BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Petition of LOCAL 655-C, WCCME, AFSMCE, AFL-CIO to initiate mediation-arbitration between said Petitioner and CITY OF LAKE MILLS	Case XVII, No. 32463 Med/Arb - 2516 Decision No. 21342-A

APPEARANCES: DAVID AHRENS, Staff Representative, Wisconsin Council 40, AFSMCE, appearing on behalf of the Union.

THOMAS POPP, JR., City Manager, appearing on behalf of the City.

ARBITRATION AWARD

City of Lake Mills, Wisconsin, hereinafter referred to as the City or Employer, and Local 655-C, WCCME, AFSMCE, AFL-CIO, hereinafter referred to as the Union, were unable to voluntarily resolve certain issues in dispute in their negotiations for a new Collective Bargaining Agreement to replace their expiring 1982-1983 Collective Bargaining Agreement and the Union, on November 17, 1983, petitioned the Wisconsin Employment Relations Commission (WERC) for the purpose of initiating mediation/arbitration pursuant to the provisions of Section 111.70(4)(cm)6. of the Wisconsin Statutes. The WERC investigated the dispute and, upon determination that there was a impasse which could not be resolved through mediation, certified the matter to mediation/arbitration by Order dated January 30, 1984. The parties selected the undersigned from a panel of mediator/arbitrators submitted to them by the WERC and the WERC issued an Order, dated February 9, 1984, appointing the undersigned as mediator/arbitrator. Based upon telephone discussions with the parties' representatives, the undersigned was advised of the parties' belief that further mediation would be unproductive and they therefore agreed to waive any further mediation and proceed directly to arbitration, without withdrawing their final offers. Upon proper notice, a hearing was held at Lake Mills, Wisconsin on April 16, 1984, at which time the parties were afforded the opportunity to present such evidence as they desired. Post-hearing briefs were filed and exchanged on May 14, 1984. Full consideration has been given to the evidence and arguments presented in rendering the award herein.

THE ISSUES IN DISPUTE

Although the parties' final offers address a total of seven subject areas, there are actually five issues in dispute. Thus, in both their final offers, the parties propose to add a provision stating that no temporary or seasonal employee will be retained or hired while a member of the bargaining unit is on layoff status and a provision to the effect that new employees earn one week of vacation after six months of employment. The five issues in dispute relate to holidays, sick leave accumulation, pay for working in a higher classification, wages, and contribution to health insurance premiums.

The City's proposal is for a one-year agreement and the Union's proposal is for a two-year agreement.

1. HOLIDAYS

The 1982-1983 Collective Bargaining Agreement provided for ten paid holidays, consisting of seven named holidays, two floating holidays, and two one-half day holidays on Good Friday and December 31. The Union proposes to make Good Friday a full day holiday in the second year of its proposed two-year agreement. This would increase the total number of holidays during the second year of the agreement to 10.5. The City proposes no change in the number of holidays during the term of its proposed one-year agreement.

2. SICK LEAVE

Under the terms of the parties' 1982-1983 agreement, employees earned sick leave at the rate of 12 days per year and were allowed to accumulate sick leave for a total of 72 days. In addition, the agreement provided for additional sick leave benefits and disability compensation benefits, not subject to the accumulation provision. The agreement contained the following payout provision for accumulated sick leave upon termination or retirement.

> "8.04 Employees who terminate or retire after five (5) or more years of service by giving two (2) weeks written notice will be paid for thirty percent (30%) of remaining accumulated sick leave, thirty-five per cent (35%) after eight (8) years, forty per cent (40%) after twelve years, forty-five per cent (45%) after sixteen (16) years, fifty per cent (50%) after twenty years, and sixty per cent (60%) after twenty-five (25) years."

The Union proposes that the number of days of sick leave which may be accumulated be increased from 72 to 84. The City proposes no increase in the number of days of sick leave which may be accumulated.

3. PAY FOR WORKING IN A HIGHER CLASSIFICATION

Currently there are no formal job descriptions outlining the duties of the various jobs or "classifications" set out in the agreement and both parties, in their final offer, propose to add a new section requiring the Employer to establish such job descriptions and provide same to the Union within 12 months of the signing of the agreement. The Union would add a second sentence to the section creating this requirement which reads as follows:

> "...Any employee performing work in a higher classification for a period of more than eight (8) hours shall receive the pay of that classification."

4. WAGES

Currently there are 21 full-time employees and one part-time employee covered by the terms of the agreement. There are 26 job classifications set out in the agreement, a number of which are currently unfilled. Ten of those job classifications are entry level classifications and contain step increases at the end of the probationary period and at the end of 12 months of employment. Thus, for example, an employee

might start as a Mechanic II at $7.37 per hour and thereafter earn step increases to $7.59 and $7.79 per hour. Upon promotion to the classification of Mechanic I said employee would earn $8.65 per hour.

The 1982-1983 Collective Bargaining Agreement provided for two split increases, taking effect on January 1 and July 1 of each of the two years covered by that agreement. Both parties base their final offers on the rates in effect since July 1, 1983, which included the last increase under the terms of the expired agreement.

The Employer proposes to increase the July 1, 1983 wage rates set out in Appendix A of the agreement by 3%, effective retroactively to January 1, 1984. No other wage increases would be granted during the term of the one-year agreement proposed by the City.

