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BEFORE FREDERICK P. KESSLER

ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF THE FINAL AND BINDING
ARBITRATION BETWEEN

THE CITY OF TOMAH

and

THE TOMAH CITY EMPLOYEES LOCAL 1947-B
WCCME, AFSCME, AFL-CIO

Case: XXIII

No: 34454

MED/ARB-3162

Decision No. 22403-A

DECISION

A. HEARING.

A hearing on the above entitled matter was held on Monday, May 20, 1985 at the City Hall in the City of Tomah, Wisconsin.

Pursuant to a stipulation, testimony was not taken. Instead, a series of exhibits were received in evidence from both parties and a schedule to submit briefs set.

B. APPEARANCES.

Daniel R. Pfeifer, District Representative, Wisconsin County 40 AFSCME-AFL-CIO, appeared on behalf of the Tomah City Employees Local 1947-B, (hereafter "Union").

Present on behalf of the City of Tomah was Robert J. Mubarak, City Attorney, City of Tomah (hereafter "City"). Also present were a number of members of the City Council, the Mayor, and members of the bargaining unit.

C. NATURE OF PROCEEDINGS.

This is a final and binding arbitration proceeding brought between the above named parties under Section 111.70 (4) (cm), Wis. Stats., the Municipal Employment Relations Act.

On January 10, 1985 the Union filed a petition with the Wisconsin Employment Relations Commission (W.E.R.C.) contending that an impasse in their collective bargaining existed between the Union and the City. The Union requested that the Commission initiate a Mediation/Arbitration proceeding pursuant to the Municipal Employment Relations Act. On February 25, 1985, James W. Engmann conducted an investigation and concluded that the parties were deadlocked in their negotiations. On February 25, 1985 the parties submitted their final offers to Mr. Engmann as well as the stipulations into which they had entered. On March 6, 1985 the Wisconsin Employment Relation Commission concluded that the parties have complied with the procedures set out in Section 111.70 (4) (cm) of the Municipal Employment Relations Act and that an impasse existed. It then ordered that Mediation/Arbitration proceedings be commenced.

On March 6th the parties were sent a list of names from which they could select a Mediator/Arbitrator. On March 19, 1985 this Arbitrator

was notified by the parties that he had been selected as the Mediator-Arbitrator in this dispute. The hearing was scheduled for May 20, 1985. At that time, in an effort to resolve the dispute, the Arbitrator attempted additional mediation with the parties. When it appeared further mediation would be fruitless, the hearing was convened and the parties, by stipulation, presented their evidence. Briefs were received by the Arbitrator dated July 1 and 2, 1985. Reply Briefs were received dated July 22, 1985.

D. THE OFFERS.

1. THE UNION OFFER:

1. The final offer of the Tomah City Employees is as follows:

- "1. Wages - Increased by 4% ATB effective 1/1/85
- Increased by 31 cents per hour ATB effective 1/1/86
2. Account Clerk - Increase rate by \$1 per hour prior to the 1985 wage increase
3. Duration - 1/1/85 to 12/31/86
4. All items not addressed in the Union's final offer remain as in the 1/1/83 to 12/31/84 agreement."

2. The final offer of the City of Tomah.

- "1. Wages
1985: 5% ATB
1986: .35 ATB
2. Insurance
1985: 167.43 family, 65.10 single
1986: 175.00 family, 70.00 single or 85% whichever is greater
\$100 paid by employees with maximum of 300 family per present insurance contract. All other language remains the same."

E. STATUTORY CRITERIA.

Section 111.70 (4) (cm) Wisconsin Statutes provides that an arbitrator must consider the following:

111.70 (4) (cm) 7. FACTORS CONSIDERED In making any decision under the arbitration procedure authorized by this sub-section, the Mediators-Arbitrators shall give weight to the following factors.

- a. The lawful authority of the municipal employer.
- b. The stipulations of the parties.
- c. Interest and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed settlement.
- d. Comparison of wages, hours and conditions of employment of Municipal employees involved in arbitration proceedings with wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities.
- e. The average consumer price for goods and services, commonly known as the cost of living.

f. The overall 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.

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

h. 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.

