



IN THE MATTER OF INTEREST ARBITRATION

Between)
)
Oneida County Courthouse Employees) Case No. 180
Local 79-B, AFSCME) No. 66752
) INT/ARB 10900
) Dec. No. 32365-A
)
and) Irving Brotslaw
) Arbitrator
Oneida County)

APPEARANCES

For the County

John J. Prentice, Esq.
Simandl & Murray, S.C.
Waukesha, Wisconsin

For the Union

Dennis O'Brien
Staff Representative
Wisconsin Council 40, AFSCME

I. BACKGROUND

The instant case involves a dispute between Oneida County, a municipal employer (hereinafter referred to as "the County"), and Local 79-B, AFSCME, AFL-CIO, a labor organization which represents courthouse employees employed by Oneida County (hereinafter referred to as "the Union"), over the terms and conditions of a new collective bargaining agreement to replace the one which expired December 31, 2006. By agreement, the effective dates of the new agreement would be January 1, 2007 to December 31, 2008.

The parties exchanged initial contract proposals, and attempted to resolve their differences through collective bargaining, but several issues, most notably the matter of health insurance for current and retired employees, remained unresolved. A petition was filed with the Wisconsin Employment Relations Commission (hereinafter referred to as "the Commission" or "the WERC") to initiate interest arbitration. On March 28, 2007 Ms. Lauri A. Millot, representing the WERC, conducted an investigation which determined that the parties remained at impasse.

The undersigned was notified that he had been selected to hear the case by means of a letter from Judith Neumann, chair of the WERC, dated April 3, 2008. A hearing on this matter was held at the Oneida County Courthouse, Rhinelander, Wisconsin on June 24, 2008. The hearing began at 10:00 a.m., and concluded at approximately 4:00 p.m. The County was represented by Atty. John J. Prentice of the law firm of Simandl & Murray, S.C., Waukesha, Wisconsin. The Union was represented by Mr. Dennis O'Brien, Staff Representative, District Council 40, AFL-CIO.

At the hearing the parties submitted evidence and presented testimony in support of the final offers which were certified to the Commission. At the hearing, the County noted that it had amended its final offer with reference to the health insurance issue. The Union objected, arguing that only the final offers certified by the Commission were the proper subject of interest arbitration. This matter will be discussed more fully below.

Since this was the first time this bargaining unit had proceeded to interest arbitration, both parties addressed the issue of what constituted the appropriate comparables for the purpose of this case. They agreed upon the inclusion of the courthouse employees of Forest, Langlade, Lincoln, Price and Vilas Counties. The Union proposed several other external comparables, including the Human Services Board of Forest, Oneida and Villas Counties; the Lincoln County social services employees; and the City of Rhinelander City Hall and Police Department employees. The County agreed to the inclusion of the Human Services Board of Forest, Oneida and Villas Counties, but did not concur with the inclusion of the social service employees of Lincoln County or the City of Rhinelander City Hall and Police Department as external comparables.

At the hearing, the County presented an "Exhibit Book" consisting of 576 pages (hereinafter referred to as "ER Ex") grouped under the following topic headings: (1) Statutory Criteria; (2) Final Offers; (3) County Financials; (4) Costing; (5) Internal Data; (6) External Comparable Data; (7) External Source Documents; and (8) Additional Information. Under cover of a letter from Mr. Prentice dated July 2, 2008, the County submitted a copy of the Social Security Administration Consumer Price Index, and a copy of an e-mail from Lauri A. Millot, dated April 2, 2007, relating to her understanding of the parties' settlement agreement. Since the Union did not object, the above-referenced documents are included in the record.

The Union submitted a set of exhibits, hereinafter referred to as "UN Ex," whose sheer volume roughly equaled the size of the County's exhibit book. They were grouped under a total of 14 headings, as follows: Final Offers; Current Contracts; Statutory Criteria; Contracts, internal units, Oneida; External Counties Comparable; Consumer Price Index; County Demographics; Population Data; Budgetary Information; Wage Comparisons; Health Insurance; HRA Information; Retiree Health Insurance; Benefit Comparisons.

The information contained in the Union's exhibits purport to demonstrate that the County's financial status is good; that the wages received by Oneida County courthouse employees are relatively high, but not the highest among the external comparable; that health insurance premiums for active employees at \$1623 a month are the 3rd highest among the external comparable; and that only a small number of its members have received retiree health insurance benefits. Conversely, the County's exhibits demonstrate that the County's financial position is unstable; that retiree health insurance costs are very high, equal to \$640,000 a year, or \$19 million if the cost is amortized over 30 years; and that its ability to raise sufficient revenue to meet the escalating cost of employee compensation is limited by economic considerations and by levy limits imposed by the State.