The Union's final offer includes split increases in each of the two years of its proposed two-year agreement, which would be applicable across the board. In addition, it proposes two special wage adjustments applicable to the wastewater treatment plant foreman and the street department working foreman which are designed to bring the wage rate for those positions into parity with the wage rates paid the water working foreman and the two line working foremen. Specifically, the Union would adjust all wage rates by 25 cents per hour across the board on January 1, 1984. On July 1, 1984 all wage rates, except for those paid the wastewater treatment plant foreman and the street department working foreman, would be increased by 20 cents per hour. The wage rates for wastewater treatment plant foreman and street department working foreman would be increased to 50% of the "existing difference" between their wage rates and the wage rates for the water working foreman and the two line working foremen. In the second year of the Union's proposed two-year agreement all wage rates would be again increased by 25 cents per hour on January 1, 1985. On July 1, 1985 all wage rates, except those applicable to the wastewater treatment plant foreman and the street department working foreman, would be increased by 20 cents per hour. The wage rates for the wastewater treatment plant foreman and the street department working foreman would be increased on that date to equal the rate then being paid the water working forman and the two line working foremen.

At the hearing the Union introduced an exhibit purporting to demonstrate the impact of its wage offer in the case of the wastewater treatment plant foreman and the street department working foreman. According to the undersigned's calculations, that exhibit overstates the wage increase which would be granted to the two foremen in question on July 1, 1984 by 10 cents per hour. The following chart accurately reflects the impact of the Union's offer on the wage rates of foremen covered by the agreement, in the opinion of the undersigned.

	Wastewater Treatment Plant Foreman	Street Dept. Working Foreman	Water Working Foreman and Line Working Foremen (2)
7/1/83 Rate	7.94	8.65	9.35
1/1/84 Rate	+25	+25	+25
	8.19	8.90	9.60
7/1/84 Rate	+81	+45	+20
	9.00	9.35	9.80
1/1/85 Rate	+25	+25	+25
	9.25	9.60	10.05
7/1/85 Rate	+1.00	+65	+20
	10.25	10.25	10.25

Under the Employer's final offer the employees in the bargaining unit would receive cents per hour increases ranging from a low of approximately 21 cents per hour in the case of the Billing Clerk Cashier I to a high of 28 cents per hour in the case of the water working foreman and the two line working foremen. The average cents per hour increase to existing members of the bargaining unit would be approximately 23.25 cents per hour. According to Union calculations, its proposal would increase the average wage earned by members of the bargaining unit currently ($7.75 per hour) by 3.2%, 2.5%, 3% and 2.4%, at the time of each increase. The cost of these increases in 1984 would be 4.45% greater than the cost of the 1983 ending rates, according to the Union. The increased cost in 1985, based on the 1984 ending rates would be 4.2%, according to the Union's calculation. However, the "lift" in the first year would be 5.8% over the ending 1983 rates and the "lift" in the second year would be 5.5% over the 1984 rates. Further, the total "lift" of wage rates during the term of the two-year agreement proposed by the Union would be 11.6%.

5. HEALTH INSURANCE CONTRIBUTION

The 1982-1983 Collective Bargaining Agreement required the City to provide hospital, surgical, and medical insurance without cost to the employees, under either the family or single plan. Similar provisions, requiring payment of 100% of the insurance premium have been included in the parties' Collective Bargaining Agreements since 1973. The current health insurance plan in effect, however, contains a deductible feature requiring employees to pay the first $50.00 per person or $100.00 per family of medical expense. In addition, the Union introduced unrebutted testimony to the effect that the "usual and customary" payments made under the health insurance policy in question do not always equal the actual cost of medical attention received.

During 1983 the health insurance premiums paid by the City were $55.96 for the single plan and $151.62 for the family plan. In negotiations the Employer proposed to include a new Section 9.03 in the agreement which would require employees to pay half of the cost of any increase in insurance premiums occurring on or after January 1, 1984. This proposal was included in the City's final offer. In its final offer, the Union proposed no change in the existing provision requiring the Employer to pay 100% of the cost of health insurance. Subsequent to the close of the investigation by the WERC, the actual increases in the health insurance premiums for 1984 (effective on April 1, 1984) became known. The new

premiums are $67.68 for the single plan and $182.42 for the family plan. Thus, under the City's proposal, an employee covered by the family plan would be required to pay one-half of the difference between the premium rates of $30.80,or $15.40 per month. Based on a work year of 2,080 hours, the Union points out that this increase would approximate 9 cents per hour for the balance of the 1984 calendar year. The difference in premium for the single plan of $11.72 would require employees covered by that plan to pay $5.86 per month or the equivalent of approximately 3.4 cents per hour for the balance of the 1984 calendar year.

UNION'S POSITION

In its brief the Union reviews each of the issues in dispute, in relation to the statutory criteria. The Union points out that there is no dispute over the lawful authority of the Employer and that the parties, by their final offers, have effectively stipulated to the new provisions dealing with the creation of job descriptions and the granting of one week of vacation after six months of employment. With regard to the interests and welfare of the public and the financial ability of the City to meet the costs of its proposed settlement, the Union points to the relatively high per capita evaluation of property located within the City of Lake Mills, as demonstrated through its exhibits.

With regard to comparisons to other public employees employed by the City, the Union points out that the only evidence of record is to the effect that the Union representing the police has agreed to a new health insurance provision which requires employees to pay one-half of the cost of an increase. However, the Union argues that the City's evidence in this regard is deficient in that it fails to demonstrate the size of the wage increase which was negotiated along with this new provision. Further, the Union argues that if the negotiators in that case were aware of the actual cost of the increase they were in a better position to negotiate with regard to that issue than were the parties in this case.

