 1997, in a case involving itself and this bargaining unit addressed the issue of appropriate comparables and included Bonduel and Gillett. It contends, therefore, that there is no compelling reason to overturn that decision now, whereas, stability and predictability are enhanced by maintaining a given set of comparables.

The undersigned agrees with the Employer that absent some compelling evidence that arbitrator Michelstetter's determination of the appropriate set of external public sector comparables is no longer appropriate they should be used in this case. First, the parties have bargained at least two contracts since the Michelstetter award and presumably have utilized the established comparable pool in evaluating what was

occurring among those comparables in developing their proposals for bargaining and potentially arbitration. Predictability is, as the City argues, an important consideration and creating a situation where the relevant comparisons for purposes of developing proposals in bargaining is ever changing means the parties can never be sure who to look to for purposes of comparing and evaluating employees' wage and benefits package – a factor to be considered in arbitration (7r.e.above). Also, there has been no showing in this proceeding why the comparable pool established by Michelstetter is no longer appropriate. It is also the case that represented or non-represented employees are but one criterion in determining a community's comparability. Arbitrator Michelstetter in arriving at the primary comparables he utilized in the earlier decision involving these parties stated

> "All of these are within 24 miles except Oconto which is slightly further, but has very easy highway access to Seymour. All are of a similar size to that proposed by the Employer. There is a variation in economic base, but this group tends to represent a good cross section of similar sized municipalities in this area. The group proposed by the Employer had many units which were not organized for collective bargaining. This group tends to be more representative."

Clearly, he was aware of the representative status of the employees in the communities he selected. It is also the case that merely because a community is deemed comparable based upon the criteria articulated by Michelstetter that they all necessarily carry equal persuasive value for any number of reasons, one of which is whether the employees are represented and collectively bargain their wages.

As can be seen from the parties' final offers the only item in dispute is the level of employee/employer contribution toward health insurance premiums in each of the three years of the contract. And, both party's proposals differ considerably from the status quo regarding health insurance as reflected in the prior collective bargaining agreement. Under the prior contract the City paid up to 105% of the family and single premium rates of the lowest cost qualified plan. In 2006, the last year of the predecessor agreement, the lowest cost qualified plan was the Network Health Plan. The Union's final offer maintains the status quo regarding premium contribution for the 2007 contract year, whereas, the City's final offer changes the status quo for 2007 by proposing that it would

only pay up to 100% of the single and family premium of the lowest cost qualified plan. In the second year of the agreement, 2008, the City proposes to reduce its premium contribution to up to 95% of the cost of the lowest qualified plan for single and family coverage. However, the Union's proposal for 2008 also deviates from the status quo. The Union proposes that in 2008 the Employer would pay 92.5% of the single and family premium rates of all qualified plans. In other words rather, rather than paying up to a percentage of the lowest cost qualified plan the Union's proposal would have the City paying 92.5% of all qualified plans. And, in the third year of the contract, 2009 the Employer proposes to pay up to 92.5% of the single and family premium of the lowest cost qualified plan, whereas, the Union's proposal is that the City would be required to pay 90% of the single and family premium all qualified plans.

The Employer argues that its offer upholds the State Plan's philosophy of encouraging competition among providers whereas the Union's proposed change to the status quo for the 2008 and 2009 contract years neutralizes the competitive bid process by removing the linkage of the City's contribution to the lowest cost plan. As it is described in the State Plan the maximum allowable employer contribution is set at 105% of the lowest cost qualified plan and the minimum contribution must be at least 50% of the lowest cost qualified plan. Thus, an employer's maximum allowed contribution to premium under the State Plan is capped at 105% of the lowest cost qualified plan. The City argues its proposal maintains this concept in that its contribution rates are tied to the lowest cost qualified plan – 100%, 95% and 92.5% in 2007, 2008, and 2009 respectively. It contends that the Union's proposal for 2008 and 2009 destroys the foundation underlying the State Plan and will result in higher costs to the City over time because the employee will be in control of what health plan the City will be contributing to regardless of cost. The City concludes that the Union's proposal destroys the free market competitive forces that are a key component to insuring that the State Plan is run on a cost effective basis. It contends that the Union plan rewards noncompetitive health care providers at too high a cost to the City to enable employees' choice of doctor.