F. ISSUES.

There are three issues in dispute between the City and the Union: First, the amount of the wage increase to be granted on January 1, 1985 and on January 1, 1986; second, the salary status of the Account Clerk in the Water Department; and third, whether a limit should be placed upon the amount of money the City will spend for employee Health Insurance.

G. THE UNION'S POSITION.

This Mediation/Arbitration proceeding is somewhat unusual in that on the issue of compensation increases, the Union request in its final offer, is for an amount of money less than has been proposed by the City in its final offer. This reversal of more traditional postures reflects the significance with which the Union views other portions of its final offer, namely the desire NOT to cap member health insurance coverage.

The Union shows that in past labor agreements there were never any deductibles provisions in the surgical/medical portion of the health insurance contract. There was a deductible provision only in the major medical section of the contract; this deductible was paid by the employees. The City is seeking to add a \$100 deductible per person/\$300 deductible per family, on the surgical/medical portion of the health insurance plan in the new agreement. Simultaneously, the City wants to place a limit on the amount of health insurance premiums that it will have to pay. Currently it pays 100% of the premiums.

The Union argues that the proposed deductibility provisions that the City is offering are a set of false economies. It would not reduce the use of medical/surgical services. There presently is a deductible for major medical expenditures. The surgical/medical deductible, which is being proposed by the City, applies only in those circumstances in which an employee is required to enter the hospital. An illness, the Union argues, must be so substantial and severe when a decision is made to seek hospitalization that it would be unlikely to be frivolous. The existence or absence of employee paid deductibles would not play a role in a decision, consequently the existence of medical/surgical deductibles would not discourage any perceived "misuse" of available health care and thus reduce the City's costs.

The Union portrays the City's offer as an attempt to "buy out" the Union by making a more substantial salary offer than the Union is seeking, and hoping the Union will retreat on the question of the insurance limits. They argue that the City's offer will result in an additional 7.5 cent per hour wage increase. For the entire year that increase will result in \$156 per year in additional salary. This is inadequate when connected with increased deductibles because employees with families could be compelled to pay up to an additional \$300 per

year in increased health insurance costs. In effect, the City's proposal is lessening the employee's total compensation package.

The Union's examination of comparable units of government disclosed all municipalities which had a 100% employer-financed health insurance in 1980, kept those Health Insurance policies during the five year period from 1980 to 1984. The Union further points out that those same 100% employer contributions are continuing in the 1985 labor agreements which have been negotiated by this time. They argue that the City is now trying to take away something to which the parties had agreed through negotiation, but is not adequately compensating the employees for the proposed change.

The Union measures it's wage offer against the cost of living increases during the agreement's life. The cost of living increase for the year ending December 1984 was a 3.5% increase. From May, 1984, to May, 1985 the C.P.I. rose 4.1%. The Union's final offer of a 4% wage increase is closer to the C.P.I. than that of the Employer's final offer of a 5% wage increase. The difference between the Union's final offer, as to wages, during the second year of the agreement is so slight as to make meaningless an attempt to compare the two to the recent C.P.I. increases.

The remaining area of dispute involves the position of Account Clerk in the Water Department. The Union contends that the Account Clerk is the only person working in the Water Utility Office and therefore, ought to be compensated at a rate of pay equivalent to an Office Manager. However, even if she is not regarded as an Office Manager, she is inadequately paid for her position as Account Clerk. Among 31 other municipalities in Wisconsin with populations in the range of from 2,500 to 10,000, City employees who hold the position of Account Clerk receive an average wage of \$7.31. The 1984 wage for the Tomah Account Clerk was \$6.29. This substantial gap is the basis for requesting the \$1/hour pay increase as part of the final offer.

The Union proposes that this Arbitrator consider as comparable communities, all the cities in the western part of Wisconsin with populations of between 2,500 and 10,000 persons. The Union indicates this choice of comparable communities gives the Arbitrator a wide range of municipalities to consider similar to the wide range of communities utilized by other arbitrators in the area in the past.

The Union strongly argues against relying only on the City of Sparta and Monroe County as proposed by the City. Those two governments are too restrictive to be comparable communities; they would not give the Arbitrator an overview of what is occurring within this region and the State. Relying only on these two governmental bodies fails to meet the Statutory requirements as to the consideration of appropriate comparable communities.

