IN ARBITRATION BEFORE
ROBERT J. MUELLER

In The Matter Of The
Arbitration Between

TEAMSTERS LOCAL UNION #43,
IBTCW & H of A

and

RACINE COUNTY DEPARTMENT
OF PUBLIC WORKS

OPINION & AWARD
Case 120
No.42363 INT/ARB-5279
Decision No. 26075-A

APPEARANCES:

MR. THOMAS G. BERGER, Business Representative, for the Union.

Long & Halsey Associates, by MR. WILLIAM R. HALSEY, for the County.

BACKGROUND

On July 17, 1989, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator to resolve the impasse between the parties by selecting the total final offer of one or the other parties and issue a final and binding award pursuant to Section 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act. A hearing was held on September 27, 1989 at the Raine County Highway Building, Sturdevant, Wisconsin. The parties were present and were afforded opportunity to present such documents and testimony as they deemed relevant. Post hearing briefs were filed in the case and exchanged through the arbitrator.

THE FINAL OFFERS

COUNTY FINAL OFFER

1. Wages

   a). Increase all classifications set forth in A.02 by 3% retroactive to 1/1/89.

b). Increase all classifications set forth in A.02 by 4% effective 1/1/90.

2. Insurance

Amend the first paragraph of Article 18.03 to read as follows:

> In 1989, the county shall contribute $250 towards the monthly premium for health insurance coverage. In 1990, the County shall contribute $260 towards the monthly premium for health insurance coverage. Each eligible employee shall have the following options for health care coverage:
>
> (remainder of 18.03 to remain unchanged)

UNION FINAL OFFER

Schedule "A" Wages -

Increase all classifications	1/1/89	40¢ per hour
	1/1/90	40¢ per hour

Article 18. Insurance

18.03 Split cost 90% employer paid - 10% employee paid.

POSITIONS OF THE PARTIES AND DISCUSSION

Evaluation of the wage offers of the two parties reveals that for the year 1989, the union's offer of 40¢ per hour increase would yield an average hourly rate of $12.63 compared to the county's 3% offer which would yield an average hourly rate of $12.58 per hour.

Under the union's offer of 40¢ per hour increase for 1990, the average hourly rate would be $13.01 compared to the county's 4% offer which would yield an average hourly rate of $13.08.

The total dollar difference between the two offers for the two year period is $42.00. It is clear that from the cost standpoint, there simply is no valid reason to choose one offer over the other.

The parties argued the merits of the form of their respective offers as the basis for selecting one as more preferable to the other.

The county contended their offer of a percentage increase in each of the two years is consistent with past settlements and with the format of the settlements reached with other county employee units. The county's offer herein is identical to most of the other internal settlements.

The union simply contends its wage offer is lower than the county offer and therefore is the most reasonable. They contend they made their wage offer lower than that of the county's in an attempt to obtain a change in the sharing of health care costs. Such lower wage offer was intended to be an inducement to the county to adopt the union's proposal concerning health care costs.

One must keep in mind that the final offers of the parties were submitted to the WERC on May 26, 1989. At that time the parties had actual knowledge concerning the health care costs for 1989. It appears that they did not know what the actual cost of health care would be for 1990. As a result, both parties were required to predict the future and clearly, their fear of the future as to health care costs for 1990 is reflected in their respective final offers. It is a severe burden on both parties to negotiations to be required to bargain while dealing with unknowns. The two year contract term concept in such cases acts as a major obstruction to voluntary bargaining to a final settlement. In such case each party is reluctant to revise or make an offer based upon their predictions of future events for fear their prediction will not be accurate and they will then be bitten by their own prediction.

The insurance costs for 1990 fall clearly into that category.

In 1988, the contract provided that the county would pay a maximum of $230.00 per month toward the cost of health care for each employee. The county's final offer would increase that cap to $250 for 1989 and to $260 for 1990. The union's proposal that the county pay 90% of the premium and the employee pay 10% of the premium compared to the county's proposal would result in a savings for the year 1989 to the county of $5,816.00.