No transcript was taken at the hearing. Post-hearing briefs were submitted by the County and the Union under cover of letters from Mr. Prentice dated August 29, 2008, and from Mr. O'Brien dated September 6, 2008, hereinafter referred to as "ER Br" and "UN Br". Reply briefs, hereinafter referred to as "ER Reply Br" and "UN Reply Br" were submitted by the County and the Union under cover of letters from Mr. Prentice and Mr. O'Brien, dated October 30, 2008 and November 4, 2008 respectively. The Arbitrator also received correspondence relating to an interest arbitration case involving another bargaining unit in Oneida County. The record was closed with the receipt of the

aforementioned documents.

II. ISSUES AND FINAL OFFERS

The parties agreed to extend the current agreement by two years, and to increase wage rates by 3% across-the-board in each year of the agreement. The Union proposed to add a call-time provision to Article 11 of the collective bargaining agreement, relating to pay for employees called for work outside of their normally scheduled hours. (UN Ex A, Tab 1.) . The Union argued that internal comparable supported the inclusion of this provision in the collective bargaining agreement, and that “the cost would be extremely small if the past experience of the parties continues,” (UN Br @16), and that “Courthouse employees do not normally get called to work outside their regular work hours.” (UN BR. @19)

Conversely, the parties devoted a great deal of attention to the predominant issue in this case - *health insurance* - for both active and retired members of the Courthouse bargaining unit. Because the issue is complex, background information which follows is necessary in order to place the dispute into perspective.

The Union proposes to maintain the status quo with respect to health insurance. The County proposes to increase the health insurance deductible to \$1000 for the single plan, to \$1500 for the single plus one plan, and \$2000 for the family plan. It offers to establish a Health Reimbursement Account (hereinafter referred to as “an HRA”), to which it will allot \$750 (single plan); \$1000 (single plus one); and \$1500 (family plan). It offers to fully fund the County’s share of the deductible in the employees’ HRA account. The remainder of this part of the County’s offer relates to the manner in which these funds can be utilized, including their availability upon an employee’s separation from employment because of termination/resignation, retirement or death. (ER Ex A, Tab

2, pp. 2-3)

The County also proposes to terminate its post-retirement health insurance plan, effective December 31, 2008 and to replace it with an HRA funded with the following level of contributions contained in *two* versions of its “final” offer:

<u>Employee retiring in</u>	<u>County contribution (1)</u>	<u>County contribution (2)</u>
2009	\$5000	\$10000
2010	4000	8000
2011	3000	6000
2012	2000	4000
2013	1000	2000

As noted above, “County contribution (2)” reflects an amendment to the final offer which was introduced following the submission of the final offer certified by the Commission, to which the Union has strongly objected.

Under the current agreement, an employee 55 years of age who retires with a minimum of 20 years of continuous service with Oneida County, and who begins receiving an immediate annuity under the Wisconsin Retirement System, is allowed to continue under the group hospital/surgical insurance plan up to the minimum age at which Medicare begins. The County agreed to pay the single plan rate for employees with at least 20 years of continuous service, and the single plan rate plus \$75 for employees with at least 25 years of continuous service. Under the County’s proposal, employees presently receiving this benefit and employees retiring in calendar year 2008 will still receive County-funded retiree health insurance and, as noted above, “the County will contribute money to the HRA accounts of employees who are now eligible for retiree health insurance and retire in the next five years.” (ER Br @2)

Under the County’s proposal, those employees retiring in 2008 will be the last beneficiaries

of the current plan. For the next five years, retirees can use their HRA funds to pay their health insurance premiums. After 2008, the plan terminates, although future retirees can remain as members of the group insurance plan, provided they pay their own premiums.

III. STATUTORY CRITERIA

The parties have agreed to interest arbitration pursuant to Section 111.70(4)(cm), Wis Stats to resolve the bargaining impasse described above. The criteria to be utilized by the Arbitrator in rendering an award are set forth in the Statute, as follows:

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 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 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. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and 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. Stipulation 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 generally in public employment in the same community and in comparable communities.

- 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 compensation presently received by 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.

IV. POSITION OF THE COUNTY

The County forcefully argues that elimination of the retiree health insurance plan is imperative, since its continuation would imperil the financial integrity of Oneida County. In support of the position articulated in its final offer, it cites looming budget crises; the rapidly escalating cost of health insurance premiums (the premium for family plan coverage increased from \$329 to \$1,623 between 1998 and 2008); and particularly, the current and prospective cost of retiree health insurance whose retention is not supported by reference to either internal or external comparables. The County does not claim “inability to pay” per se, but rather that prospective increases in health insurance premiums will cause severe financial problems for the County, and that it is logical for the County to be proactive, rather than to simply wait for the inevitable to occur.

