STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of CITY OF PLYMOUTH EMPLOYEES LOCAL 1749-B, WCCME, AFSCME, AFL-CIO To Initiate Mediation-Arbitration Between Said Petitioner and CITY OF PLYMOUTH (UTILITY COMMISSION)	Case XXIV No. 29962 MED/ARB-1770 Decision No. 19960-A

Appearances:

Ms. Helen Isferding, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of Union.

Mulcahy & Wherry, S. C., Attorneys at Law, by Mr. Edward J. Williams, appearing on behalf of Employer.

ARBITRATION AWARD:

On October 19, 1982, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to Section 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between City of Plymouth Employees Local 1749-B, WCCME, AFSCME, AFL-CIO, referred to herein as the Union, and City of Plymouth (Utility Commission), referred to herein as the Employer, with respect to certain issues as specified below. Pursuant to statutory responsibilities, the undersigned conducted mediation proceedings between the parties on November 29, 1982, at Plymouth, Wisconsin, however, mediation efforts failed to result in settlement of the dispute. Pursuant to prior notice, after the parties had executed written waiver of the provisions of the statutes at 111.70 (4)(cm) 6.c., which require the Mediator-Arbitrator to provide written notice of his intent to arbitrate and to establish a time frame in which either party may withdraw his final offer, arbitration proceedings were also held on November 29, 1982, at Plymouth, Wisconsin. At the arbitration proceedings the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs and reply briefs were filed in the matter. Reply briefs were exchanged by the undersigned on February 8, 1983.

THE ISSUES:

Three issues remain in dispute between the parties involving: deductibles for health insurance coverage; special wage adjustment for the Tree Trimmer classifications; and the amount of general wage increase.

The final offers of the parties are:

I. HEALTH INSURANCE

EMPLOYER OFFER:

The Employer will provide a health care benefit plan for the full-time employees. Premiums for said plan shall be paid by the Utility, single plan for employees without dependents and family plan for employees with dependents.

For any deductible portion of hospitalization, the employees shall be obligated to pay $25.00 per incidence of hospitalization for him/her or his/her dependents up to a maximum of two (2) hospitalizations per family, per year. The City shall pay the remaining portion of the hospitalization deductible.

The employee and/or his/her dependent shall execute a subrogation agreement in such form as is satisfactory to the City, providing for the reimbursement of any portion of the deductible paid by the City for the employee's or his/her dependent's hospitalization, arising out of awards or collection of any funds from third persons causing such hospitalization.

The City may from time to time change the Health Care benefit provider or the method of providing Health Care benefits so long as the level of benefits is equal or better than that currently in effect.

UNION OFFER:

The Employer will provide a Health Care benefit plan for the full-time Employees. Premiums for said plan shall be paid by the Utility, single plan for Employees without dependents and family plan for Employees with dependents. The City shall pay the hospitalization deductible.

The Employee and/or his dependents shall execute a subrogation agreement in such form as is satisfactory to the City providing for the reimbursement of the deductible paid by the City for the Employee's or his/her dependent's hospitalization, arising out of awards or collection of any funds from third persons causing such hospitalization.

The City may from time to time change the Health Care benefit provided or the method of providing Health Care benefits so long as the level of benefits are equal or better than that currently in effect.

II. WAGES

EMPLOYER OFFER:

1. Adjust Tree Trimmer I and II and Tree Trimmer Foreman classifications by increasing the May 15, 1981, rate by 15 cents.

2. Increase all positions by 66 cents per hour effective January 1, 1982.

UNION OFFER:

A. Increase all classifications sixty-seven cents (67¢) across the board.

B. Increase the following classifications an additional fifty-one cents (51¢)

Tree Trimmer Foreman
Tree Trimmer II
Tree Trimmer I

DISCUSSION:

Employer argues that its final offer in this matter should be adopted for the following reasons:

1. The Employer's pool of comparables is the more appropriate for use in these proceedings.

2. The Employer's final offer is the more reasonable when compared with the public interest.

3. The Employer's final offer guarantees that the employees will receive wage and benefit increases that exceed the increase in the cost of living.

4. The Employer's insurance offer is more reasonable in light of internal comparisons and comparisons with employees in comparable communities.