The union stated that it had obtained predictions from health carriers that premiums for health care would increase from 10% to 50% over the next several years with "no end in sight." They also point out that such forecasts have been well documented in the media. They argue that such type health care costs would impact the employees the hardest. The employees have placed extreme importance on the insurance issue so as to achieve some form of protection against the possibility of employees being required to shoulder the full burden of a potential large increase in insurance casts during the contract term. In the event of any such increase under the county's proposal, even the wage increase for the year could be wiped out.

The union also contends the external comparables overwelmingly favors the union offer on health care cost sharing. None of the other comparables impose a dollar cap other than one and in that case the employer and employees share any increase in health care costs above the cap on a 50-50 basis. All other comparables provide a cost sharing of 90%, 95% or 100% of the health care costs being paid by the employer.

Finally, the union points out that during negotiations, the county made an offer to share the health care costs on an 80% - 20% basis. The membership, however rejected such proposal because if accepted in conjunction with the wage proposal, it would result in members losing "a lot more money than they could live with".

In the final analysis, the union argues that its final offer would best protect its members from runaway health care cost increases while at the same time, the savings to the county from the union's wage offer and the savings from the 1989 contract year on insurance, would serve to offset to some extent the impact on the county of any possible large increase in health care costs for 1990.

The county argues that the health care proposal to this unit is the same as is in effect for all other county employees. The county's offer allows for effective budget preparation in that its budgetary costs are known or determinable.

The county points out that under the county's proposal, approximately 50% of the employees would pay nothing under the current health care costs. In comparison, all employees would be required to pay part of the costs under the union proposal.

They argue that the union's offer constitutes a major structural change in the contract. It is generally held by arbitrators (Citing Arbitrator Kessler in Nekoosa School District, Dec. No. 25817-A, 6/30/89), that in the absence of there being a quid pro quo for a major change, it should be left to the parties to make any substantial changes in the status quo through the process of voluntary negotiations.

The county argues that the combination of factors favoring the county's final offer outweighs the factors favoring the union's final offer. The internal factors favor the county's offer. The prevailing view that changes in the status quo should not be made through arbitration in the absence of there being an appreciably equal quid pro quo for such change also favors the county offer. In this case the union's offer does not contain an appreciably substantial quid pro quo for their proposed substantial change in the status quo.

It is obvious that the insurance issue is the controlling issue in this case. The two proposals on the wage issue are both totally reasonable standing alone, and as such are not susceptible to a rational choice of one over the other as the more reasonable. I do not find the format of percentage increase as compared to a cents per hour increase to be either more or less preferable or supported by the application of any relevant criteria.

It therefore comes down to an analysis of the merits of the parties positions on the insurance issue.

It is first necessary to point out that the principle extracted from the Kessler arbitration award has its limitations. In those collective bargaining relationships where employees have the right to strike, the resolution of impasse between the parties on a particular issue may not be resolved by one offering a quid pro quo for a change, but upon the question of which party possesses the bargaining "muscle" to enforce its demand over the other. In the public sector, where employees are prohibited from striking to enforce their demands, the only way to achieve a substantial change in the status quo is to voluntarily persuade the other party to voluntarily agree thereto or if that fails, seek to obtain it in arbitration. It is not therefore necessary that a quid pro quo <u>always</u> be offered by a party seeking a change in the status quo, but by application of relevant statutory factors to the issue presented.

If one were to subscribe to the principle that even though a proposed change is found in most of the comparable contracts, a change in the status quo should not be approved by the arbitrator except in extraordinary circumstances, (Kessler Award) in cases where the party opposing a change in the status quo simply refuses to agree despite any and all persuasion to do so, it could forever prevent such change except through arbitration. Under the Kessler priciple it then could be accomplished only upon a showing of "extraordinary circumstances". I do not subscribe to such principle as expressed. The status quo and quid pro quo arguments are but two of many considerations applicable to resolution of issues at impasse. The statutory factors along with the merits of the issues are equally relevant.

I certainly cannot fault either party for their positions in this case. Both are concerned about the impact that possible future unknown health care increases could have upon them. It is a case of both parties being afraid of the "big bad unknown wolf", ie. future health care cost increases.

