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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Mediation-Arbitration Between

Menasha City Employees Local 1035, AFSCME, AFL-CIO

-and-

City of Menasha

Case 56
No. 34419 MED/ARB-3149
Decision No. 22525-A

Appearances:

Mulcahy & Wherry, by James R. Macy, for the City.

Gregory N. Spring, Staff Representative, for the Union.

On May 21, 1985 the Wisconsin Employment Relations Commission appointed the undersigned as mediator-arbitrator in the above-captioned case. On July 31, 1985 at Menasha, Wisconsin mediation was attempted, but was unsuccessful. Also on that day an arbitration hearing was held. No transcript of the proceedings was made. At the hearing the parties had the opportunity to present evidence, testimony and arguments. The record was completed on September 4, 1985 with the exchange by the arbitrator of the parties' post-hearing briefs.

There is one issue in dispute. The Union's final offer maintains the status quo with respect to health insurance benefits. The City's offer contains the following language:

> "1. Article XIV, Health and Dental Care Benefits - Modify by adding the following:
>
> Effective 1/1/85, employees are responsible for the first $5.00 of expenses incurred per Doctor's Office Visit, and the first $10.00 of expenses per Emergency Room Visit. These charges pertain to medical coverage only."

FACTS

The Union represents one of four bargaining units that bargain with the City. The other three units are police, fire and clericals, the last of which is also represented by AFSCME.

In 1982, in response to drastically increasing premiums for health insurance, the City, with the voluntary agreement of all of its bargaining units, became self-funded for health insurance. The City continued to pay for the entire premium, as it had done before, and employes were not required to pay any deductibles.

In bargaining for 1984 agreements with its unions the City made several proposals designed to further reduce the cost of health insurance. Just one of the proposals was accepted. The three bargaining units which are not involved in this dispute accepted the City's proposal that effective 1/1/84 each employe would pay $5 per office visit and $10 per emergency room visit. Local 1035 did not accept that proposal.

During mediation, which produced a 1984 Agreement, with Local #1035, the City dropped its demand for the $5/$10 payment. In return for keeping the existing health payment arrangement, the Union agreed to take a lower wage settlement for 1984. While all other bargaining units received 4.75% effective 1/1/84, Local #1035 received 2% 1/1/84 and a non-compounded 3% increase 7/1/84.

City witnesses testified that it was their intent that Local #1035 be allowed to wait one year before agreeing to the $5/$10 proposal, in order that the parties have the opportunity to observe whether the $5/$10 arrangement really did meet its purpose of saving health insurance costs. No evidence was put into the record by the City, however, which shows that in reaching the 1984 Agreement Local #1035 agreed to accept the $5/$10 arrangement in 1985. There is also no City testimony contending that any such statements were made by representatives of Local #1035.

In 1985 bargaining, voluntary agreement was reached with the other three units including a wage increase of 5% in 1985 and 4 1/2% in 1986. Bargainers for the City and Local #1035 agreed to these wage increases also. The only item on which they did not agree, and which is the subject of this arbitration, is the City's proposal that Local #1035 accept the $5/$10 payment arrangement which has been in effect for the other units since 1/1/84.

Evidence put into the record by the City shows that in 1982, the first year of self-funding, the health insurance premium increased 15.8%. It rose 12% in 1983 and 6.11% in 1984. In 1985 there was a 4.37% decrease.

Data presented by the City show that during 1984, had Local #1035 been subject to the $5/$10 arrangement, the average cost per employe would have been about $32. Seven employes would have paid in excess of $50. If for 1985 the usage through July were projected for the year, the amount would also be about $32 per employee.

The City data show also that in 1984 26.14% of the premium for health insurance paid for the four bargaining units was paid on behalf of Local #1035, whereas in excess of 30% of the benefits paid were to Local #1035 represented employes. In excess of 31% of the so-called Health Maintenance Benefits (office visits and emergency room) were paid to Local #1035 employes.

The City produced data on other municipalities, although it did not indicate why it felt that each of these municipalities should be compared to Menasha. Some perhaps are obvious because of their geographical location in or near the Fox Valley. Those cities having some deductibles are Appleton, DePere, Fond du Lac, Kaukauna, Manitowoc, Marinette, Ripon, Sheboygan, Stevens Point, Wausau and Wisconsin Rapids. Only Marshfield, Neenah and Oshkosh have no deductibles.