5. The Employer's wage offer for the Tree Trimmer classifications is more reasonable because it does provide a fair increase compared to increases received by other city employees, and because the Union has shown no justification to support its position to significantly upgrade the Tree Trimmer wages.

6. The Employer's wage offer maintains and improves its ranking among the comparable municipalities.

7. The wages only increases generated by the Employer's final offer exceeds the average wages only increase in comparable communities that negotiated settlement in a similar economic climate.

8. The Union's wage exhibits do not provide adequate information to demonstrate an acceptable standard of comparability.

Union argues that internal comparisons are not persuasive here because the instant Employer is separate and distinct from the City of Plymouth in that the instant Employer is Plymouth Utility, whereas other represented employees in the community are employed by the City of Plymouth. In support of the foregoing, the Union contends that the instant Employer as a Utility sells a product and collects revenues from those sales, whereas the City of Plymouth is tax supported. The Union further argues in support of its distinction between the Utility and the City that the bargaining history is different as it applies to other employees of the City of Plymouth (utilities, street or police), noting variances in holiday provisions, longevity provisions, vacation provisions, sick leave provisions, educational incentives and durations of contracts. The Union further argues that by reason of the uniqueness of the 1982 calendar, the police settlement calculates to 12.67% rather than 8.5% because the calendar provided 27 pay periods for the year 1982, rather than the customary 26 pay period. The Union further argues that by reason of an improved sick leave provision in the Street Department Collective Bargaining Agreement, the settlement there exceeds the 8.5% settlement that has been stated by the Employer. With respect to the hospital deductible, the Union argues that Employer has failed to establish his burden to support the change proposed in its final offer because it is unsupported by a majority of the comparables, and because there is no testimony in this record that hospital admissions have raised the premium cost. Union further argues that the amount of saving to the City by reason of the deductible is small - small enough not to prejudice the Union final offer.

In reply to Union's brief, Employer argues that Union ignores the comparability of other City of Plymouth employees represented by AFSCME; that Union's comparison to the Mini-8 is unfounded and inappropriate; and that the Union's narrow comparison to the private sector fails to take into account the full economic reality of the present economy. Employer further argues that Union's costing of the Police agreement using 27 pay periods clearly misrepresents fair costing which was agreed upon by the parties. Employer also argues that the Union's off-hand diminution of the insurance issue makes it even more clear that they failed to recognize the problems with the escalating costs of insurance. Finally, in response to Union's arguments, Employer argues that Union, by its own admission, makes clear that an upgrading of the Tree Trimmer class is an attempt to gain here through arbitration that which it bargained away in negotiations.

In its reply brief, Union argues that Employer's comparables are inappropriate and reasserts its position that the best comparables are the Mini-8. The Union further argues that Employer's reliance on conflict with public interest is misplaced in view of the slight difference in the wage package costs of the respective offers, therefore, creating little impact on public interest. Union further argues that Employer's brief distorts the picture of cost of living, contending that the Arbitrator should view the worth of the Union offer at 6.2% and the Employer offer at 5.8%. Union further submits that Employer's reliance on City of Oshkosh, Milwaukee Area Voc. Tech. and Adult

Education, District No. 9 and Barron County is misplaced, because the arbitrators in those matters were talking about the same employer, and here there are separate and distinct employers involved, City of Plymouth vis a vis Plymouth Utility. With respect to health insurance Union further argues that the burden of proof is on Employer to justify the change and identify any quid pro quo it might have provided to have changed the insurance benefit and has failed to do so. Finally, Union argues that Employer's reliance on its Exhibit 27 in support of its Tree Trimmer proposal is misplaced, because the communities set forth therein are not involved with electric utilities.

In arriving at a decision in this matter the Mediator-Arbitrator is directed by the statutes at 111.70 (4)(cm) 7 that he consider factors a through h contained therein. The undersigned, therefore, in arriving at his decision in this matter will review the evidence and arguments submitted by the parties against said statutory criteria.

