STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of an Interest Arbitration between	
WINNEBAGO COUNTY HIGHWAY DEPARTMENT EMPLOYEES UNION LOCAL 1903, AFSCME, AFL-CIO and WINNEBAGO COUNTY	Case 166 No. 41393 INT/ARB-5091 Dec. No. 26037-A

Appearances:

Gerald L. Engeldinger, Corporation Counsel, Winnebago County, Wisconsin and William J. Wagner. Director of Personnel, Winnebago County appearing on behalf of Winnebago County.

Gregory N. Spring, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO appearing on behalf of Winnebago County Highway Department Employees Union, Local 1903, AFSCME, AFL-CIO.

Arbitration Award

On June 27, 1989 the Wisconsin Employment Relations Commission, pursuant to 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act appointed the undersigned as Arbitrator in the matter of a dispute existing between the Winnebago County Highway Department Employees Union, Local 1903, AFSCME, AFL-CIO, hereafter referred to as the Union, and Winnebago County, hereafter referred to as the Employer. On August 10, 1989 a hearing was also held in Oshkosh, Wisconsin at which time both parties were present and afforded full opportunity to give evidence and argument. No transcript of the hearing was made. Post hearing briefs were exchanged through the Arbitrator on October 5, 1989.

Background

The Employer and the Union have been parties to a collective agreement the terms of which expired on December 31, 1988. On October 3, 1988 the parties exchanged initial proposals on matters to be included in a new collective bargaining agreement. Thereafter, the parties met on three occasions and failing to reach an accord, the Union filed a petition on December 7, 1988 with the Wisconsin Employment Relations Commission to initiate Arbitration. After duly investigating the dispute, the WERC certified on February 1, 1989 that the parties were deadlocked and that an impasse existed.

Final Offers of the Parties

Employer's Final Offer

"Continue the terms of the 1987-88 Agreement except as amended by the stipulations of the parties and as further amended as follows:

ARTICLE 18, GROUP HEALTH PROGRAM.

Replace the second sentence of the first paragraph of this article with the following:

Except as hereinafter provided in this Article, the County will pay up to 105% of the single or family premium of the lowest priced of the group health plans offered by the County toward the premium of the plan selected by the employees who desire and qualify for such coverage. While the County may offer more plans than those listed herein, for purposes of determining contribution level, the County will consider the premiums of only the following plans: WPS-HIP, HMO of Wisconsin, Network Health Plan, and the Oshkosh Area Protection Plan (HPP).

Union's Final Offer

"Continue the terms of the 1987-88 Agreement except as amended by the stipulations of the parties."

1987-88 Agreement Language

ARTICLE 18 - GROUP HEALTH PROGRAM

. . . Except as hereinafter provided in this Article, the County will pay 97% of the family or the full single monthly premium for employees who desire and qualify for such coverage.

. . . .

Statutory Criteria

As set forth in Wis. Stats. 111.70(4)(cm)7, the parties and the Arbitrator are to consider the following criteria:

A. The lawful authority of the municipal employer.

B. Stipulations of the parties.

C. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

D. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

E. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

F. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

G. The average consumer prices for goods and services, commonly known as the cost-of-living.

H. The overall compensation presently received by the 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.

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

J. 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.

Positions of the Parties

The Employer's Position

The Employer supports its position with the following points:

1. In contrast to a 5.2% increase in the consumer price index through July, 1989 the Employer indicates that, depending on the carrier and the coverage, premium rates have increased between 1988 and 1989 in a range of 10.00% to 55.7% The Employer's final offer represents an effort to standardize the plans across its 1,000 employees to increase its bargaining power with the carriers and thereby bring its costs under control. The Employer concludes that the relatively small 1989 increases for two of the plans offered, (HMO of Wisconsin and Network HMO) are evidence that its strategy is working.

2. The Employer also argues that it has shown a willingness to pay its fair share of the health insurance premium cost. Its final offer would cover 105% of the lowest insurance bid which in turn provides a health care plan in which the premiums will be fully paid by the Employer. Thus, concludes the Employer, it ". . . is not attempting to diminish the health care package but to do what it can to control health care insurance costs." Further, adds the Employer, the Union has not demonstrated that any of the offered health care plans are inferior or provide inferior care.

3. In 1989, according to the Employer, "the parties have negotiated and accepted a number of improvements to the labor agreement including vacation allowances, tool allowance and hourly wage increases . . . ."

4. The Employer also contends that the interests and welfare of the public -as required under the statutory criteria - demand that "some real effort be undertaken by public employers and public employees to make reasonably comparable health insurance benefits available to public employees at reasonable cost."

