STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of OSHKOSH PUBLIC LIBRARY EMPLOYEES, LOCAL 796-A, AFSCME, AFL-CIO To Initiate Arbitration Between Said Petitioner and CITY OF OSHKOSH (PUBLIC LIBRARY)	Case 100 No. 38521 ARB - 4346 Decision No. 24800-A

Appearances:

Mr. Gregory N. Spring, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of Local 796-A.
Mr. John W. Pence, City Attorney, City of Oshkosh, appearing on behalf of the Employer.

ARBITRATION AWARD:

On September 22, 1987, the undersigned was appointed to serve as Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4) (cm) 6 and 7 of the Municipal Employment Relations Act, to resolve an impasse existing between Oshkosh Public Library Employees, Local 796-A, AFSCME, AFL-CIO, referred to herein as the Union, and City of Oshkosh (Public Library), referred to herein as the Employer. Hearing was conducted at Oshkosh, Wisconsin, on November 24, 1987, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs were filed in the matter, which were exchanged by the Arbitrator on January 25, 1988.

THE ISSUES:

The issues in dispute between the parties are reflected by their final offers as follows:

UNION FINAL OFFER:

ARTICLE XVI - HEALTH AND HOSPITAL INSURANCE

A. Delete the last paragraph of article.

B. Add to article:

Section 4. Effective July 1, 1987, the Library agrees to pay the full single coverage for employees working between 3/8 and 1/2 time. For family coverage, the Library agrees to pay an amount equal to 3/8 of the family coverage or an amount equal to the single coverage whichever is greater.

Section 5. The parties agree that the additional hours which an employee may work during the months of June, July and August, beyond those which they had been normally scheduled, shall not be computed to cover any additional hospital insurance premium contributions, paid by the employer, or to be considered being a "change of status." The employer will pay no hospitalization or health insurance premium for any salaried or hourly employee working less than 3/8 time.

For the purpose of this article, 3/8 time shall mean a job scheduled for an average of sixty-five (65) hours per month and 1/2 time shall mean a job scheduled for an average of eighty-five (85) hours per month.

SALARY SCHEDULE:

A. Salaried Employees:

Add 2% to all rates effective pay period #1, 1987
Add an additional 3% to all rates effective pay period #1, 1988

B. Pages:

Add 5¢ to hourly rate effective pay period #1, 1987
Add an additional 5¢ to hourly rate effective pay period #1, 1988

EMPLOYER FINAL OFFER:

1985-86 Labor Agreement as amended by stipulation of the parties with the following modification:

SALARY SCHEDULE:

A. Salaried Employees:

Add 3% all rates effective pay period #1, 1987
Additional 3% all rates effective pay period #1, 1988

B. Pages:

Add 10¢ per hour effective pay period #1, 1987
Additional 10¢ per hour effective pay period #1, 1988

DISCUSSION:

The statute at 111.70 (4) (cm) 7 directs the Arbitrator, in making his decision, to give weight to the factors enumerated as subsections a through j of 7. The undersigned, therefore, in arriving at his decision in this matter, will consider all of the statutory criteria, focusing particularly on those criteria to which the parties have directed evidence and to which they have made argument.

The record in this matter is established via certain stipulated facts which the parties entered into the record at hearing on November 24, 1987, as well as facts which were adduced by exhibits and testimony. The stipulated facts are as follows:

1. The health insurance premiums presently in force are: single plan, $94.76 per month; family plan, $236.89 per month.

2. Pages work eleven (11) hours per week.

3. If the Union's final offer is selected, the affected employees shall receive the premium costs of the health insurance (but the Employer shall not be liable for medical costs which those employees may incur between July 1, 1987 and the date of the arbitrator's award).