With regard to comparisons to employees performing similar services in public employment in comparable cities, the Union argues that this criterion should be given great weight in this proceeding. The Union proposes comparisons to employees employed in five nearby cities (Oconomowoc, Jefferson, Fort Atkinson, Watertown, and Whitewater) and the County of Jefferson, in which the City of Lake Mills is located. Using data introduced at the hearing with regard to comparative wage rates paid to employees who the Union contends are working as heavy equipment operator I's, general laborer I"s, general laborer II's, and wastewater treatment plant foremen in those municipalities, the Union argues that the City is ranked last among this comparable grouping. In fact, based on this same data, the Union argues that even if the Union's 1985 increases were added to its proposal for 1984 the City's relative ranking would remain in the "cellar" except in the case of heavy equipment operator I's employed by one municipality, Watertown.

Using this same data, the Union also points out that the wastewater treatment plant foreman would likewise remain in the "cellar" if only the across the board increases included in its offer were applied to that position. The Union points out that this would be true (absent its "parity"

proposal) notwithstanding the testimony at the hearing regarding the upgrading and recertification of the wastewater treatment plant.

The Union criticizes the City's offer, based on its failure to correct the inequities among foremen and based on the fact that, as a percentage increase, it is tied in rank to the lowest of the percentage increases offered by any of the jurisdictions deemed comparable by the Union. According to the Union's data, Fort Atkinson, which the Union describes as "the second lowest" of the comparables, provided a percentage increase which was double that offered by the City. On the other hand, the Union argues that the cost of its final offer for 1984, calculated at 4.45%, is average among the comparables.

According to the Union, the City's own evidence reveals that it is 14 cents behind the average compensation for mechanics in the cities surveyed by the Employer. The Union notes that it is not possible to determine "what mechanics" the City surveyed, based on the testimony at the hearing, but argues that the City's own evidence nevertheless supports the equity of its proposed split increase during 1984.

With regard to the issue of health insurance, the Union points out that the parties were unaware of what actual increase would occur in health insurance premiums during the negotiations. According to the Union, the Employer's proposal could be likened to leading the Union into an "ambush" if it had turned out that the increases were greater than those which actually occurred.

Further, the Union argues that the City's proposal that employees pay as much as $15.40 per month toward the cost of health insurance is not supported by the comparisons drawn. None of the other municipalities relied upon by the Union require employees to co-pay and the Union alleges that the Employer's proposal is "regressive" and would be unprecidented in the area. The co-payment feature would, in fact, amount to a wage reduction of approximately 9 cents per hour for employees on the family plan and would reduce the Employer's proposed wage increase to approximately 14 cents, or less than 2%, in the case of such employees.

According to the Union, the Employer has offered absolutely no evidence to support the reasonableness of such a dramatic diversion from the longstanding past practices of the parties. The City has been paying 100% of the cost of health insurance since 1972 and the current proposal constitutes the first time that the Employer has attempted to bargain for employee contributions. According to the Union, there has been no "give and take" in such bargaining since the Employer's offer makes no effort to "buy out" the existing provision.

The Union points out that the issues of wages and health insurance are the central issues in this dispute since they constitute the overriding portion of compensation enjoyed by employees in the bargaining unit. All other issues are "subsidiary" and are "more reasonably fashioned by the Union's final offer" according to the Union.

On the issue of out of classification pay, the Union points out that all of its comparable jurisdictions provide for out of classification pay and only one of those jurisdictions, Whitewater, has a provision which is more liberal to the Employer. All other such provisions require such payment after the first four hours or eight hours.

The out of classification pay provision is supported in two ways, according to the Union. First, the Employer has recognized the need for a job classification system in its final offer. According to the Union, such a job description and classification system is not worth very much if the Employer can continue to assign employees to jobs outside their classification without any pay consequence. Secondly, the Union points to testimony to the effect that the Employer has, in the past, assigned employees to higher rated classifications, resulting in grievances which were ultimately withdrawn. According to the Union, it had to "wait months" for the Employer to post a higher paying job while an employee filled that job without receiving the correct pay. The Union contends that its proposal does not constitute " nitpicking" because it exempts the first eight hours and only requires such payments if the assignment lasts for more than a normal work day. Since the Employer will be required to pay out of classification pay under the Union's proposal, it will have the necessary impetus to post the job immediately.

With regard to its proposal for an additional one-half holiday, the Union acknowledges that only two of its six comparables currently have more holidays than the City. Based on this data, the Union acknowledges that its proposal will place the City in the upper half of the range. However, it argues that "considering the otherwise deficient level of compensation" it is not unreasonable for the employees in this unit to be slightly ahead of their compatriots.

With regard to the issue of sick leave accumulation, the Union argues that it lags behind the comparable communities relied upon. All other communities allow accumulations of between 90 to 115 days, whereas the City only allows an accumulation of 72 days. The Union contends that under its final offer it will remain in "last place" but closer to the statistical range.

In support of its position that a two-year agreement is more reasonable than the Employer's proposed one-year agreement, the Union points out that three of the last four contracts have been for two-years' duration. In fact, the last two contracts have been of two-years' duration, according to the testimony. Thus, the Union argues that the City's proposal to go to a one-year agreement constitutes a change in the status quo which comes at a "difficult time" because of the long delays which accompany the mediation/arbitration process. Specifically, the Union argues that by the time the arbitrator renders his award in this proceeding it will nearly be time to begin negotiations for a new agreement, under the Employer's proposal.

The Union points out that neither party has attempted to draw any comparisons with employees in private employment and no information was introduced at the hearing in that regard.