5. Finally, the Employer asserts that special weight should be given to the internal comparables. That is, five of the six bargaining units plus the nonrepresented Administrative employees have now accepted the County's offer on health care. Only the Highway Department employees continue to hold out. By refusing to join with the other Winnebago County employees, contends the Employer, the employees in the Highway Department are not doing their part to help control rising health insurance costs.

The Union's Position

The Union makes the following arguments in support of its position:

1. The Union dismisses the applicability of statutory criterion "C" asserting that the Employer has presented no argument or evidence of an inability to pay. Moreover, the economic differences between the parties' offers are said to be minor and hence not determinative of which is the more reasonable.

2. According to the Union, both offers are less than recent changes in the cost of living. However, says the Union, its offer is more
favorable since it is closer to the increase in the consumer price index.

3. The Union dismisses the Employer's reliance on "internal comparables" contending that the six County bargaining units have no history of uniformity in County contributions towards health insurance. In support of this point, the Union presents data covering 1982-88 intended to show an historical diversity of contribution levels and methods across the County's six employee groups.

The Union also disputes the Employer's use of internal comparables challenging several related assumptions. Among others, it dismisses the possibility that employees will choose the highest cost plans, attacks as ludicrous the potential costs the Employer foresees if the health insurance status quo is maintained and asserts that the Employer failed to show that the distribution of employees in each plan would vary based on employee costs.

4. Using five "comparable" county highway departments - Brown, Fond du Lac, Manitowoc, Outagamie and Sheboygan - the Union cites in its behalf a set of external comparables. These comparables, it is asserted, show that Winnebago would be the only county basing its insurance contribution on an HMO rather than a standard plan. For those of the Employer's workers choosing the HMO the plan would be restrictive in terms of doctors, hospitals and location of health providers. The Union also points out that from the employees standpoint, the Employer's offer for those choosing the standard plan would saddle the Winnebago Highway Department employees with higher health insurance costs than any in its comparables group. Finally, the Union also argues that its offer would maintain the Employer's relative ranking among the benchmark counties.

5. Under statutory criterion "J", "Such other factors . . . which are normally or traditionally taken into consideration . . ." the Union draws upon a number of arbitral authorities to argue the following. On the one hand, it contends that the Employer must show a demonstrated need for change. On the other, there is also a corollary need to offer a quid pro quo for the proposed change. It is the contention of the Union that the Employer has failed in each case to meet these two standards. In particular, the Employer's acceptance of an improvement in the vacation allowance is described as not substantial enough "to convince the Union to give up its language that locked the Employer's contribution in at 97% of any family plan selected. The Employer agreed to that language in 1985. Now it asks the arbitrator to take it away."

Discussion

The parties are at odds over a single issue for the successor agreement to their 1987-88 contract. The Employer proposes to change the language on health insurance while the Union seeks to maintain the current provision unchanged. In order to resolve the dispute the undersigned will consider the pertinent statutory criteria under Section 111.70, Wis. Stats. as follows.

The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet the Costs of any Proposed Settlement

Although the Employer has not raised a defense of inability to pay it has argued that its final offer is more in line with the

interests and welfare of the public. The arbitrator agrees that the parties and the undersigned should give weight to the public interest where this is appropriate. This is especially true of an issue such as health insurance whose costs seem to be permanently on an upward spiral. There is no evidence in the instant dispute, however, to indicate that either of the final offers is more reasonable than the other when this criterion is applied. Each offer provides an attempt to restrain the cost increases by sharing the burden. As one looks at the costs for 1989 (Employer Exhibits 12, 13) for example, the difference between the two offers from the Employer's standpoint is only about 1.8% While the County argues that the costs for 1990 potentially could be much greater under the Union's offer this is no more than speculation and as such not a proper basis for deciding this dispute.

Cost of Living

As the Union notes, both offers are under recent increases in the consumer price index. The Union also contends that because its offer is closer to changes in the CPI its offer is more reasonable. As discussed above, however, the 1989 cost differences are not large and what will happen in 1990 is a matter of pure conjecture. This is true for both the cost of living and the cost of specific health plans. Therefore, there is no reason to conclude that either offer is more reasonable when this criterion is applied.

Comparison of the Wages, Hours and Conditions of Employment of the Municipal Employees involved in the Arbitration Proceedings with the Wages, Hours and Conditions of Employment of Other Employees Performing Similar Services

Based on a comparison with the health plans of five highway departments of comparable counties - Brown, Fond du Lac, Manitowoc, Sheboygan and Outagamie - the Union asserts that the "external comparables" favor its offer. The Employer does not dispute these comparables nor its standing with regard to the five counties. Thus, the unrebutted data show that the County's highway department employees' health insurance position would become relatively worse if the Employer's offer were to be implemented in 1989. For example, a comparison of the standard plans, which apparently are the base for the comparable county highway department health plans, reveals that Winnebago County highway department employees who paid $0 for single coverage and $8.52 for family coverage would see their monthly costs under the HMO based formula jump to $21.07 (single) and $31.37 (family) under the Employer's offer. In 1988 the cost to the County's employees was lowest for single coverage and in the middle for family. With the implementation of the Employer's offer, for 1989, the County employees' standard plan contribution for family and single coverage would now be the highest in its comparison group.