A review of the final offers of the parties satisfies the undersigned that the general increase proposed by each party establishes a dispute so narrow so as to be almost indistinguishable. Employer proposes a 66¢ per hour general increase, whereas the Union proposes 67¢ per hour. It is obvious to the undersigned, therefore, that irrespective of where the comparables reside, neither party can make a compelling case that its offer is superior to that of the other. Consequently, the Arbitrator is unable to make a determination to select the final offers of the party based on the general wage increase dispute, and the general increase will be determined by which party's offer should be a dopted with respect to the remaining issues.

The remaining issues include the special increase for the Tree Trimmer series of classifications where Union proposes a 51¢ per hour increase to Tree Trimmer Foreman, Tree Trimmer II and Tree Trimmer I classification, whereas Employer proposes a 15¢ per hour increase. The final offers are not specific as to the effective date of the special increases for the foregoing classifications, however, the undersigned reads the offers of both parties to anticipate its adjustment to be retroactive to January 1, 1982, in both offers. Union, in support of its position for the 51¢ per hour increase, relies on comparisons with private sector tree trimmers in utilities, as well as a previous historic relationship rate of pay between Tree Trimmers for the instant Employer and the Groundsman II classification. With respect to the Union's assertion that there is a historic relationship between Tree Trimmer II and Groundsman II, the evidence establishes from Union Exhibit No. 30 that in the 1973-74 collective bargaining agreement Groundsman II and Tree Trimmer II classifications were both paid at the same rate, i.e., $4.42 per hour; and that the Tree Trimmer I classification was paid 20¢ per hour less; and that the Tree Trimmer Foreman classification was paid at 15¢ per hour more. In the successor labor agreement the evidence establishes from Union Exhibit No. 31 that the 1975-76 collective bargaining agreement no longer carried the classifications of Tree Trimmer, and testimony further establishes that the tree trimming work was at that time contracted out by the Employer. Union Exhibit No. 32 establishes that the 1977-78 collective bargaining agreement contained no classifications of Tree Trimmer. Union Exhibit No. 33, the collective bargaining agreement between the parties for the year 1979-80 establishes that the Tree Trimmer classifications reemerged in the collective bargaining agreement. At the time the Tree Trimmer classifications reappeared in the agreement, the Tree Trimmer II classification was established at $6.20 at the inception of that agreement, however, the Groundsman II classification then was established at $6.67, a differential of 47¢. Subsequent to the reappearance of the Tree Trimmer classifications in the 1979-80 agreement, the parties negotiated the predecessor agreement to this dispute for the year 1981 (Union Exhibit No. 1), wherein the Groundsman II rate of pay became $8.18 per hour effective May 15, 1981, and the Tree Trimmer II rate of pay became $7.67 per hour effective the same date, a differential of 51¢ per hour, which forms the basis for the Union's final offer here in order to establish parity between Tree Trimmer II and Groundsman II classification.

The undersigned is satisfied from the history of the negotiations that

the Tree Trimmer classification disparity compared to Groundsman classification is a product of the negotiations of the parties. The evidence is clear that the parties have signed two collective bargaining agreements wherein the differential to which the Union now objects between Tree Trimmer and Groundsman classifications were agreeable to the parties as manifest by the Union's signature on the two agreements. The undersigned, therefore, concludes that parity between Groundsman and Tree Trimmers should not be restored by this third party based upon the prior historic parity relationship between the two classifications because the parties, by their own agreement, established the differential which now exists, unless there is compelling evidence among external comparables supporting the Union position for the rates for the Tree Trimmer classifications which it proposes.

Turning to the external comparables with respect to the Tree Trimmer classification, the undersigned is unpersuaded that the Union position should be adopted. Employer Exhibit No. 27 establishes that non-utility Tree Trimmers are paid closer to wage rates proposed by the Employer than the wage rates proposed by the Union for that classification. Union argues that the duties are not comparable by reason of the differential in hazard where the instant Tree Trimmers are exposed to live electrical wires. The undersigned agrees with the distinction drawn by the Union, however, it is the Union who must support its position among comparables if they are to prevail in this dispute. Union argues that since most utilities use journeymen linemen or linemen for tree trimming duties, the Lineman III rates at Manitowoc, New Holstein lineman rates, and Waupun lineman rates are closer valid comparisons for the purposes of comparing comparable rates for this tree trimming classification. The journeyman lineman rates at Manitowoc are $10.86 per hour;at New Holstein, $9.68 per hour; and at Waupun, $9.67 per hour. The undersigned rejects the Union argument because it is patently obvious that the responsibilities of a journeyman lineman, even though they perform tree trimming duties, are considerably more complex and, therefore, warrant higher rates of pay than those of tree trimmers. The undersigned, therefore, concludes that the Union has failed to support its position with respect to tree trimmers rates by external comparables.