With regard to the criterion of consumer prices or cost of living, the Union argues that its proposal is more reasonable. According to the Union, the City's proposed

3% increase or the Union's proposed 3.2% increase effective January 1, 1984 would not be sufficient to account for inflation occurring in 1983 and would not provide for any real wage increase for a bargaining unit which the Union contends is "seriously deficient in wages in their comparable group." Such real wage increase would be provided under the Union's step increase in July. In the second year, the Union argues, its proposal is "dangerously low." This is so because projections contained in articles introduced into evidence by the Union indicate a rate of inflation for the second half of 1984 and the first half of 1985 of 5.5% and 7% respectively.

With regard to the criterion of overall compensation, the Union argues that its exhibits show that there is no area of compensation in which the employees in this bargaining unit are in the upper half of the comparables relied upon except for the dollar value of health insurance premiums. Under the Employer's proposal on health insurance, this bargaining unit would fall from third place to sixth place, according to the Union. In all other areas the employees are on the "bottom rung" in the Union's view. On the other hand, the Union argues that the Employer's ability to pay and its proximity to the Madison and Dane County area support a more generous level of overall compensation.

Finally, the Union argues that there are no changes which have occurred during the pendency of this proceeding or "other factors" which would have a significant influence on the outcome of the proceeding.

In conclusion, the Union argues as follows:

> "The Union believes that in all elements of its final offer, it is more reasonable than the City. It is apparent that the City's final offer is a product of political expendiency rather than the subject of an analysis of the relevant data. There is simply no evidence to support the lowest pay increase to the bargaining unit with the lowest pay. Then, the City proposes to compound its grievous error by making 9¢ wage deductions for health insurance.
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> "Though there are substantial issues before the Arbitrator, none are of the magnitude of the wages and insurance issue. This is, of course, not to say that both comparable jurisdictions and a basic sense of equity and fairness would not compel the Arbitrator to decide in the Union's favor in each issue. But, what issue has as great impact as the multi-percentage difference between the parties? One-half holiday? Sick leave accumulation? Out-of-class pay?
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> "Based on the evidence presented in hearing, it is the Union's position that its offer is more reasonable and should be included in the collective bargaining agreement for 1984-1985."

EMPLOYER'S POSITION

In its brief, the Employer sets out its position in relation to each of the five portions of its final offer. The first portion of the City's final offer, dealing with

the retention or hiring of temporary or seasonal employees while bargaining unit members are on layoff status is the same as the contract language originally proposed by the Union and the City notes that it has agreed to include such provision in the new agreement.

In its second proposal the City has accepted the Union's proposal to require the development of job descriptions within 12 months of the (signing) of the agreement. However, the Union proposes as a portion of that same new provision, to require the payment of the higher wage rate when employees are required to work in a higher classification for a period of more than eight hours. To this proposal the City objects for the following reasons:

> "It is not specified how the provision would work in practice. Are the eight hours necessarily consecutive? What if there are two five-hour periods on successive Mondays? Who determines when an employee is working out of classification? Is it a management decision? Is it grievable or arbitrable? What if a foreman is out for two days but no one is assigned the foreman duties? If someone is assigned the duties, does the higher pay begin on the first hour or the ninth? These questions and others the union president was unable to answer at the hearing. The proposed language does not answer them, nor can the City.
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> "Even if the procedures were clear, the City would have objection to the period of eight hours as being unreasonably short. In principle, the City cannot object to paying an employee for performance of duties assigned. But filling in without added compensation during times of another employee's brief illness or vacation is routine and normal on any job.
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> The City strongly objects to this proposal in its present form."

In support of its proposal that employees be required to pay half the cost of the increase in insurance premiums on or after January 1, 1984, the City argues as follows:

> "The cost of providing health and life insurance benefits is one which is rapidly increasing, over which the City has very little control and the employees have a great deal of control.
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> "This amendment for a sharing of the increase in the cost of these insurance premiums would provide financial relief to the City, would promote a proper vested interest on the part of employees in containment of the cost of such premiums, would greatly improve awareness of this benefit, and would enable cooperation when such is mutually beneficial.
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> "The labor union of the Lake Mills Police Department agreed to such a provision for its 1984 contract (see City Exhibit 1). Section 10.1 of that contract contains language whereby, this year for the first time, the members of that union shall reimburse the City one-half the cost of the premium increase, or $16.28 per month. For members of the AFSCME union, in the instant arbitration, the cost would be an average of $12.22 per month.

"Such a provision as the City proposes is neither radical nor uncommon. Many municipalities pay part of the cost of health and life insurance for their employees, as Lake Mills is proposing to do. For 1984, the City would still be paying 93.3% of the cost of this benefit. The City's cost would not go down but would in fact increase by the same amount as the employees would pay.

"In December of 1981, the City's health insurance carrier raised rates by about 75%. The City proposed to change carriers to the present one to save that increase. The union was able to obstrct the change because the name of the former carrier was in the contract; but the union did, after several months, agree to the change which the City had proposed. This intransigence cost the union nothing but cost the City over $6,000. That expenditure benefitted an insurance company, but did not benefit either the City or its employees. Had the proposed amendment been in effect, the union would have had strong motivation for a quick resolution of an easy problem, and the waste would have been avoided.

"The proposed amendment, then, should be adopted because it would provide financial relief, it would encourage cost containment, and it would improve awareness of a benefit and cooperation in a shared responsibility for its management."

In support of its proposed one-year agreement with a 3% across the board increase, without any additional improvement in benefits such as the one-half holiday and increase in sick leave accumulation requested by the Union, the City argues as follows:

"Under Section 111.70(4)(c)7., Wis. Stats., the City argues that wages are comparable, cost of living increases are small, and overall compensation is comparable.