H. THE CITY'S POSITION.

The City has proposed in it's final offer that the employees be required to pay the first \$100, up to a maximum of \$300 per family, for health care costs. The City has had a substantial increase in its Health Insurance Premiums over the last two years. The cost of Health Insurance for family coverage rose from \$109.90 per month to \$178.20 per month per employee during the term of the last agreement. That cost was supposed to be increased to \$189 per month per employee for the benefits presently covered. The City, however, obtained a policy from another company which brought the monthly premium cost down to the present level of \$167.43. It is because of this continually increasing cost that the City to seek both a limit (a "cap") on the total premium and a shift of part of the cost to the employees by adding a deductibility provision.

The City contends that it is unlikely that individual employees will suffer any loss. They point out that an employee who does not use his

or her Health Insurance policy will not have to pay any deductible amount. Further, even if such an employee is required to pay a deductible, their economic loss will be negligible because of the wage increase that has been offered by the City which will more than offset the typical deductible expense. They further contend that by including an employee paid deductible provision in the plan and a limit on the maximum cost to the City, the new plan will create an economic incentive for both the City and the employees to work together to keep Health Insurance costs down.

The City contends that it is offering a very substantial wage adjustment for 1985 and a realistic adjustment for 1986. Their more generous wage offer was obviously being made to reassure employees that they would have adequate resources to meet any potential future costs in their health care. The proposed wage increase compares favorably to the wage increase of the City of Sparta and to Monroe County, the two other comparable government units that the City urges the Arbitrator consider as comparable. The City wage offer was made to induce the employees to agree to the proposed insurance adjustments.

The final issue urged by the City is the status of the Account Clerk in the Water Department. The City contends the Account Clerk in the Water Department is merely a Bookkeeper/ Receptionist. Past wage increases of 6.6% in 1984, plus the 1985 and 1986 increases, and longevity increases for the current clerk, will result in her having a 30.7% wage increase between 1983 and the end of 1986. They argue that any further wage increase for that position is unnecessary and inappropriate.

The City contends the one obvious choice for a comparable community, is the City of Sparta. Both Tomah and Sparta are located in Monroe County. Tomah has a population of 7,500; Sparta has a population of 7,300. Both are primarily farming communities supporting two or three other industries. They are located within 15 miles of each other. They each have the same two Municipal Unions representing their employees. Consequently, the City concludes, they should be used as comparable communities in Mediation/Arbitration situations. Their proximity, and similarity are so overwhelming that no other comparable communities are required. The only other governmental body that should be used is Monroe County because it is the county in which both communities are located and is the employer of "other employees generally in public employment in the same community".

I. DETERMINATION OF COMPARABLES.

According to the 1980 U.S. census, Tomah had a population of 7,204, while Sparta had a population of 6,934. The brief submitted by the City indicates there has been population growth in both communities. Tomah's population has increased to nearly 7,500 while Sparta's has grown to 7,200. Both of the communities remain farm/market communities and are influenced by their location near a major cross continent Interstate Highway.

The Union does not dispute that the City of Sparta belongs on a list of comparable communities. The issue as to the comparable community list is whether it should be the only other community on such a list. The Union, in its proposed list of comparable municipalities, offers the Cities of Baraboo, Black River Falls, Mausten, Onalaska, Prairie du Chien, Reedsburg, Richland Center, Sauk City, Sparta, Viroqua, and West Salem. It also proposes inclusion of Monroe County on the list. Their list includes communities that are somewhat geographically distant from the City of Tomah and includes a number of communities of a substantially different population. The mere location of a community in the western portion of Wisconsin, in and of itself, does not make that community comparable to the city of Tomah.