On balance, the review of the external comparisons supports the Union's position on this criterion.

Comparison of the Wages, Hours and Conditions of Employment of the Municipal Employees involved in the Arbitration Proceedings with the Wages, Hours and Conditions of Employment of Other Employees Generally in Public Employment in the Same Community and Comparable Communities

The crux of the County's position rests on this criterion. Specifically, the County contends that the Highway Department employees now stand alone in their insistence on carrying forward the langauge of the old labor agreement. Thus, five other County bargaining units have voluntarily agreed to the same offer

rejected by the Union. However, the Union questions the relevance of this development, arguing that historically there has not been uniformity among the bargaining units in terms of Employer contributions to health insurance. It also asserts that the County's effort to achieve uniformity across all units is no more than "an excuse to achieve a major 'takeaway' at no cost to the County."

The Arbitrator concludes that the Union is unduly hasty in dismissing the Employer's evidence and argument on this point. In the first place, the Union neither rejects the use of the five County bargaining units as valid comparisons nor the fact that the units voluntarily accepted the new system of health insurance. Second, the picture on the extent of historical uniformity is not as clearcut as the Union would argue. Thus, it appears that since 1985 the three AFSCME units have been treated in a relatively uniform fashion; that is, the Employer's contribution was a nearly identical percentage in each case.

The Arbitrator agrees that there must be more than administrative convenience to justify the Employer's position. However, the pluses and minuses provide a net balance that slightly favors the Employer's offer when judged by this criterion.

Such Other Factors Normally or Traditionally Taken into Consideration

The Union argues at some length that the party which moves to disturb the contractual status quo must demonstrate both the need for change and the offer of a quid pro quo. Arbitral doctrine is well established and straightforward on this point. For example, Arbitrator Reynolds sets out the following "three prong test" to judge whether the moving party has carried its burden for change: (Adams County Highway Department, Dec. No. 25479, 11-22-88, p. 3). (1), the present contract has given rise to conditions that require amendment; (2), the proposed language may reasonably be expected to remedy the situation; and (3), the alteration will not impose an unreasonable burden on the other party.

The undersigned finds that the County in the instant dispute has failed to sustain its obligation under each of the "Reynolds" test. Thus, the evidence indicates that for 1989 the Employer's position would not be dramatically worse off under the Union's offer than its own. In fact the Employer's cost would be less under the Union's offer for two of the five health plans it provides. (Employer's Exhibit 10). One of these plans, HMO of Wisconsin, enrolled 52 of the 83 highway department employees in 1989. Moreover, as described above the difference in cost to the Employer between to the two offers is negligible. And as also mentioned previously, although the County speculates that the Union's offer would cause a dramatic increase in County costs such speculation can not be accepted here.

In terms of Reynold's third test, it is equally clear that the change in language proposed by the Employer would result in a significant reduction in benefits for many of the Union's members. For many highway department employees, for reasons of residence, physician preference or location of health provider, a shift to the lowest cost HMO is apparently difficult if not impossible. For these employees, the immediate consequence is a significant rise in their costs of health insurance. Thus for those employees with single coverage the 1989 annualized cost will jump to $252.84 from $0 in 1988 and for family coverage the increase will go up from $102.24 to $372.84.

Obviously the Union has a substantial investment in the language which provides its existing health insurance benefits. In so many words if a "buy Out" of this language were to occur the Employer would have had to offer the equivalent in exchange. According to the Union, there was no quid - at least sufficient to pay for the loss it would suffer without the carryover of the language to the successor contract. Hence, no bargain. Under the circumstances, the arbitrator is not persuaded that a need to impose this bargain on the parties has been demonstrated by the Employer.

Summary

The evaluation of the statutory criteria finds that by the external comparables the Union's offer was more reasonable, by the internal comparables that of the Employer and by the criterion of "other factors normally considered" the Union's was judged most favorable. The factors of cost of living and public interest favored neither side to the dispute. Taken together the criteria lead to the selection of the Union's final offer.

In light of the above discussion and after careful consideration of the statutory criteria enumerated in Section 111.70 (4)(cm)7 Wis. Stat. the undersigned concludes that the Union's final offer is to be preferred and on the basis of such finding renders the following:

AWARD

The final offer of the Union together with prior stipulations shall be incorporated into the Collective Bargaining Agreement for the period beginning January 1, 1989 and extending through December 31, 1990.

Dated at Madison, Wisconsin this 11th day of November, 1989.

Richard Ulric Miller, Arbitrator