The County does not claim that it has offered a “quid pro quo” for the elimination of the retiree health insurance benefit. But it proposes to establish and administer an HRA for each employee, which will mitigate some or much of the loss which employees might suffer because of the increased deductibles for active employees, and the elimination of County-paid health insurance for employees who retire before becoming eligible for Medicare. In support of its proposal, the County also argues that the establishment of an HRA will make its employees better informed, more knowledgeable consumers of health care:

“It has been shown that employees who have ownership of the money in their HRA’s are better consumers of health care because it establishes an incentive for them to make prudent decisions with respect to not only the types and costs of services, but also to the life-style choices that affect their health. This results in employees who are more involved and knowledgeable about their personal health and reduces the claims experience, which in turn lowers insurance premiums and results in costs savings, both to the County and the employees.” (ER Br @3)

The County cites cost considerations as the major justification for its position with regard to

the elimination of retiree health insurance. While it is currently in good shape financially, it is concerned that “the reduction in revenue streams and skyrocketing health insurance premiums will financially cripple the County in a relatively short period of time.” It estimates the cost of its retiree health insurance plan to be \$634,377 per year and \$19 million over 30 years, based on an actuarial valuation prepared for the County by John P. Frederick (ER Ex, Tab 4. @14). It argues that Oneida County’s reserves are insufficient to cover this liability, and that its offer includes a “soft landing to lessen the impact of the proposed elimination of the retiree health insurance on those employees who can (sic) or are close to retirement.” (ER Br @3-4) It predicts serious consequences if it fails to act in a timely fashion:

“Like so many public and private employers, Oneida County is standing upon a precipice. It can simply stand by and allow retiree health insurance costs to eat away at County finances, resulting in layoffs and challenging the County’s ability to pay its current employees competitive wages and benefits, or it can purge what is really a short-lived benefit in an effort to help contain benefit costs and return the health insurance coverage of Oneida County employees to a level more consistent with the health insurance coverage of its citizens who are paying the bills.” (ER Br @5)

The County predicts that if it cannot eliminate the retiree health insurance plan, it means that staff, service and benefits will have to be cut, noting that it faces a \$395,000 cash shortfall for services and benefits from the amount of the available 2009 tax levy. (ER Br @6) It claims that two-thirds of union members will qualify for retiree health benefits; that health insurance costs are greater for the elderly than the very young; and that the estimated cost of the benefit is \$640,000 per year. (ER Br @7-8)

According to the County, it has reached the levy limit on property tax assessments; that its other revenue sources, from sales taxes, stumpage fees and long-term care for the elderly, etc. are dwindling; (ER Br @9-10, Cty Ex @22, UN Ex 9E); that it must make cutbacks to live within its

means; and that the reserve fund which it carefully accumulated, which was not intended to fund County operations or to finance recurring liability, will disappear:

“Even if much of the fund was not already committed, using every penny of the County’s contingency fund would not come close to satisfying the \$19 million retiree health insurance liability. It is with these factors in mind that Oneida County has proposed to eliminate the employer paid health insurance benefit and introduce an HRA program that will help County employees save for their retirement health insurance like everyone else in Oneida County.” (ER Br @11)

The County explains that the benefit was introduced during collective bargaining with its Highway Department in 1999, was then negotiated with other bargaining units in Oneida County, and was bargained as part of a package deal with its Courthouse employees in 2001, when the cost of the benefit was relatively low. (ER Br @11-12) In the face of the escalating cost of retiree health insurance, the County asked (Union representative) Dennis O’Brien what it could offer to the Union to bargain out the retiree health benefit, to which he allegedly responded that “there was nothing the County could offer to the Union to bargain out the retiree health benefit.” (ER Br@13)

The County acknowledges that the elimination of the benefit would be a painful loss to the Union’s membership, but would be mitigated by the HRA, and by the fact that retired employees and employees retiring by the end of the year would continue to receive the employer paid retiree health insurance benefit. The second part of the County’s final offer involves an increase in the health plan deductible and the implementation of an HRA, a change which affects both current bargaining unit employees and retirees. (ER Br @15) According to the County, the funds contributed to the accounts would be equal to the increase in the employees’ insurance deductible amount.