The Union in Exhibit 11a, submitted a wage survey for the "Western Wisconsin Service Delivery Area" prepared by the Department of Industry, Labor and Human Relations. That area consisted of Buffalo, Crawford, Jackson, Juneau, La Crosse, Trempealeau, and Vernon Counties. It is the finding of this Arbitrator that the comparable communities to be used should be those cities with a population of between 2,500 and 10,000 located within those 8 counties. The communities that would fall within that description are: Tomah, Sparta, Mausten (population in 1980 of 3,284), Onalaska (population in 1980 of 9,249), Viroqua (population in 1980 of 3,716), Black River Falls (population in 1980 of 3,434), Mondovi (population in 1980 of 2,545), Prairie du Chien (population in 1980 of 5,859), West Salem (population in 1980 of 3,276). No evidence has been received regarding Health Insurance or wage rates in Mondovi from either the City or the Union. Therefore, although its inclusion is appropriate, it will not be considered by the Arbitrator in any fashion. Since both parties ask that Monroe County be included in a list of comparable units of government, it will also be included.

J. DISCUSSION.

1. Health Insurance The changes proposed by the City in the area of Health Insurance coverage for its employees are very significant. They clearly can be described as "major changes" in the agreement. In The School District of La Crosse, Decision 19714A, Arbitrator Byron Yaffe, dealt with the burden of proposed major changes in a labor agreement and said:

"The Association is proposing a major change in the agreement. It has the burden of demonstrating not only that a legitimate problem exists, which requires contractual attention, which it has done herein, but that its proposal is reasonably designed to effectively address that problem."

In this proceeding, a major change is being proposed in a labor agreement. The change would shift a portion of the cost for major medical expenses to employees and would place a limit on the cost of Health Insurance to the employer. The first question is whether this is a "legitimate problem that requires contractual attention" and if so, determine whether the City's proposal "is reasonably designed to effectively address" the problem.

This Arbitrator concludes that the increased Health Insurance cost has been very substantial and is causing a legitimate problem for the City which does merit contractual concern. Since 1983 the cost of the premium's for the Health Insurance policy the City maintains has increased 35%. The dramatic increase of insurance costs to the employer is a major problem that affects the contract. Specifically, the cost for family coverage rose from \$109.90 per month to \$178.20 per month per employee under the old policy. The City's new carrier charges \$167.43 per month. The City has proposed, in its final offer, that its liability for health insurance premiums be increased to 167.43 for family coverage in 1985, and \$175 for family coverage in 1986, or 85% of the cost per person of the premium, whichever is greater.

The City also is proposing that a \$100-per-individual and \$300-per-family deductible provision be added to the Health Insurance Policy. The employees would be required to first pay those amounts before their insurance became liable.

In the comparable communities a number of them are paying 100% of the premiums. The percentage is as follows:

Percentage of Health Insurance Premiums
Paid by Employer in 1984

	<u>Single</u>	<u>Family</u>
Black River Falls	100 %	100 %
Mauston	100	77
Onalaska	100	100
Prairie du Chien	100	100
Sparta	100	92
Viroqua	42	80
West Salem	100	100
Monroe County	<u>88</u>	<u>78</u>
Average	91	91

The City's final offer still contemplates a 100% financing of the current family premium at \$167.43. The deductible feature of the plan, however reduces the effective contribution from the employees point of view. The City does propose a limit ("cap") of 85% or \$175, whichever is greater) for the 1986 term.

This Arbitrator must determine whether the substantial increase in the cost of Health Insurance, (the entire burden of which has fallen upon the City) offsets the pattern of wage settlements in other comparable communities where the Health Insurance cost is being paid in its entirety by the City or unit of government.

The ever increasing cost of Health Insurance is a cost that should not continue to fall entirely on the City. At the time that a health policy was incorporated in the labor agreement, the cost of the policy was considerably lower. The parties are not likely to have anticipated the substantial and increasing amounts of money needed to pay the Health Insurance Premiums. This additional cost to the City is also an additional indirect compensation to the Neither party can predict with accuracy how the increase will occur in the future. The intent of the parties as to compensation in the original agreement is not likely to have dealt with these dramatic increases.

I conclude that the proposed solution of the City appears to be designed to effectively deal with this problem. In regards to this issue between the Union and the City, the City's final offer is the more reasonable of the two final offers.

2. Wages

The final offers relating to wages in this case clearly would be viewed as unusual if they were standing alone. The Employer's offer rarely is in excess of the final offer of the Union. In this case the City is proposing a 5% increase for the first year and 35¢ per hour for the second year (a 4.4% increase), while the Union is proposing a 4% wage increase for the first year and 31¢ per hour for the second year (a 4% increase). The reason for the reversal of roles is related to the dispute over placing a limit on the employer cost of Health Insurance.