The Union counters that the City's arguments are nonsense because the State Plan offers the City protection form excessive premium increases by limiting an employer's premium payment to no more than 105% of the lowest cost option and the Plan's built in

competition and spreading of the risk over a larger pool. On the other hand the City is asking employees of modest incomes to bear and incredible financial burden in the event they have the audacity to chose anything other than the lowest cost plan. Thus, the Union concludes that the City proposal is the more unreasonable because it exposes the employee to more risk. Also, the Union argues that the City produced no evidence that the Union's proposal is prohibited or even frowned upon by the State Plan. It points to the fact that its proposal is mirrored in other locations around the state including two of the external comparables – Kimberly and combined Locks. It concludes that the State of Wisconsin Group Insurance Board, which oversees the State Plan is in the best position to protect the interests of the plan and there is no indication that the Board disfavors the Union's offer.

Both parties have also presented arguments regarding the other party's offer as being a change in the status quo and why the party has not satisfied the status quo tests enunciated by other arbitrators. The fact is, as noted earlier, in the undersigned's opinion each party's final offer modifies the status quo regarding the method of determining the dollar/percentage amount of the employee/City contribution toward the health insurance premium of the plan selected by the employee. It is also the case that neither offer contains a quid pro quo for the change being proposed. While some arbitrators in the face of such circumstances have engaged in an exercise of assessing which final offer presents a significant change or more significant change in the status quo in order to establish who has the burden of persuasion and whether a quid pro quo is required, the undersigned doesn't see that exercise as helpful in determining which offer best reflects the outcome that would have resulted had the parties been able to reach a voluntary settlement in bargaining. Rather, in the undersigned's opinion's, what is occurring in an employer's bargaining with its other represented units and what has taken place with other external comparables and comparing and contrasting the offers with those comparables is the most instructive. Since both party's final offer modifies the status quo that existed under the predecessor collective bargaining agreement and because neither party offers a quid pro quo for its proposed changes nothing more needs to be said concerning the necessity of a quid pro quo in this case.

Turning then to the comparables, there is only one other represented bargaining unit in the City – sworn employees in the Police Department. And, that unit is also represented by the Union and is in interest arbitration with both parties having made final offers on health insurance identical to what are before me in this proceeding. Consequently, there is no internal comparable settlement to examine for guidance.

In terms of the external comparables, Brillion, Combined Locks and Oconto Falls health insurance plans are those offered under the State Program, as is the case in Seymour. In the case of Brillion in 2007 the employer will pay 100% of the lowest cost qualified plan less 5% of the monthly premium. Thus, the employee was responsible for 5% of the premium, but that amount was capped at $68 for 2007. If the employee selected a higher cost plan he/she was responsible for the difference in the cost as well as the employee share. In Combined Locks the employee must pay 8%, 9%, and 10% in 2007, 2008, and 2009 respectively, of the premium of the plan selected that is offered under the State Program. In Oconto Falls in 2005 the employer contributed 90% of the premium of the "mid-level qualified health care plan in the Employer's service area". Then in 2006 the Employer contributed 97% of the cost of the premium of the "lowest level cost qualified health care plan" and in 2007 the 97% employer contribution level was reduced to 95% of the lowest level cost qualified plan.

Under the Clintonville 2007-2009 contract the employee must contribute 10% of the cost of the premium and depending upon whether the employee chooses services in the plan or from non-plan providers there are established co-pays and deductibles that the employee must also pay. In Kimberly, for the 2006-2008 collective bargaining agreement the employee is required to contribute 10% of the cost of the health insurance premium and 5% of the cost of the dental insurance premium. New London's contract for 2007 provided the employer would pay 92% of the health insurance premium and there was a $500 deductible and 20% co-pay on the first $2000 in charges for services provided outside the PPO. For PPO services the maximum out of pocket was $400 for family and maximum out of pocket for non-PPO services was $900 for family exclusive of prescription drugs. For the 2008-2010 the New London ratified agreement provides that the employee share of the premium was reduced form 8% to 4% effective 1/1/2008, the drug card was eliminated, deductibles will be $3000 for family and for non-PPO