4. Except for one (1) unsettled unit, 3% was the wage increase for Oshkosh employees in 1987.

5. Employees in the unit who were employed in 3/8 positions receive life insurance benefits.

The record establishes additional facts as follows:

1. The parties entered into a tentative Collective Bargaining Agreement which would have settled all of the dispute between the parties, which was ratified

by the Union and rejected by the Employer on a 3 to 3 vote. The Union final offer mirrors the tentative Agreement rejected by the Employer. (Joint Exhibit No. 5)

2. The Union's final offer for 1987 reflects a cost of $10,244, and the Employer final offer reflects a cost of $11,772 for 1987. (Union Exhibit No. 5)

3. The Employer furnishes no insurance benefits to part time employees in any other bargaining unit within the employ of the Employer, except for employees of the Library, however, the Employer employs no part time employees in any other unit except for the unit of Library employees.

4. The number of employees employed at the Public Library total 56 within the bargaining unit, of which 43 are part time employees.

5. Until 1985 there was only one 3/8 position within the bargaining unit. Since 1985, as positions became open, they have been posted for positions of 3/8 time, and the number of 3/8 positions has increased to 7 during the term of the predecessor Agreement and during the hiatus period since the predecessor Agreement expired and the instant proceedings.

6. Prior to 1984, there were no 3/8 positions at the main library location. Prior to 1985 there were no 3/8 positions at the southside library location.

7. Among the employers that the Union considers comparables, the Madison, Eau Claire, Milwaukee, Oshkosh and Beloit libraries do not employ any employees less than half time. The Brown County Public Library has a provision in its Collective Bargaining Agreement which prorates part time employees' health insurance premium payments irrespective of the number of hours they are employed.

8. The pages who work on an average of 11 hours per week would not be affected by the inclusion of 3/8 positions for health insurance coverage.

9. The Employer proposes to maintain the language of the predecessor Agreement, which provides that health insurance premiums will be provided on a pro rata basis for those part time employees who work half time or more, half time to be determined by whether employees work on an average of 85 hours per month, and that provision has existed since at least 1977.

The Employer argues that the Union has failed to show even when using employees that were questionably comparable that such benefits had been extended to employees working less than one-half time and, therefore, the Union's proposal is not a prevailing practice. The record testimony of David Arends, Wisconsin Council 40 Research Analyst, establishes that Brown County Public Library provides pro rata of all fringe benefits irrespective of the number of hours worked by part time employees. Therefore, in at least one of the comparables relied on by the Union, the proration of benefits for part time employees is superior to the proration of benefits for part time employees proposed by this Union. The testimony of Arends further establishes that among the other comparables there are no employees who work less than half time in the employ of the comparables relied on by the Union. While the Employer argument somewhat misstates the facts, nevertheless, the evidence fails to establish that health insurance coverage is available to part time employees who work less than half time in the employ of the Union proposed comparables.

The Employer further argues that the Union's proposal requests the Arbitrator grant a change in the library policy regarding fringe benefits, and because no other city employee working less than half time receives such a benefit, unless there is a compelling rationale for such a change, the Arbitrator in labor disputes should be hesitant to impose the change. In making the foregoing argument, the Employer relies on Elkouri and Elkouri, How Arbitration Works, 3rd edition (pages 760-761) as follows:

> The question sometimes arises as to how arbitrators should treat demands for contract terms sufficiently unprecedented that no prevailing practice is available. It might be urged that demands for improved contract terms should not be rejected on the sole grounds that they are unprecedented, since the adoption of a contrary principle would seriously impair the

usefulness of arbitration as a method of settling labor disputes. It is clear, however, that arbitrators will require a party seeking a novel change to justify it by strong evidence establishing its reasonableness and soundness. Moreover, the absence of prevailing practice may be taken to show that a demand has not been adequately justified by labor within the industry or area. Arbitrators generally agree that demands for unusual types of contract provisions, preferably should be negotiated. This view was elaborated by Arbitrator Whitley P. McCoy speaking as Chairman of a board of arbitration: 'We believe that an unusual demand, that is, one that has not found substantial acceptance in other properties, casts upon the Union the burden of showing that, because of its minor character or its inherent reasonableness, the negotiators should, as reasonable men, have voluntarily agreed to it. We would not deny such a demand merely because it had not found substantial acceptance, but it would take clear evidence to persuade us that the negotiators were unreasonable in rejecting it.'