“Under the County’s proposal, an employee electing family coverage would pay a deductible of \$2,000 (was \$1,500); however, the employee would also receive a County contribution of \$1,500 to his/her HRA account, so essentially it is a wash.” (ER Br @16)

In response to the question of whether a benefit attaches to the simultaneous increase in the deductible amount and the introduction of the HRA contribution, the County points out while it would not allow employees to use HRA money for expenses eligible under Internal Revenue Code 213, its plan is focused on the real benefit of this program, i.e., post-retirement funding of health insurance premiums. “Under the County’s HRA plan, an employee may use the account balance for qualified medical expenses not covered by insurance, or let it build up over a period of time:

“An HRA is not subject to a ‘use it or lose it provision. Consequently, funds not used by an employee to reimburse allowable employee expenses during the coverage period are carried over to subsequent periods. The County’s proposal includes this carry-over component.” (ER Br @16)

External comparable

The County points out that this is the first (interest) arbitration between these two parties, and therefore, external comparables have yet to be established. It agrees with the Union that the courthouse employees of Forest, Langlade, Lincoln, Price and Vilas Counties are to be included. It notes that the Union has proposed other external comparables, including the Human Service Board of Forest, Oneida and Vilas Counties; the Lincoln County Social Services Employees, and the City of Rhinelander City Hall and Police Department Employees. The County agrees with the inclusion of the Human Services Board, but argues that it is inappropriate to include the City Hall and Police Department Employees of the City of Rhinelander as an external comparable. It also objects to the inclusion of the social services employees of Lincoln County as an external comparable, since (1)

Lincoln County's courthouse employees are already included as a comparable, and (2) Oneida also has a social service department: "The positions included in Lincoln County's social services unit do not coincide with the position in Oneida's Courthouse unit. Rather, as their names suggest, they coincide with Oneida's Social Services Unit." (ER Br @17-18)

With respect to the agreed upon comparables, the County notes that none provide funded retiree health insurance to their employees. Rather, most offer the opportunity to continue coverage under the counties' health plans, using the payout of paid time off or sick leave time to pay for retiree health coverage of some sort - whether through the county or otherwise. It also notes that HRA programs, similar to the one being proposed by Oneida County, operate in several of the external comparables. (ER Br @18)

For the reasons cited and discussed above, the County concludes that its final offer should be selected by the arbitrator.

V. POSITION OF THE UNION

The Union strongly opposes the County's proposed elimination of the retiree health insurance plan. It contends that the plan, which was first negotiated in 2001 in exchange for a stand alone drug card program, is a benefit of great importance to its members, which should not be eliminated through interest arbitration. (UN Br @3) It argues that the County erred by attempting to include in the record what amounts to an "amended" final offer (ER Ex, Tab 2, 005-008), and that only the employer's final offer certified by the Commission (ER Ex, Tab 2, 009-0012) should be given any consideration. (UN Br @6) It cites three interest arbitration cases in which the same issue surfaced, in which arbitrators Slavney, Bilder and Fleishli concurred with the Union's position that final offers which include errors, whether inadvertent or purposeful, cannot be revised unilaterally. (UN Br @9-10)

The Union added the City of Rhinelander City Hall unit and the Police Department, and the Human Services Center of Oneida, Forest and Vilas Counties to its list of proposed external comparables, citing as a reason for their inclusion "common labor market characteristics." (UN Br @11) According to the Union, it rejected the County's HRA proposal in part because it did not include the IRS Section 213 expense allowance, and that "if they had accepted the HRA proposal they (the Union) would have an inferior HRA in their health insurance plan design." (UN Br @15) With regard to the inclusion of a call-time provision for employees called to work outside normal work hours in their final offer, the Union points to comparability with internal units (Sheriffs, Social Workers, Public Health Nurses and Non-sworn Sheriffs' Department employees), and to the fact that "Courthouse employees do not normally get called in to work outside their regular work hours," which means that the cost to the County will be minimal. (UN Br @16-19)

The Union argues that the County cannot reference the “greatest weight” factor in defense of its affordability argument because of its solid financial position, citing indicators such as “increasing fund balances and decreasing loan balances, and continuously decreasing levy rates.” (UN Br @20) It points to other revenue sources (sales tax, intergovernmental charges, timber sales and interest accrued on County deposits) as positive indicators of the County’s financial health. It argues that “while these revenues may not be as great as the property tax revenues subject to the (levy) cap, the cost of the retiree health insurance benefit is insignificant when compared to these revenues,” and that

“declining debt obligation, falling property tax rates, increasing fund balances both as a dollar amount and as a percentage of the total general fund expenditures do not justify the County’s claim that the levy limits support its final offer under the greatest weight criteria.” (UN Br @24-27)