services there is a co-pay of 30% of the next $10,000, but co-pays for PPO services were eliminated after the deductible. The Employer also provides a Health Savings Account it funds up to 75% of the deductible in 2008 and 60% in 2009 and 2010. City of Oconto employees are represented by the Teamsters and the employee is responsible for 10% of the cost of the Central States C6 Health Insurance Plan which includes coverage for dental, vision and retirees. Under the 2008-2010 Pulaski collective bargaining agreement the employer will pay "up top $999.52/month for family health insurance and $23.86/month for employee dental insurance. And, in Suamico for the 2006-2008 contract the employer pays 90% of the premium cost of the Teamsters Central States Health and Welfare Plan.

Examination of the various external comparables health insurance programs as outlined in the collective bargaining agreements makes it clear that other than being able to compare and contrast the percentage level premium contribution, unless the plans are identical any meaningful comparison is impossible. As discussed above some plans provide for co-pays and deductibles of differing amounts and depending upon whether the services were PPO or non-PPO. Also, the collective bargaining agreements, in some cases, do not specify a plan or the services that are provided. Clearly, the level of covered service drives the plan costs. In the undersigned's opinion the only apples to apples comparison that can be made is when the plans are identical. In this case that means looking to Brillion, Combined Locks, and Oconto Falls as they are the only other established external comparables who offer the State Health Insurance Program.

The Combined Locks contract mirrors the Union's final offer for 2008 and 2009 in that the employer pays an agreed upon percentage of the premium of any of the plans offered under State Program. In 2008 that percentage is 91% and in 2009 the percentage paid by the employer is 90%. That compares with the Union's offer in this case of 92.5% in 2008 and 90% in 2009. But, the Oconto Falls 2005-2007 contract is the same in concept as Seymour's final offer in that the employer contributes a percentage of the lowest cost qualified plan. In 2007 that was 95%. Brillion's contract also ties the employer's maximum contribution to the lowest qualified plan with the employer paying 100% of the lowest cost qualified plan less 5% of the premium of any selected plan to be paid by the employee with the employee's contribution capped at $68/month in 2007.

Seymour's final offer, however, does not place a cap on the monthly dollar amount the employee can be required to contribute regardless which plan the employee selects.

So in 2007,[3] under the City's final offer it would pay 100% of the Network premium and an employee selecting the United Healthcare Plan would be required to contribute $80.80 per month for family coverage – the difference between 1135.00/month and 1216.30/month. Under the Union's offer for 2007, which maintains the status quo, an employee selecting the United Plan would be required to pay $24.02/month or $56.78/month less than under the City offer.

In 2008, when the City proposes to reduce its contribution level to 95% of the lowest cost qualified plan, the Union's final offer proposes to change from the status quo to having the City contribute 92.5% of the cost of any plan chosen by the employee. Had the prior contract status quo been maintained in 2008, employees selecting the Network plan would pay nothing and employees selecting the United Plan would have paid $60.53/month. Under the City's offer for 2008 employees selecting the Network Plan would pay $60.97/month (5%) and those selecting the United Plan would pay $182.47/month (13.6%), whereas under the Union's final offer for 2008 employees selecting the Network Plan would pay $91.45/month (7.5%) and those selecting the United Plan would pay $100.56/month (7.5%). Under the Union's final offer the 3 employees selecting the Network Plan will pay $30.48/month ($365.76/year) more than under the Employer's final offer but the 6 employees selecting the United Plan would pay 81.91/month (982.92/year) less under the Union final offer than under the Employer final offer.

In 2009, under the City's final offer, and assuming a 10% increase in premiums over 2008 premium costs, the employees selecting the Network Plan would pay $100.59/month (7.5%) and those selecting the United Plan would pay 234.24/month (15.8%). Had the status quo under the prior agreement been maintained in 2009 employees selecting the Network Plan would have paid nothing and employees selecting the United Plan would have paid $66.59/month (4.5%). Under the Union's final offer for 2009 employees selecting the Network Plan would pay $134.12/month (10%) and those selecting the United Plan would pay $147.48/month (10%). Under the Union's final

[3] The Brillion contract for years beyond 2007 was not settled at the time of the hearing in this matter.

offer for 2009 if the 3 employees who selected the Network Plan in 2008 stay with the same plan in 2009 they will pay $33.56/month ($402.36/year) more than under the Employer's final offer, but if the 6 employees who selected the United Plan in 2008 stayed with the plan in 2009 they would pay $86.76/month (1041.12/year) less under the Union final offer than under the Employer final offer.