The undersigned has considered the citation relied on by the Employer, and agrees essentially with the holdings contained therein. Agreeing with the holdings, however, does not automatically give rise to the rejection of the Union final offer in this matter. Initially, it is noted that while the Employer correctly states the status of part time insurance coverage for employees of other units in the employ of the city, the record is clear that there are no other units which employ part time employees. Consequently, an improvement in coverage for employees working less than half time cannot be denied by reason of how the Employer treats its other employees in its labor agreements, since none of the other units have the same fact situation, i.e., no other unit has part time employees as this unit does.

It remains to be determined whether the Union proposal here should be adopted which would improve the coverage for part time employees from those working half time to those working 3/8 positions. It should be noted that the proposal does not create a novel situation insofar as extending fringe benefit of hospitalization to part time employees. The record is clear that up until this point, since at least 1977, part time employees who work half time or more have received health insurance coverage, and the premium costs have been prorated. Consequently, it is concluded that the provision of providing part time employees' health insurance benefits to 3/8 positions is not novel as it pertains to part time employees. It is, rather, an improvement as to which part timers shall be covered, and which shall not. Consequently, the proposal cannot be said to be novel as it pertains to furnishing these benefits to part time employees.

The question, then, remains whether there is inherent reasonableness to the Union proposal. The undersigned concludes that there is for several reasons. First of all, there was the tentative agreement in committee for the proposal which the Union now espouses in its final offer. The fact that the two committees entered into a tentative agreement displays a certain degree of reasonableness to the proposal, or the Employer committee undoubtedly never would have agreed to it on a tentative basis in the first place. The tentative agreement was rejected by the Employer Board on a tie vote of 3 to 3. Nevertheless, at least at the committee level, the negotiators found the proposal which is at issue here to be reasonable. Because the undersigned concludes that the committee has found the proposal to be reasonable, it would seem to follow that the Arbitrator should find that the proposal is reasonable as well.

In finding that the committee's tentative agreement establishes a certain reasonableness to the Union proposal here, the Arbitrator in no way infers that the Union should win its final offer in this arbitration proceeding merely because the tentative agreement was not ratified by the Employer Board. The undersigned has considered this type of situation in the past, and has rejected any argument on the part of parties who would enforce a tentative agreement which has been rejected by the ratifying group of one of the parties. The undersigned remains convinced that to adopt a final offer solely because there had been a tentative agreement would have a chilling effect on bargaining, and should be avoided in the interest of encouraging collective bargaining between the parties.

An additional reason is established in this record for establishing the reasonableness of the Union proposal. The record establishes that during the term of the predecessor Collective Bargaining Agreement, the Employer has created at least five, and perhaps six, additional 3/8 positions which were formerly half time or more. The former incumbents in these positions were furnished health insurance on a pro rata basis, and the present incumbents are not. It would seem reasonable to the undersigned to reduce the threshold to qualify for health insurance where the number of employees being covered under the proposal of the Union does not increase the numbers which had heretofore been covered prior to the creation of additional 3/8 positions by the Employer which previously had been half time or more.

From the foregoing, then, the undersigned concludes that the Union has fulfilled its burden of showing that its proposal contains an inherent reasonableness to which the negotiators as reasonable men should have voluntarily agreed (in fact, in committee they did). Furthermore, the record establishes that the 1987 cost of the Union proposal is in fact less than the cost of the Employer proposal in this matter. The foregoing further establishes that from a cost point view there is an inherent reasonableness to the Union proposal since it represents less cost than that of the Employer. Put another way, in proposing that the threshold for coverage of part time employees for health insurance purposes be reduced from 1/2 to 3/8, the Union has proposed a quid pro quo which reduces the cost, at least in the first year of the two year Agreement, to a cost less than the cost proposed by the Employer.

For all of the foregoing reasons, then, after considering the arguments of the parties, and all of the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Union, along with the stipulations of the parties, and those terms of the predecessor Agreement which remained unchanged through the bargaining process, are to be incorporated into the parties' written Collective Bargaining Agreement for 1987 and 1988.

Dated at Fond du Lac, Wisconsin, this 23rd day of February, 1988.

Jos. B. Kerkman,
Arbitrator

JEK:rr