The Union contends that the actuarial study relating to post-employment benefits overstates their cost, since the largest portion of the annual cost (\$330,696) represents the amortization of accrued liability over a period of 30 years as a level dollar amount. According to the Union, this would be reduced by close to \$100,000 annually if the County were to switch to the level percentage of payroll method, and assume a 3% annual increase in payroll. It also argues that the only reason that there needs to be an amortization of accrued liability at all is that Oneida County failed to fund the promise of these benefits in prior years, and that “if the benefits had been funded as the liability had accrued, there would be no amortization and the interest cost would be expected to be offset by the earnings from the earmarked funds.” (UN Br @28)

With respect to the “factor given greater weight” criterion, the Union argues that “either intrinsically or in comparison to the external comparables, Oneida county does quite well, and that

the demographic statistics in the record indicate that Oneida County is either first or second in almost every one of the categories utilized to rate local economic conditions.” (UN Br @30) Specifically, it cites economic indicators such as net new construction; per capita values; growth in equalized value; adjusted gross income; per capita income; median household income; and sales taxes collected by the County as indicators of its financial health. (UN Br @30-36) In its opinion, the aforementioned data supports its position:

“The Union’s final offer is modest and reflects the external pattern far more than the County’s which seeks a substantial reduction in benefits. The County’s local economy is at or near the top by any measure commonly used to evaluate such things. The greater weight criterion supports the Union’s final offer.” (UN Br @39)

With respect to the comparability criterion, the Union notes that it is not the “lone holdout” in this dispute, e.g., it is not the final recalcitrant unit attempting to circumscribe an established internal pattern. In fact, “it is the polar opposite of the so-called ‘lone holdout’.....in this dispute, the County cannot even lay claim to a possible internal pattern. It has achieved no agreement concerning the two most significant aspects of this disputes with any of its represented employees.” (UN Br @37-39)

With respect to changes in consumer prices as a arbitral criterion, the Union argues that the appropriate benchmark for comparative purposes would be the CPI-Midwest, rather than the Social Security cost-of-living adjustment as proposed by the County. It notes that the CPI-Midwest index rose 1.7% for December, 2006, and 4.6% for December, 2007, or 6.3% for two years:

“The CPI supports the parties’ agreement for increases of 3% in each year of the dispute. It does not support the significant reduction in benefits sought for in the County’s final offer.” (ER Br @41)

The Union addresses the fact that none of the external comparables have retiree health

insurance benefits similar to Oneida County, noting that (1) “the wages and benefits of the Onedia County employees are reasonable and unremarkable when compared to the external comparables,” and (2) “that by arbitral reasoning the parties in labor negotiations are free to establish their own priorities, which may differ from county to county.” (UN Br @41)

With regard to 7(r)(g), e.g., “such other factors,” the Union argues that it is the County who is proposing a significant change to the status quo; that the County carries the burden of proving the need to do so; and that it has failed to meet the standards set forth by arbitrators Malamud and Engmann to justify a change in the status quo, and that having failed to for meet their tests,

“it is absurd for the County to maintain that the record supports any claim to an immediate need to remove retiree health insurance for this unit because of its cost and effect on the County’s finances.” (UN Br @44)

The Union disputes the County’s contention that the retiree health insurance plan represents a huge financial burden for the County, citing the low incidence of utilization of these benefits by its members:

“The record indicates that in this unit, the Oneida County Courthouse employees, since 2002, 3 employees have received the benefit for an average of slightly more than 3 years. Moreover, there is presently only one unit member receiving the benefit.” (UN Br @44; also, UN Reply Br @3)

The Union contends that the County is employing what it considers to be an inappropriate strategy of using the Courthouse bargaining unit as the opening salvo in a campaign to eliminate the retiree health insurance plan with other bargaining units, even though settlements with other units in 2007 and 2008 retained the benefit. It further argues that if there is a problem, attempts to resolve it should begin as conservatively as possible. It cites possible solutions, such as shortening the number of years for which an individual could obtain the benefit, raising the age for eligibility, or

increasing employee contributions towards the cost of the plan, etc. (UN Br @49)

The Union also argues that the County has not met another of Arbitrator Malamud's "tests" for changing the status quo via interest arbitration, e.g., whether a quid pro quo has been offered, whether the dollar contributions to the (proposed) HRA represent an alternative to the existing retiree health insurance plan, and whether a less "radical" approach to solving the problem cited by the County would have been a preferable strategy. (UN Br @49-50)