The arguments of both parties contain merit. They consist of the considerations that the parties themselves weigh and consider in the course of contract negotiations.

In this case the internal considerations favor the county. The external factors and considerations favor the union. The case thus comes down to one of evaluating the merits of each offer as it impacts or benefits one or the other party.

Under the county offer, the employees would be impacted the most severely in the event of a substantial increase in health care costs during the term of the contract. If the increase exceeded the cap of the county offer, employees would be burdened with the full 100% increase.

County Ex. 4 indicates that the current cost of the Employers-HMO family plan is $288. Thirty two employees have elected coverage under such plan. Thirty two employees have elected coverage under one of three other available family plans.

If one then evaluates the plan in which most of the employees are enrolled, one finds the following possibilities with respect to where and to what extent cost increases would impact on one or the other party under the two offers.

Under the county offer, the following increases would impact as follows:

Assumed increase	Premium cost	less cap	=	Employee share monthly	Employee share annual
0%	$288	260 (1990)		$28	$336
10%	316.80	260		56.80	681.60
20%	345.60	260		85.60	1,027.20
30%	374.40	260		114.40	1,372.80
50%	432.00	260		172.00	2,064.00

Under the union's offer the costs would impact as follows:

Assumed Increase	Premium cost	County share 90% monthly	County share 90% annual	Union share 10% monthly	Union share 10% annual
0%	$288	259.20	3110.40	28.80	345.60
10%	316.80	285.12	3421.44	31.68	380.16
20%	345.60	311.04	3732.48	34.56	414.72
30%	374.40	336.96	4043.52	43.20	449.28
50%	432.00	388.80	4665.6.	43.20	518.40

The maximum annual cost to the county per employee under their proposed cap of $260 is $3120.00.

As noted earlier herein, under the union's offer, the county would pay approximately $5800 less toward insurance coverage during the year 1989. It is also noted that with respect to the wage rates, the hourly average wage rate would be 7¢ per hour lower at the end of the two year contract term under the union's wage offer. That would mean that the parties would bargain from such 7 cents per hour lower hourly wage rate for the next two year contract term. While one cannot measure the value of starting at such lower point of bargaining, it undoubtedly is of some value to the county.

Under the two offers each party would pay the following amounts toward coverage over what they would pay under the opposite party's offer:

Assumed increase	Additional cost per mo. to co. under union offer	Additional cost per mo. to union under co. offer
10%	$ 25.13	$ 56.80
20%	51.04	85.60
30%	76.96	114.40
50%	128.80	172.00

As can be seen from the above analysis, any of such assumed increases would impact the greatest upon the employees under the county offer than would it impact upon the county under the union offer. It is evident however, that the impact is severe under either offer.

One element of the impact that one must consider is that the payments by the employer would be dollar for dollar amounts whereas the amounts paid for coverage by employees is done with <u>after tax dollars</u>. Employees therefore must earn $1.30 to $1.40 (more or less) before taxes in order to have $1.00 after taxes to pay the insurance costs. In that respect it therefore also impacts that much greater upon employees. For example, if the insurance increased 30%, and if one assumes that 30% of an employees gross wages goes to pay federal and state income taxes, such employee would be required to earn $148.72 gross, in order to have $114.40 after taxes to pay his share of the premium for a month.

It seems to me that a balancing of the overall considerations and equities attributable to the offers of each party weighs in favor of the union final offer. The internal comparability factors favors the county offer. The external comparability factors favors the union offer. I find that none of the other statutory factors serve to favor one final offer over the other to any distinguishable degree. In the final analysis, the determining consideration is the balancing of the respective burden and/or benefit of each offer on each party. As above discussed, it appears that the union offer is better designed to spread the burden to both parties in the event of an increase in health care costs in a more equitable manner than is the county's final offer.

It therefore follows on the basis of the above facts and discussion thereon that the undersigned issues the following decision and,

<u>AWARD</u>

The final offer of the union is selected and as such is to be incorporated into the parties collective bargaining agreement.

Dated January 6, 1990.

Robert J. Mueller

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