"Comparable is demonstrated by a study of wage rates for the position of mechanic in sixteen cities in southeastern Wisconsin. The names of those cities, and the rate paid in each, was supplied to the union during negotiations, and the names of the cities were supplied by letter to the union and the arbitrator on April 17, 1984. That study showed an average hourly wage of $8.79 as compared to the Lake Mills rate of $8.65.

"A sampling of wages for the position of Wastewater Treatment Plant Foreman showed an average annual wage of $16,200, as compared with the Lake Mills wage of $16,515.

"Union Exhibit 4 addresses the matter of comparability in wage rates, and the information it supplies supports the City's contention that its rates are indeed comparable. For Heavy Equipment Operator I, Lake Mills July 1, 1983 rate is $7.94, Fort Atkinson is $7.46-$8.06, and Watertown is $8.05-$8.23. These are the biggest cities in Jefferson County: Fort Atkinson is 2½ times as big as Lake Mills, and Watertown is 5 times as big. All the cities in the exhibit

are bigger than Lake Mills, some quite a lot bigger, and if they pay the same or slightly higher wages, it should not be surprising.

"With respect to General Laborer I, again, the exhibit shows that Fort Atkinson July 1, 1983 hourly rate is $7.25-$7.88 and Watertown is $7.56-$7.62. It shows the Lake Mills II rate in the I line. (Why this misrepresentation?) In fact all the General Laborers in Lake Mills are classified as I and earn $7.48, which is certainly comparable.

"Union Exhibit 8 also appears to address the comparability question. Again it needs to be pointed out that all of these cities are bigger than Lake Mills (an average of three times as big). Further, Oconomowoc and Whitewater are outside the county and are in other areas of market influence. These are not comparable municipalities.

"The City takes the position that its existing wage rates are as high as rates in comparable communities.

"The City then takes the position that cost of living increases have been small and that the wage increase it proposes is appropriate. The 1983 CPI gain was 3.8%, as the union testified. All the exhibits about what the CPI might do are irrelevant to the factors to be considered in this award, under the law. The City proposes a wage increase of 3%. The union proposes cents-per-hour increases which translate to an average of 5.8% in 1984, 5.5% in 1985, and a total of 11.6% in two years over the 1983 base. Such increases in pay are absolutely insupportable in the face of a 3.8% increase in consumer prices. The City's offer of 3% plus increased vacation is much more closely in line.

"The City further takes the position that overall compensation is as high as that in comparable communities.

"By the benchmarks of vacation, holidays, sick leave, insurance, and retirement, the City provides benefits which meet or exceed the standard in comparable communities.

"Lake Mills employees are entitled to a graduated scale of vacations rising to five weeks after eighteen years, clearly ahead of the standard. The City proposes even to add a week in the first year (see following).

"Lake Mills employees get ten paid holidays per year, earn twelve paid sick days per year, and have excellent health and life insurance. Both employer and employee contributions to the retirement fund are paid by the City of Lake Mills. These benefits are certainly at or above the standard for like communities, as union exhibits 5, 10, and 11 demonstrate.

"Nor has the union presented any evidence that benefits and overall compensation are lagging in Lake Mills.

"The components of overall compensation as itemized by the law are excellent in Lake Mills in comparison with others. Indeed, direct wage compensation, vacation, and the continuity and stability of employment are improved by the City's offer, and insurance and pensions and medical and hospitalization benefits are automatically improved by built-in cost or benefit increases already in place.

"The union proposal would add holiday time and sick leave accumulation. These benefits the City opposes.

"The addition of twelve days sick leave accumulation is particularly objectionable, because of the buy-out provision in the existing contract. (See section 8.04) A hypothetical employee retiring with only twenty years of service and an hourly rate of $9.00 would be paid $2,592.00 at termination if he had accumulated the maximum number of sick days. Under the proposal he would be paid $3,024.00 instead. These wholesale increases are extremely difficult to manage and, further, do not benefit the City or any employee. They benefit only persons who have retired and have thus become former employees.

"The union has presented no evidence that there is need among the employees for additional sick leave accumulation. Indeed sections 8.03 and 8.05 of the contract provide not only but two means of assuring income for employees who are ill, and there is Workers' Compensation additionally, of course.

"The City objects to the addition of these proposed benefits.

"More basically, the City objects to the proposed wage increases, as discussed above.

"And particularly, the City objects to the proposed special increases for Wastewater and Street foremen. The more radical of these increases is that proposed for wastewater treatment plant foreman, which would be a total increase of 29.1% in wages in the eighteen months from December 31, 1983 to July 1, 1985. The City has presented evidence that this wage rate is already as high as that for the same position in comparable municipalities.

"Further, this increase is proposed on the basis of the supposed merit of parity among foremen, but no evidence is presented to support that claim. No job description has been prepared; no wage study has been done; no classification plan has been advanced. Indeed, the union proposes such in the same Final Offer; why not let the study proceed and find out if parity is merited before concluding the results? The City has agreed to the union's request for job descriptions and finds it absurd to propose reclassification in advance of establishing those job descriptions.

"An increase of 29.1%, in any case, would be insupportable without any evidence as to its need. As a point of interest, the position of Wastewater Treatment Plant Foreman was filled a year ago, at the wage rates shown in the contract, by a man with excellent

skills, background, and credentials for the job. It was not necessary to take anything less than a first-rate candidate at existing wages.

"In sum, then, under Section 111.70(4)(c)7., Wis. Stats., the City argues that wages are comparable, cost of living increases are small, and overall compensation is comparable."