These numbers show that the financial cost to the employee for selecting the lowest cost qualified plan under the Employer's final offer is less than under the Union's final offer, but significantly more under the Employer's final offer if he/she selects the next highest cost qualified plan, which is consistent with how things were structured under the status quo of the predecessor agreement. Under the Union's final offer, while an employee also pays more for selecting the next highest cost qualified plan, the additional cost is moderated. There is no question but that under the Employer's offer there is greater steerage toward the lowest cost qualified plan. The Union's offer does not discourage employee choice of the higher cost plans by requiring the employee to pay a higher percentage of the cost of the higher cost plans as does the Employer's offer. Although there is no record evidence of the reasoning behind the both parties' offer to go away from the status quo one can surmise that it was driven by the fact that employees of those external comparables who offer the State Plan were being required to pay a greater percentage of the total cost of the health insurance premium than was the case in Seymour. None of the 3 employers, Brillion, Combined Locks and Oconto Falls, were paying 105% of the lowest cost plan.

In the undersigned's opinion because both parties were moving away from the status quo in 2008 and 2009 I think it instructive to examine the impact of the changes proposed when compared to what would have occurred under the status quo. There is no question that even under the status quo employees would have been required to pay more simply because premium costs are going up. It is also the case that under the status quo if an employee selected the lowest cost plan he/she would not be required to pay any of the premium. And, any employee selecting a higher cost plan, qualified or not, would have that choice subsidized because the Employer would have been required to contribute 105% of the cost of the lowest qualified plan toward the employee's choice of plan.

In 2008 under the status quo had an employee selected the United Plan he/she would pay $60.53/month and $726.36/year (4.5%), under the Union's final offer that employee would pay $100.56/month and $1206.72/year (7.5%), and under the Employer's offer that employee will pay $182.47/month and $2189.04/year (13.6%). In other words under the Employer's final offer the employee selecting the United Plan in 2008 will pay 2 times more for his/her choice than had the status quo remained in effect, and 1.66 times more under the Union offer. But, in terms of dollar cost to the employee the employee's choice of the United Plan under the Employer's offer will cost the employee $121.94/month and $1463.28/year more than under the status quo, whereas, under the Union offer he/she will pay $40.03/month and $480.36/year more than under the status quo.

In 2009 under the status quo had an employee selected the United Plan he/she would pay $66.59/month, and $799.08/year (4.5%), under the Union's final offer the employee would pay $147.43/month and $769.16/year (10%), and under the Employer's offer that employee will pay $234.24/month and $2810.88/year (15.8%). In other words under the Employer's final offer the employee selecting the United Plan in 2009 will pay 2 ½ times more for his/her choice than had the status quo remained in effect, and 2 ¼ times more under the Union offer. But, in terms of dollar cost to the employee the employee's choice of the United Plan under the Employer's offer will cost the employee $167.65/month and $2011.80/year more than under the status quo, whereas, under the Union offer he/she will pay $80.84/month and $970.08 more than under the status quo.

I understand the Employer's desire to have the employee contribute a greater percentage of the cost of his/her health insurance and the external comparables support that idea. But, both final offers represent a huge increase in cost to the employees over the three-year term of the agreement. Even the increased cost to the Employer over many years preceding this bargain occasioned by the ever escalating cost of health insurance, while in some years rising by double digit percentages, never approached the percentage increases that will be required to be absorbed by the employees under either party's offer in 2008 and 2009 over what they paid before. In 2006, employees electing the Network plan would have had to contribute nothing to the cost of their health insurance premiums. In 2007, under either the Union or the Employer final offer employees selecting the