In summary, the Union argues that arbitrators require the party attempting to alter the status quo through interest arbitration to demonstrate an urgent, pressing need, to offer a proposal which is as conservative as possible to address the problem, and finally some reasonable reciprocation. From its perspective, there is no urgent need for the change, including the fact that none of the internal comparables has negotiated retiree health insurance benefits; the County offers nothing for the "excessive" reduction in benefits sought in its final offer; and that its offer is not supported by any internal or external settlement:

"The Union, by contrast, has an offer, which is much closer to the externals settlement pattern and as discussed above no employee of Oneida County would have as a result of the voluntary settlement the two significant changes sought by the County for these employees." (UN Br @53)

VI. DISCUSSION

As noted above, the central issue before the arbitrator is the County's proposal to eliminate the retiree health insurance plan for Oneida County courthouse employees, which was first negotiated in 2001, and replace it with an HRA financed by the County, versus the Union's insistence on maintaining the status quo. In support of their final offers, the parties have provided the arbitrator with a large amount of supporting data, and carefully reasoned post-hearing and reply briefs. The latter alone included a total of 76 pages. The documentation provided by the parties was carefully examined and considered by the Arbitrator.

The County offers a number of reasons in support of its final offer, principally that it is facing critical financial problems because of State-imposed limitations on its ability to raise needed revenue via the property tax. According to the County, its immediate financial status is okay; but it must address serious problems which lie ahead, chief among them being the rapid escalation of health insurance costs. It is particularly concerned about the current and prospective cost of retiree health insurance benefits. It argues that Oneida County, alone among the external comparables, offers county-paid retiree health insurance, and that an HRA will make its employees better informed and more careful consumers of health care because "they will be spending their own money." Implicit in the County's position is the strong possibility the decision in this interest arbitration case will establish a precedent for the County's negotiations with its other bargaining units where the same issue is likely to be addressed.

The Union is strongly opposed to losing retiree health insurance via interest arbitration, arguing that the (proposed) HRA does not represent adequate compensation for the loss of an important benefit. It contends that the County's financial position, measured by almost all of the

traditional criteria, is sound, and that its arguments to the contrary do not constitute sufficient grounds for the elimination of post-retirement health insurance benefits. It argues that its cost has been grossly overstated by the County, noting that its projections are based on the cost of the benefit for all Oneida County employees, including non-represented employees, while the instant case involves only the Courthouse unit, of whom only a very small number have availed themselves of the benefit. (UN Reply Br @3) It also argues that the County has not offered an adequate quid pro quo for its elimination; that the inclusion of a revised HRA contribution schedule in the County's exhibit book, different from the one included in its (certified) final offer, is disingenuous; and that the County is attempting to impose a pattern via interest arbitration which it could not achieve through collective bargaining, where, it argues, a change of this magnitude should be negotiated.

Observations about the positions of the parties

As indicated by the foregoing, the possible elimination of the retiree health insurance benefit and its replacement by an HRA, understandably, is a matter of considerable importance to the parties. The County is realistically concerned about increasing health insurance costs, a concern which is widely shared by union and management negotiators, and by the body politic. The rapid escalation of health insurance premiums for Oneida County employees is acknowledged by the Union. (UN Ex 11, A-C) Also, evidence provided by both the Union and the County demonstrate that none of the external comparables enjoys County-paid retiree health insurance benefits.. The County emphasizes the importance of being proactive with respect to looming financial problems, arguing that to do otherwise would be irresponsible. With regard to its limited ability to raise additional tax revenue, it notes that

“The statutorily imposed tax levy cap limits Oneida County’s tax to 2% or net new construction, or approximately \$295,000. And in the face of these declining revenues, Oneida County has incurred significant increases in health insurance costs. Every 1% increase in health insurance translates to approximately \$43,000, and the County’s health insurance costs increased annually 17% on average.” (ER Reply Br@2)

The County’s final offer includes an increase in the health insurance deductible amount for active employees, for both single and family coverage. This would be accompanied by a contribution to each employee’s HRA roughly commensurate with the increased deductible, which leads the County to describe the change as “a wash.” Assuming that the County’s portrayal of the change to the overall plan is correct, it means that the only substantive difference between the parties’ final offers is the proposed elimination of the retiree health insurance benefit. With regard to future costs, the County cites a study which estimates that the benefit, if funded in accordance with accepted actuarial standards, will be \$634,377 a year, or \$19 million over 30 years. (ER Ex Tab 4, @41) While the estimate sounds frightening, it is important to place the amount cited above into perspective. First, the actuarial valuation was undertaken in accordance with Government Accounting Standards Board (GASB) Statement 45, which was performed to determine the liability for (post-employment) benefits to be paid to active and retired employees. The statement takes the position that “post-employment benefits are a form of deferred compensation earned by the employee while in active service and therefore require the recognition of the cost of these benefits over the period of the employees’ service with their employer.” (ER Ex Tab 4, @36)