Finally, the City notes that it originally proposed that employees who have worked six months but less than twelve months, be entitled to one week of annual paid vacation and that the Union accepted the City's proposal and included it in the Union's final offer. According to the City, it made this proposal in the belief that it is to the benefit of both the employees and the Employer to allow new employees an opportunity for rest and recreation during the early months of their employment. Under the current agreement an employee only receives one week of vacation during the first 24 months of employment and this proposal would remedy that situation, according to the Employer.

In conclusion, the City argues that its final offer should be awarded because the Union's final offer is unreasonable and unsupportable by the factors enumerated in the statute. According to the City, it has made a fair proposal, beneficial to employees in several ways, and defensible in comparison with like municipalities.

DISCUSSION

After the briefs in this proceeding had been exchanged, the Union filed a formal objection to certain portions of the Employer's brief, asking that they be striken as unsupported by the record. Specifically, the Union objected to those portions of the City's brief which: (1) referred to the Employer's version of a dispute which apparently arose in 1981, concerning the City's desire to change to a different insurance carrier than that which was then named in the agreement; (2) comparedthe wage rates for wastewater treatment plant foremen in certain other communities; and (3) referred to the recent filling of the position of wastewater treatment plant foreman. In response to the Union's objections and request that these portions of its brief be striken, the City points out that the arbitrator ruled at the hearing that the City would be required to separate its evidence from its arguments in its presentation and indicates that it experienced some difficulty in doing so, because it was prepared to present its evidence and arguments simultaneously at the hearing, in accordance with its understanding of the procedure contemplated by the wording of the statute. Further, the City argues: (1) that the Union's version of the insurance dispute in 1981, to the effect that the City did not contact the Union in sufficient time to make the desired change, is subject to verification based upon correspondence in the files of both parties; (2) that the City did in fact introduce data with regard to the wage rates for wastewater treatment plant foreman in six named communities (Fort Atkinson, Whitewater, Baraboo, Dodgeville, Stoughton, and Verona); and (3) that none of the disputed argument concerning the filling of the wastewater treatment plant foreman position is unsupported by the evidence, except the assertion to the effect that the individual hired was a "good man."

The undersigned is of the opinion that the Union's request should be granted in part. First, there is no evidence in the record concerning the dispute which arose over the City's desire to change insurance carriers in 1981

and therefore no consideration will be given to either parties' version of that dispute. On the other hand, the undersigned believes that the City does have the right to argue to the effect that the presence of some co-payment feature for insurance premiums gives the Union a greater incentive to search for cost-cutting measures, than when the agreement simply provides for a 100% pickup of any increase in insurance premiums. That argument will be considered herein. Secondly, the City is correct in its contention that it verbally presented data at the hearing to support its comparisons in the case of the rates paid to the wastewater treatment plant foremen in the six named communities and that argument will not be striken. Thirdly, to the extent that the City makes reference to the ease with which it hired a qualified wastewater treatment plant foreman at the existing wage rate, the record is devoid of any testimony or other evidence to support that claim and that portion of the City's argument will be striken. The balance of the City's arguments with regard to the wastewater treatment plant foreman either finds support in the record or are not disputed by the Union and will not be striken.

Both parties correctly identify the health insurance issue and the wage issue (including the duration question) as the central issues in this proceeding. Nevertheless, there are other issues which must be addressed since they do have some impact upon the proper weight to be attached to the parties' respective final offers under the statutory criteria.

1. HOLIDAYS

On the isolated question of whether the Employer should be required to grant an additional one-half day holiday on Good Friday, the undersigned would be inclined to favor the City's offer of no additional holiday time off, if there is to be a one-year agreement. This is so, not because the Union happens to propose to add the additional one-half day holiday in the second year of its proposed two-year agreement, but because the available comparative data generally supports the current number of holidays provided under the terms of the 1982-1983 agreement and because such an improvement in holiday benefits would therefore seem to be uncalled for at this time, at least under the terms of a one-year agreement. On the other hand, the granting of an improvement of this type makes more sense as an inducement to enter into a two-year agreement, provided it does not throw the Employer's holiday schedule substantially out of line with that of other, comparable employers and provided that the added cost of such benefit (approximately 1.6 cents in 1985) is taken into consideration as part of the overall cost of the two-year package. If the additional one-half day holiday is granted the two most comparable cities (Jefferson and Fort Atkinson) will have one half holiday more or the same number of holidays as the City. In summary then, neither party's position is deemed to be more or less reasonable than the other party's position on this isolated question because the proposed term of the agreement differs under each of their final offers.

2. SICK LEAVE

The Union's porposal to increase the number of days of sick leave which may be accumulated from 72 to 84, would appear to be quite reasonable, based upon the number of days of sick leave which may be accumulated under the agreements in the surrounding municipalities deemed comparable by the Union. Under the terms of those agreements, sick leave may

be accumulated up to a low of 90 days in Oconomowoc and Whitewater to a high of 115 in Jefferson.

In its argument, the City points out that the Union's exhibits and analysis ignore the impact of Section 8.04 of the agreement on the cost of this improvement to the City. Unfortunately, the evidence introduced at the hearing does not firmly establish whether all of the other agreements contain similar provisions to that contained in Section 8.04 of the parties' 1983 agreement.[1/] Two of the agreements covering municipalities claimed comparable by the Union were introduced into evidence at the hearing, those covering Fort Atkinson and Whitewater. An analysis of the Fort Atkinson agreement discloses that employees who retire, die or become disabled are allowed to use up to 50% of their unused sick leave to pay for continuation of health insurance coverage for themselves or their dependents. An analysis of the Whitewater agreement discloses that employees who terminate for reasons other than a discharge for just cause receive a payout equal to 50% of the value of their accumulated sick leave and that employees who die while on active employee status receive a payout equal to 100% of the value of their accumulated sick leave. While these provisions are somewhat different than those contained in the agreement here, they do establish that the City's "buy out" provision is not unique among the comparables.