Among the factors an arbitrator may consider in determining the level of compensation to be paid under Sec. 111.70 (4) (cm) Wis. Stats. is the Consumer Price Index. The Consumer Price Increase for June 20, 1985 indicates that the percent changes for all indexed items for urban wage earners for a one year period in the United States was 4.1%. In small metropolitan areas the increase was 3.2% and in non-metropolitan areas the increase was 2.9%.

When examining wage rates, the wage levels paid in the comparable communities should be reviewed. Those rates for selected positions are as follows:

1984 Wage Comparisons

	<u>Mechanic</u>		<u>Heavy Equip. Operator</u>		<u>Sewer Pl. Operator</u>		<u>Clerk-Typist</u>		<u>Custodian Maintenance</u>	
	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>
Blk. Rv. Falls	7.97	12.53	9.18	9.18	8.05	8.05				
Mauston			7.23	7.23	5.61	6.63	5.87	5.87		
Onalaska										
Pr. du Chien			6.49	7.37	6.99	7.24	5.58	6.24	5.01	5.91
Sparta	8.25	8.25	8.25	8.25	7.97	7.97	5.55	5.55		
Viroqua			6.98	6.98						
West Salem			7.61	7.61	7.61	7.61	6.51	6.51	6.85	7.25
Monore County	<u>7.71</u>	<u>7.91</u>	<u>7.56</u>	<u>7.76</u>	_____	_____	<u>4.88</u>	<u>6.16</u>	<u>5.25</u>	<u>7.81</u>
Average	7.98	9.56	7.61	7.77	7.25	7.50	5.68	6.07	5.70	6.99
Tomah	8.10	8.10	7.83	7.83	7.60	7.60	5.75	5.75	7.60	7.60

The Union's final offer calls for an increase slightly less than that of the City. The wage rate comparables show that the City of Tomah is paying above the average wage in almost all classifications. No evidence has been offered to show any automatic increase or difference has occurred in Tomah or any of the other cities. It appears therefore, that the final offer of the Union relating to the wage increase is closer to those statutory standards that the Arbitrator may consider. The wage package proposed by the Union is therefore preferred.

3. Account Clerk

The Union, in its final offer, is proposing that the salary of the Account Clerk in the Water Department be increased by one dollar per hour over and above any other increase awarded to the employees. The Union contends that the person performing that job is doing more than acting as an Account Clerk. She acts as a bookkeeper, receptionist and is, in effect, holding the position of Office Manager. The City strongly disputes that assertion. The Superintendent of the Water and Sewer Department has an office in that Department and, according to the City, he performs the work of an Office Manager. They claim that the Account Clerk is actually a Receptionist/Secretary/Clerk for the Superintendent. In the City view, the Account Clerk does the same type of work as is done by secretaries in other Water Departments of other cities.

The Union, in the alternative, argues that if the Arbitrator rejects their proposition that the Account Clerk is an office Manager, her salary as Account Clerk is still below the average of other Account Clerks in other cities doing the same types of jobs. The only other cities, that are within the previously determined comparable cities, and which have the position of Account Clerks performing work for the Sewer or Water Departments, are paying those Clerks as follows:

1984 Salaries for Account Clerks

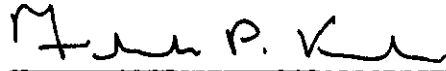
Prairie du Chien	5.18
Sparta	6.05
Viroqua	<u>6.15</u>
Average	5.79
Tomah	6.29

The survey shows that Tomah is paying the Account Clerk a wage rate higher than that of the comparable municipalities. The Union has the burden to show that the work performed by the Account Clerk is substantially different from the job in other communities. It has not convinced the Arbitrator of those differences. In regard to the position of Account Clerk, the City's final offer is more in conformity with the criteria the Arbitrator must consider.

K. THE AWARD.

The 1985 agreement between the City of Tomah and the Tomah City Employees shall therefore, include the final offer of the City as set forth and explained herein.

Dated this 18th day of October, 1985.



Frederick P. Kessler
Mediator-Arbitrator