The estimate is constructed in accordance with the application of traditional actuarial assumptions, such as the age of retirement, mortality and turnover experience, the duration of benefit payments, investment earnings on reserve funds, etc. The projected annual cost includes payment of normal and interest costs and the amortization of the accrued liability over 30 years, e.g., the

expectation that retiree health insurance benefits will be funded in a manner similar to way in which defined benefit pension plans are funded. While GASB 45 requires employers to estimate the cost of post-employment benefits, as a means of alerting interested observers to the fact that it faces a potential liability, it does not require advance funding. The County offered no evidence that it would not continue to fund the benefit as it has in the past, e.g., on a pay-as-you go basis.

Secondly, there appears to be considerable variance between the actuarial assumptions used to construct the cost estimate, and the actual experience of Oneida County employees with respect to their utilization of the retiree health insurance benefit. The Union argues that only a handful of courthouse employees have taken advantage of the benefit, an assertion which was not challenged by the County. Mr. John P. Frederick, the County's actuary, seemed to agree that he overestimated the utilization rates by Oneida County employees:

"In the 2002 valuation, it was assumed that 25% of employees who retire with less than twenty years of service will elect (sic) participate in the plan and receive coverage. A review of the experience over the last few years has revealed that the actual rate of participation is far less than 25%. Therefore, the participation percentage was reduced from 25% to 5%. Similarly, in the 2002 valuation, it was assumed that 80% of married participants would elect coverage for their spouse after retirement. After a review of the experience, it was decided to reduce this assumption to 40%." (ER Ex Tab 4 @30)

The County frequently observes that none of the external comparables provide post-retirement health insurance benefits paid for by the respective counties. But this does not in and of itself indicate that its negotiation in 2001 was an error in judgment on the part of the parties to the agreement which would justify its elimination; neither is there any evidence, as the County claims, that "the Union has chosen to relinquish control over its own destiny by engaging in 'bulwarism' and refusing to bargain the issue which forced this matter to arbitration." (ER Reply Br @3) This

is an apparent reference to a bargaining tactic credited to Lemuel Boulware, then Vice President of the General Electric Company, which amounted to presenting the Union with a “one and only” offer, not subject to modification. Based on the information available to the Arbitrator in the instant case, this does not appear to be a strategy which either Oneida County or AFSCME Local 79-B is likely to utilize under contemporary conditions.

Clearly, the County has made a good faith effort to mitigate the pain of the loss of the retiree health insurance benefit by proposing to establish an HRA funded by County contributions. Conversely,, the Union cannot fairly be accused of failing to bargain in good faith because it demonstrated a strong reluctance to relinquish an important benefit. Adherence to strongly held positions does not, per se, represent a failure to bargain in good faith.

With regard to the proposed HRA included in the County’s final offer, the Arbitrator will only consider the contribution schedule included in its certified final offer, since his consideration of the revised schedule would bring into question the integrity of interest arbitration provided for under the Statute. Whether the offer represents a quid pro quo for the elimination of the retiree health insurance benefit is subject to honest debate. Clearly, an HRA is better than *no* post-retirement health insurance benefits; but in the opinion of the undersigned. it is not a substitute for actual health insurance, since the proposed HRA contribution by the County would cover the cost of continued health insurance coverage for a relatively short period.

At the hearing, and at several points in its post-hearing brief, the County argued that “employees who have ownership of the money in their HRAs are better consumers of health care because it establishes an incentive for them to make prudent decisions with respect to not only the types and costs of services, but also to life-style choices that affect their health.” (ER Br @2-3, 17)

This is an interesting argument, advanced by some health care economists, which equates competition in the medical marketplace with competition in the market for other types of goods and services. While the argument may be meritorious, attempting to assess the validity of this line of reasoning is beyond the scope of this decision. Neither is it wholly relevant to the central issue in this case, e.g., whether the elimination of the retiree health insurance benefit is supported by the evidence cited by the County in support of its final offer.