Network Plan will continue paying nothing. However, in 2008 they will have to pay $60.97 under the Employer's offer and $91.45 under the Union's offer, one-half again as much. Then in 2009 employees selecting the Network plan will be required to pay 100.59/month under the Employers offer and 134.12/month, a third more under the Union's offer. In 2006 employees electing the United Plan paid $0.61/month and $7.32/year (Network Plan cost = $1057.80 x 105% = $1110.69 and United Plan cost = $1111.30 [$1111.30 – $1110.69 = $0.61 x 12]). In 2007 under the Employer final offer they will pay $80.80/month, in 2008 they will pay $182.47/month, and in 2009 they will pay $234.24/month. As compared to what employees paid in 2006 regardless of whether they selected the Network Plan or the United Plan they will be paying significantly more during this contract period for either plan. It is also clear that cost could not have been an employee consideration in the selection of either plan in 2006, when it only cost employees selecting the United Plan $0.61/month more than if they had selected the United Plan. Also, the year over year percentage increase in the premium from 2006 to 2007 for the Network Plan was 7.3% ($1057.80 increased to $1135.50) and for the United Plan was 9.5% ($1111.30 increased to $1216.30). Those increases pale in comparison to the increase in the cost of health insurance that will be incurred by the employees under either final offer over what they paid before. This, in the undersigned's opinion, reinforces the point that the cost of insurance didn't get to the point that it is at today in a short period of time, and therefore, it shouldn't be expected that employees must assume a greater and greater percentage of the cost of the insurance in a very short period of time. Rather, the cost increased steadily over a substantial number of years. It is not unreasonable, faced with the enormity of the cost of providing this fringe benefit today, for employers to expect employees to be sharing in that cost. But, in the undersigned's opinion, it is unreasonable to expect the employees to start absorbing some of that cost, in percentage terms, other than incrementally.

The 2009 estimated cost of the lowest cost Network Plan is $16094.76/year ($1341.23/month x 12) or 38% of the employee's annual salary based upon the median bargaining unit wage of $20.35/hour in 2009 or $42,328/year. And, that employee's increase in 2007 was $0.54/hour, in 2008 was $0.55/hour and in 2009 was $0.57/hour. Thus, his/her wage increases during the term of the agreement were $1123.20 in 2007,

$1144.00 in 2008, and $1185.60 in 2009, totaling $3452.80 over the term of the agreement. Yet, under the Employer's final offer an employee selecting the United Plan will see his/her cost increase from $7.32 in 2006 to $5970.12 over the term of the agreement. Even under the Union's final offer that employee will see his/her cost over the term of the agreement increase to $3264.72. And, an employee who selected the Network Plan will see his/her cost increase from zero in 2006 and 2007 to 60.99/month or $731.88/year in 2008 and $100.53/month $1232.36/year in 2009 for a total increase during the contract term of $1964.24 under the Employers offer, and $91.45/month or $1097.40/year in 2008 and $134.12 or $1609.44/year in 2009 for a total increase during the contract term of $2706.84 under the Union's offer. Thus, the Union's offer costs an employee selecting the Network plan $742.60 more over the term of the agreement than the Employer's offer, whereas, the Employer's offer costs an employee selecting the United Plan $2705.40 more than the Union's offer.

As the numbers show, regardless which offer is selected and regardless which insurance provider an employee selects, his/her wage increases will be substantially eroded by their increased costs for insurance. It is the case that the Employer has an IRS 125 plan that can be utilized by employees to eliminate the need to pay taxes on the wages that will be used for health insurance premiums, but that will not provide much solace in the face of $4 a gallon gasoline.

In the undersigned' opinion the Employer's offer extracts too much too fast from employees electing the Network Plan as compared to what those employees would have been required to pay had the predecessor agreement's status quo been continued. Had it moderated its proposal by, for example, implementing caps as was done in Brillion, or taking a longer period of time with smaller incremental increases (Combined Locks 1% increase in employee percentage per year) to reach the 90% level, or staying at 95.5% in 2009, or other solutions for moderating the rate of increase its offer would have been more attractive.