DISCUSSION

The arbitrator must base his decision on the factors listed in the statute. Some of them have no bearing on this case: (a) lawful authority of the employer; (b) stipulations of the parties; (e) cost-of-living and (g) changes in the foregoing circumstances during the arbitration proceedings.

Factor (c) is not germane to this case insofar as it involves "the financial ability of the unit of government to meet the cost of any proposed settlement." It is involved insofar as it directs the arbitrator to consider "the interests and welfare of the public." It is in the interests and welfare of the public, in the arbitrator's opinion, that public employes receive quality health care at as low cost as possible. The City's offer is designed to reduce unnecessary utilization of health services. However, there was no persuasive evidence presented to show that either as a general proposition, or in the City's case specifically, imposition of co-payments for doctor visits or emergency room use saves the City money and does not reduce the quality of health care for employes and their families. Arguably such a move is cost efficient, in that the City's health insurance premiums were reduced in 1985 after the introduction of these payments for its other employes in 1984. Not enough information was made available to the arbitrator to persuade him that there was a causal connection between the beginning of co-payments and rate reduction.

Thus, in the arbitrator's opinion neither final offer is favored based on the "interests and welfare of the public" criterion.

Factor (d) deals with comparisons with other public employes, both in and outside of the City, and with private sector employes also. No data were presented dealing with the private sector.

The final offers in this case are for a 1985-1986 Agreement. As of 1/1/84 every other employee of the City who was covered by City-provided health insurance made the $5/$10 payments at issue here. For the represented employes this resulted from voluntarily bargained settlements with the three other units, including one represented by AFSCME. These internal comparisons strongly support the City's final offer, in the arbitrator's opinion.

As mentioned above there are many other cities in the geographical area of the City which require their employes to pay deductibles. Two other cities in Winnebago County do not. The arbitrator does not have the data to make a determination of which of the cities is most comparable to Menasha. It appears to be the case that such payments are not unusual in the geographical area, and are not unusual in units represented by AFSCME. It is probably the case that the external comparables lend support to the City's final offer.

Factor (f) deals with the "overall compensation presently received by the municipal employees." The item in dispute here is not a large one. The evidence presented indicates that there is some variation in benefits and costs between units. In the arbitrator's view, however, the item in dispute in this case is not of such significance to make either party's final offer preferable under the "overall compensation" factor.

The last factor to be considered is (h) "such other factors...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining...arbitration or otherwise between the parties..."

One such factor is bargaining history. The Union argues cogently that there is a very long history of the City providing fully paid health insurance to employes with no deductibles and no co-payments. Moreover, the Union argues, the City proposed the now-disputed item in 1984 bargaining and voluntarily dropped it in the process of achieving the 1984 Agreement. There was no agreement or understanding between the parties, according to the Union, that the $5/$10 item would be included in the 1985 Agreement.

Given the existence of this long-standing bargained benefit, and the City's recent unsuccessful effort to change it in bargaining, the Union argues that the arbitrator should not permit such a change to occur in the absence of compelling reasons, and in its view no compelling reasons exist in this case. The City suggests that all employes should have the same insurance programs and especially since it is designed to reduce premium costs for everyone.

As a general rule the arbitrator agrees with the Union's position that with such a long-standing benefit, and the recent bargaining history, any change in the benefit should be bargained, not imposed through arbitration. However, this factor must be balanced with others. Were there not arbitration available, and were the City able to achieve voluntary agreement in its three other bargaining relationships to change the benefit, it is not at all likely that this bargaining unit would be successful in holding out to retain a benefit given up by everyone else. Where the internal voluntarily bargained settlements all favor the City's position, and where the objective of the City is to achieve standardized insurance benefits, and where the arrangement is not out of line with what is occurring in comparable communities, the arbitrator believes that the arguments in favor of the City's position outweigh those in favor of the Union's position. It may be the case as the Union argues that it did not get anything, or enough, from the City in the way of extra economic benefits in exchange for agreeing to co-payments. Whether or not this is true, the Union was aware that the City was seeking this concession, and the Union could have constructed its final offer to achieve some compensation if the City were to prevail. In any event, the parties will be able to address these considerations in subsequent bargaining.

Based on the above facts and discussion, the arbitrator hereby makes the following AWARD

The final offer of the City is selected.

Dated this 2nd day of October, 1985, at Madison, Wisconsin.

Edward B. Krinsky
Mediator-Arbitrator