As noted above, the parties offer conflicting opinions about the County's financial status. In all likelihood, the Union's estimate of Oneida County's financial viability is somewhat overstated. By contrast, the County over-emphasizes the negative aspects of its balance sheet, and the possibility that retention of retiree health insurance benefits will push it off of a financial cliff. Like most governmental units, the County may confront financial problems down the road. Data cited by both the County and the Union indicate that, all factors considered, the County is currently in reasonably good shape. Understandably, it is concerned about its ability to meet future obligations. Accordingly, the question before the arbitrator is whether these concerns justify the County's proposed elimination of a benefit voluntarily negotiated by the parties, which the Union argues is a matter of great importance to its members.

It is hardly surprising that the principal issue in the instant case is health insurance, given its prominence in contract negotiations generally. As previously noted, the dispute centers around *retiree* health insurance, a benefit demonstrated to be unique among the external comparables. The County argues that the projected long-term cost of the benefit (\$19 million over 30 years) clearly demonstrates that its effort to replace the retiree health insurance benefit with an HRA is justified.

The Union disagrees, arguing that the cost estimate, even if accurate, applies to *all* employees of Oneida County, not only to those represented by AFSCME local 79-B.

It is a well-known axiom that interest arbitrators are reluctant to render decisions which significantly alter the terms and conditions of an existing collective bargaining agreement, arguing that such changes should be negotiated by the parties. This is an opinion shared by the undersigned. Arbitrators have also noted that there are obvious exceptions to this principle, e.g., extremely exigent circumstances which would result in severe economic harm to one or both of the parties. Clearly, the burden of demonstrating that such circumstances exist rests with the party proposing the change. The case for and against the proposed change, which in this case is the elimination of retiree health insurance benefits, has been addressed previously, and is summarized below.

The Union has argued credibly that retiree health insurance is an important part of the collective bargaining agreement. The HRA proposed by the County is an interesting concept, but it is neither a quid pro quo nor an adequate substitute for traditional insurance benefits. The County is understandably concerned about escalating health insurance costs in general, and the projected cost of retiree health insurance benefits in particular. For reasons referred to above, the dollar estimate cited by the County may be hyperbolic, since only a handful of courthouse employees have taken advantage of the benefit. The number of early retirees may increase in the future; but as the Union suggests, the cost of funding the benefit can be reduced by tightening eligibility requirements, reducing the duration of benefit payments, etc.

The uniqueness of the retiree health insurance benefit among the external comparables is not a precondition for its elimination via interest arbitration, since it was voluntarily negotiated by the parties, following its earlier adoption by other Oneida County bargaining units. Neither is there is

a requirement for uniformity among the external comparables, since they are free to establish their own agendas and their own priorities. The absence of retiree health insurance benefits among the external comparables does not per se represent a sufficient rationale for its elimination. Conversely, if the Union was seeking to add the benefit via interest arbitration, most arbitrators, including the undersigned, would not concur.

The County has clearly demonstrated that health insurance costs in general are a fiscal burden. But given the low rate at which the retiree health insurance benefit has been utilized by Oneida County courthouse employees who retire before becoming eligible for Medicare, and the fact that the decision in the instant interest arbitration case is applicable to the contract term 2006-2008, there is insufficient evidence that retiree health insurance benefits are currently responsible for the increase in overall health insurance costs cited by the County. Furthermore, since the parties are about to begin negotiations for a contract to replace the one which will expire December 31, 2008, the bargaining table represents the appropriate forum in which modifications of retiree health insurance benefits can and should be addressed, with the objective in mind of reducing prospective costs.

VII. AWARD

After a careful review and consideration of the evidence presented by the parties through the testimony of witnesses present at the hearing held in Rhinelander, Wisconsin on June 24, 2008, and evidence presented by the parties through voluminous exhibits and carefully reasoned post-hearing briefs and reply briefs, and applying the statutory criteria set forth at Wisconsin Statutes 111.70(4)(cm)(7), it is the decision of the Arbitrator that the final offers of the Union is the more reasonable of the two final offers, since it preserves the status quo with only a very minor modification, e.g., the addition of a call-time provision not likely to be utilized very often, whereas the County's final offer represents a significant modification of the current collective bargaining agreement with respect to an existing benefit of considerable importance to AFSCME Local 79-B members.

Since the Union did not provide compelling evidence that the list of external comparables should be expanded beyond those agreed upon by the parties, the Arbitrator agrees with the County that they should be comprised of the counties agreed upon by the parties, e.g., the courthouse employees of Forest, Langlade, Lincoln, Pierce and Vilas Counties, and the Human Services Board of Forest, Oneida and Vilas Counties.

It is hereby ordered that the foregoing be implemented into the 2006-2008 collective bargaining agreement between the parties.

Dated: December 13, 2008



Irving Brotslaw, Arbitrator