There are valid reasons for including "buy out"provisions in an agreement, to discourage avoidable use of sick leave and to reward employees who do not "squander" such benefits. Furthermore, the cost of sick leave accumulation is not limited to such "buy out" provisions, but also includes long term illnesses, which undoubtedly occur in all of the comparable municipalities from time to time. For these reasons the undersigned concludes that the Union's proposal to increase the number of days of sick leave accumulation to bring the City more in line with the Union's comparables, as part of its two-year proposal, is more reasonable than the City's proposal to continue the relatively low cap on such accumulation during the term of its one-year proposal.

3. PAY FOR WORKING IN A HIGHER CLASSIFICATION

The City's objections to this proposal are basically two-fold. First, the City objects to the proposal because of claimed uncertainty as to its proper interpretation and application. However, the evidence discloses that the City did not raise any of these concerns during the negotiations which preceded the finalization of the final offers in this case. While it is true that the Union did not volunteer any explanation as to the intended interpretation and application of its proposal, the language utilized is straight forward and would appear to require little or no explanation, absent a claim by the City that such an explanation was required. To the extent that the City was in a position to foresee problems with its interpretation or

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1/ At the hearing, the Union did offer to introduce into evidence copies of the 1983 agreements with all of the municipalities deemed comparable in its exhibits, if either the City or the arbitrator desired to review them as source documents.

application, it was incumbent upon the City to point out those problems in negotiations, thus giving the Union an opportunity to clarify or modify the proposal if required. Its failure to do so seriously undermined its argument in this regard and, in the view of the undersigned, the proposal is sufficiently clear and certain in its wording so as to make its rejection for this stated reason unwarranted under the circumstances.

The second argument advanced by the City is the claim that eight hours is an unreasonably short period of time for purposes of requiring out of classification pay. As the Union points out, the use of an eight-hour threshold period avoids the administrative problems which might accompany the use of a period of time less than a full shift in length. Furthermore, the provision would allow the City to assign an employee to perform the duties of a co-worker who is absent up to a full day due to unanticipated reasons or scheduled time off, without the need to record a temporary change in pay rates. On the other hand, if an employee is assigned to perform such duties to cover for an extended period of absence due to illness, vacations or a job vacancy, it is not unreasonable to expect the Employer to take the necessary steps to change the rate of pay for the employee who has been temporarily called upon to perform the duties of the absent employee. The fact that such reassignments may be "routine" or "normal" does not compel the conclusion that out of classification pay is unwarranted.

Further, the reasonableness of the Union's proposal is supported by the evidence to the effect that all of the communities claimed comparable by the Union have a similar provision and that several of those communities have provisions which are more restrictive than that proposed by the Union herein. Oconomowoc provides for such pay after the first hour and Whitewater and Fort Atkinson both provide for such pay after four hours. Jefferson County's provision requires such pay after eight hours or more. Only Whitewater, among the Union's comparables, provides that such payments are not required for the first five days of such an assignment. While the City of Jefferson apparently has no waiting period, it does not require payment unless there are "two classifications" difference between the two positions, a limitation which presumbably allows the Employer there to avoid such payments in many cases.

For the above reasons the undersigned finds the Union's proposal in this regard is not unreasonable as alleged. On the contrary, it would appear to provide for an equitable compromise between the desire on the part of the City to avoid such payments and the desire on the part of the Union that employees receive the rate for the job to which they are assigned and that the City be given an incentive to fill all vacancies promptly. Such a compromise falls well within the range of similar provisions contained in agreements with communities deemed comparable by the Union. The City offered no evidence to offset this evidence of comparability.

4. and 5. WAGES AND HEALTH INSURANCE CONTRIBUTION

The last two issues in dispute will be discussed jointly because of their direct and significant relationship to the total compensation to be paid during the term of the agreement (one year under the City's proposal and two years under the Union's proposal). However, before evaluating these two issues jointly, several observations should be made concerning certain

aspects of these proposals, based upon the parties' arguments.

In the view of the undersigned, the City makes a significant point when it criticizes the Union's proposal for equity adjustments for the two foremen positions as "premature." The parties have agreed that job descriptions should be developed for all bargaining unit classifications, including the two foremen positions in question. Given that agreement it would seem logical to wait until that process is complete before making a substantial change in the relative compensation for the two positions in question. However, there is no indication in the record that the drawing of job descriptions will also include a systematic job evaluation process suitable for the purpose of making such internal comparisons.

Further, this weakness in the Union's position is largely offset in the case of the wastewater treatment plant foreman, by the evidence of comparable rates provided for similar positions in other nearby communities. The maximum 1983 rates for such positions were substantially in excess of that paid by the City in the case of all four cities who had positions apparently comparable, according to the Union's data (Fort Atkinson, Jefferson, Watertown and Whitewater). The 1984 wage increases negotiated to cover those positions in Fort Atkinson, Jefferson, and Whitewater (53¢, 40¢, and 38¢ respectively) would increase this differential if the City's offer is adopted. On the other hand, if the Union's offer is adopted this differential would probably be eliminated in the second year of the agreement, under the Union's proposal.