The Employer has argued that adopting the Union's final offer will have the effect of diminishing competition among providers and undermining the State Program's model. But, there is no record evidence to support that conclusion. And, in as much as other employers utilizing the State plan have adopted a premium sharing arrangement

like the Union proposes in this case and the State Plan has not prohibited such an arrangement apparently the State Plan does not believe such an arrangement is problematic. Therefore, I don't find the City's arguments in that regard persuasive.

The Employer has also argued that the Union's offer removes the disincentive built into the State Program for selecting any plan other than the lowest cost qualified plan which also will necessarily increase its costs. However, even if the Union's final offer is selected and employees revert from their 2008 plan selections (6 United and 3 Network to their historical 2000-2007 plan selection of 8 selecting the United Plan and 1 selecting the Network plan,[4] the additional cost to the Employer would be $1965.84/year and in 2009 an additional coast to the Employer of $2083.44/year. Clearly, this would not be a significant additional cost when measured against the Employer's final offer total package cost of $583,543 for 2008 and $607,689 in 2009 - .3% in each year. And, it is unknown what the premiums for 2009 will be, and therefore, what employees will choose to do. Thus, this argument is just too speculative to have any persuasive value.

The Employer also argues that the Union's offer is ambiguous and should, therefore, not be selected. It contends that the Union's offer does not define what the Employer's contribution to premium will be when an employee selects a "non-qualified" plan, in this case if an employee selected Arise, a "non-qualified" plan in 2008. The Union asserts that its offer is not ambiguous, similar language appears in other collective bargaining agreements found throughout the state, and in two of the external comparables. And, even assuming the offer is ambiguous, the Employer should have objected before the Commission certified the offers.

Review of the Union's offer indicates that it does not explicitly address the situation if an employee selects a "non-qualified" plan how the Employer/employee premium payments will be calculated. And, the Union has proffered no explanation as to why it thinks its offer is not ambiguous in this respect. In 2008 Arise is the only "non-qualified" plan in the Employer's service area, and there is no information regarding what plans will be available in 2009. Thus, it is unknown if there will be any "non-qualified" plans in 2009. In the 2007 contract year the Union proposed retaining the status quo

[4] I have assumed the one employee that had historically selected the Arise plan would switch to the Network plan because of the high cost to the employee of selecting the Arise plan even under the Union offer.

meaning the Employer's argument is not applicable for the 2007 contract year. In 2008 no one had selected Arise so the argument is also not applicable to the 2008 contract year. I do agree with the City that parties should work to avoid creating ambiguous language, but I also agree with the Union that if the City believed the language was so ambiguous as to be an inappropriate final offer it should have raised that issue with the Commission's Investigator. It did not. So if the Union's offer is selected the Employer will have to live with the ambiguous language for only one contract year and it will not become an issue unless an employee selects a "non-qualified" plan, assuming there is one offered in the City's service area. Also, it is not my responsibility nor do I believe it appropriate for me to interpret the language in this proceeding, and the parties have not presented argument as to what the language means. The City's has only argued that the ambiguousness of the Union's language is sufficient reason for the undersigned to select the City's final offer. I disagree.

Concerning the other statutory factors, the "greatest weight" factor pertaining to any state laws or directive placing limitations upon expenditures or revenues collected has not been shown to have any impact upon the selection of either final offer. Also, there is no record evidence that the economic conditions in the City – the "greater weight" factor –would preclude selection of the Union offer. And, the interest and welfare of the public is served by both offers in that the all employees will be assuming some of the cost of their health insurance in the second and third years of the contract, as is the case among the external comparables. Finally, the City's ability to meet the cost of the Union's final offer is not a factor in the outcome.

Thus, even though both offers will require most employees to quickly assume a significant percentage of the cost of heir health insurance, when compared to what they contributed under the predecessor agreement, the undersigned is persuaded the Union's final offer is the more reasonable. Therefore, based upon the evidence, testimony, arguments, and application of the statutory criteria contained in Section 111.70(7) Wis. Stats. to the facts of this dispute the undersigned enters the following

AWARD

That the Union's final offer is selected and it along with the tentative agreements of the parties shall be incorporated into the parties' 2007-2009 collective bargaining agreement.

Entered this 15th day of July 2008.

Thomas L. Yaeger
Thomas L. Yaeger
Arbitrator