Since the Employer has proposed a 15¢ per hour improvement for Tree Trimmer; and since the undersigned has concluded that the evidence fails to support the 51¢ adjustment sought by Union here; it follows that the Employer offer should be adopted when considering this dispute.

With respect to the dispute over health insurance, arbitral authority has consistently held that internal comparisons with other bargaining units of the same employer carry great weight, e.g. Barron County, WERC Dec. No. 18597-A (2/82); City of Oshkosh (Police), WERC Dec. No. 15258-A (4/77); Milwaukee Area Voc. Tech. and Adult Education, District No. 9, WERC Decision No. 19183-A (1982). Thus, if the evidence establishes that the Employer proposal here establishes internal comparability, the Employer offer will be favored. The record establishes that the Employer offer here is identical to settlements arrived at between other bargaining units in the City of Plymouth. The record clearly establishes that for the year 1982 the Police unit and the Street Sanitation-City Hall and Custodial unit voluntarily agreed to the health insurance provisions proposed by the Employer here, and that the employees in those units are represented by the AFSCME union.

Union argues that the Employer's reliance on internal comparables here is misplaced, in that the Employer in the instant dispute is the City of Plymouth Utility Commission, whereas the Employer in the Police and Street unit is the City of Plymouth and, therefore, internal comparability does not exist. The undersigned rejects the Union argument. In view of the clear evidence in this record that, historically, negotiations between the City of Plymouth Utility Commission and the City of Plymouth employees have been held either simultaneously or in close relationship with each other, the distinction the Union attempts to draw is inappropriate. Furthermore, the undersigned is satisfied from the record that employees employed in this unit have historically been covered and continue to be covered by the same health insurance carrier as the employees

in the other units employed by the City of Plymouth, and that the coverages and premium payments absorbed by the Employer in the other units compared to this unit have been the same. In view of the foregoing, the undersigned concludes that while there may be a legal distinction as to the nature of the employer in the utilities unit vis a vis the other employees represented by the AFSCME Union and the City of Plymouth, the bargaining relationship in fact ignores the legal distinction and the practicality is that health insurance fringe benefits have been viewed to be a matter of uniform concern across unit lines for the City and the Utility Commission. In view of the foregoing conclusion, the undersigned considers it appropriate to give weight to internal comparables of City of Plymouth employees versus City of Plymouth Utility employees as has historically been done in interest arbitration matters where disputes of this type arise. Having so concluded, it follows where other units have voluntarily agreed to the proposal which the Employer advances here; and since the undersigned is satisfied that the Union has not demonstrated a basis for a distinction for the employees in this unit in the opinion of the undersigned; the health insurance proposal of the Employer should also be adopted.

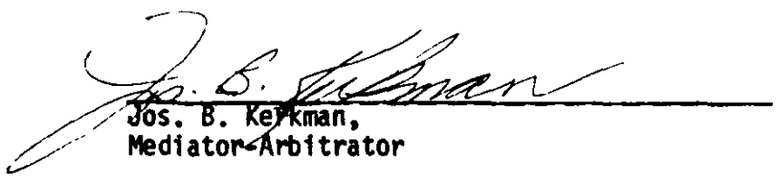
CONCLUSIONS:

The undersigned has concluded that the Employer's offer is favored for both the Tree Trimmer issue as well as the health insurance issue, and that the wage difference of 1¢ per hour is unpersuasive for either party's case. Therefore, based on the record in its entirety, and the foregoing discussion, after considering the statutory criteria and the argument of Counsel, the undersigned makes the following:

AWARD

The final offer of the Employer is to be adopted into the written Collective Bargaining Agreement between the parties.

Dated at Fond du Lac, Wisconsin, this 26th day of May, 1983.



Jos. B. Kerkman,
Mediator-Arbitrator

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