The City introduced testimony to the effect that the annualized salary of employees holding this position is comparable to the annualized salary of persons holding positions alleged to be similar in six other communities. However, most of the communities relied upon by the City are located at some distance from Lake Mills and the agreements covering those positions were not available at the hearing. Further, a review of the agreements covering two of those communities in close proximity to Lake Mills discloses that: (1) in determining the annualized salary for Fort Atkinson the City obtained the starting rate for the position of Water Department serviceman foreman rather than the 18 month rate, which is 68¢ higher; and (2) in determining the annualized salary for the comparable job in Whitewater, the City apparently obtained data for the wrong position, since the wage rate for all positions in Whitewater's division of wastewater treatment (not just the assistant chief operator deemed comparable by the Union) are substantially in excess of the figures obtained by the City.

The City also makes several arguments in support of its position that its employees should be required to make co-payments toward the cost of health insurance, which are separable from the overall question of whether the City's offer is more reasonable under the statutory criteria. First, the City argues that such a provision creates a vested financial interest on the part of employees and gives them an incentive to work to help contain health insurance costs. This argument is deemed to be valid. On the other hand, such an incentive already exists to some extent since the City is free to emphasize in negotiations that such increases will be treated as part of total compensation available and relied upon in arbitration if such becomes necessary[2/]. Furthermore, the City's proposal

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2/ Perhaps the City's purpose in this regard could be more effectively accomplished by negotiating a change in the anniversary date of the health insurance policy so that future increases occur shortly before or during negotiations.

would seem to constitute an unnecessarily harsh departure from past practice for such purposes. A proposal to require employees to absorb 50% of any increase during the term of the agreement, could have an unpredictable and potentially harsh impact on a bargaining unit of employees whose average hourly earnings were $7.75 in 1983. In addition, it should be remembered that any payments made by employees under such a proposal would be made from after tax incomes.

The City relies upon its agreement with the Union which represents its police to support its position on health insurance. However, that agreement, unlike the agreement here, specifies the carrier and plan and the premium to be paid by the parties and specifically limits the amount to be paid by employees to $16.28, an amount which is identified as equal to one-half the increase for 1984. As the Union points out, there is no evidence in the record to indicate what other agreements accompanied this change, particularly those involving compensation.

Notwithstanding the City's claim that such provisions are not radical or uncommon, its proposal is not supported by any evidence indicating that such provisions are common in the area or that a trend exists toward the negotiation of such agreements in the area. For this reason as well, the City's proposal on this issue, which is not accompanied by a generous wage offer or other "buy out" proposal, must be viewed as having a major, negative impact on the overall reasonableness of its compensation offer.

The City's proposed 3% across the board wage increase is nearly uniquely low among the comparables. Among the comparables for which data is available, only Watertown offered a similarly low percentage increase for 1984. Significantly, Fort Atkinson and Jefferson settled on terms which included a 6% increase in wages. Oconomowoc and Whitewater,which are deemed less comparable in the view of the undersigned, settled for 5% and 4% increases respectively. On the other hand, the 4% settlement with Jefferson County is slightly more supportive of the City's offer than the Union's offer, on wages alone. However, Jefferson County also agreed to continue to pay 100% of the health insurance premium for its employees in 1984 (as have all of the other employers cited by the Union).

Taking the available wage data for comparison purposes, the Union would appear to be correct in its claim that, in 1984, the City will not "catch up" with the wage rates paid for comparable positions in the classification of heavy equipment operator or general laborer 1 and 2, even when its split increases are applied to the existing wage rates.3/ Whether the City will "catch up" with such rates in 1985, with the additional split increases proposed by the Union, is, of course, uncertain at this point in time. However, given the available data with regard to the projected rate of inflation for late 1984 and early 1985, it is possible that it will not. The cents per hour increases implemented in Fort Atkinson, Jefferson, and Oconomowoc for 1984, after a 3.8% rate of inflation in 1983, suggests that the Union's proposed split increases may be required in order to "catch up" or even keep even with comparable

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3/ The City makes several arguments which would appear to unfairly distort or misconstrue the Union's comparative data. For example, in its discussion of the rates paid for heavy equipment operator 1 and laborer 1 by Fort Atkinson and Watertown, the City cites January 1, 1983 rates and compares them to ending 1983 rates in Lake Mills. It also suggests that the entry level position of "laborer 1" in Fort Atkinson should be compared to the top level laborer 1 in Lake Mills.

increases for 1985.

The undersigned recognizes the substantial percentage lift that is inherent in the Union's two-year proposal and has also taken into account the other improvements that the Union seeks in the form of an additional one-half holiday in 1984, sick leave accumulation and out of classification pay. However, when these elements of the Union's two-year proposal are compared to the City's one-year proposal, which would provide a net increase slightly in excess of 2% in take home pay, and when due consideration is given to the available data regarding wage comparisons, the undersigned is convinced that the statutory criteria support the Union's offer over that of the Employer. The City's offer is substantially less than that justified by the current rate of inflation and would cause the employees to fall further behind similarly situated employees in comparable communities, whether measured in terms of wages or overall compensation.

For the above and foregoing reasons the undersigned concludes that the Union's final offer should be selected over that of the Employer and renders the following

AWARD

The Union's final offer, submitted to the Wisconsin Employment Relations Commission, shall be included in the parties' 1984-1985 Collective Bargaining Agreement along with all of the other provisions which were agreed to by the parties for inclusion therein, including those provisions of the 1982-1983 agreement which remain unchanged by said offer.

Dated at Madison, Wisconsin this 29th day of May, 1984.

George R. Fleischli
Mediator/Arbitrator