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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE INTEREST ARBITRATOR

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| In the Matter of the Petition of<br><br>MENASHA UTILITIES EMPLOYEES UNION, LOCAL 1269, AFSCME, AFL-CIO<br><br>To Initiate Arbitration Between Said Petitioner And<br><br>CITY OF MENASHA (WATER AND LIGHT COMMISSION) | Case 74<br>No. 41550 INT/ARB-5128<br>Decision No. 26091-A |

APPEARANCES: GREGORY N. SPRING, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mulcahy & Wherry, S.C., Attorneys at Law, by EDWARD J. WILLIAMS, appearing on behalf of the Commission.

ARBITRATION AWARD

The Water and Light Commission of the City of Menasha, hereinafter referred to as the Commission or Employer, and Menasha Utilities Employees Union, Local 1269, American Federation of State, County, and Municipal Employees, AFL-CIO, hereinafter referred to as the Union, were parties to a collective bargaining agreement which expired on December 31, 1988. The parties were unsuccessful in their effort to negotiate a successor agreement for the calendar years 1989 and 1990 and, on January 3, 1989, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC), wherein it sought to initiate arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act (MERA). A member of the WERC's staff investigated the petition and, on July 21, 1989, the WERC certified that the conditions

precedent to the initiation of arbitration pursuant to said provision of the statutes had been met and ordered that the matter be submitted to arbitration. The parties selected the undersigned, from a panel of arbitrators provided by the WERC, and, on August 16, 1989, the WERC issued an order appointing the undersigned arbitrator, to issue a final and binding award pursuant to Section 111.70(4)(cm)6. and 7. of the MERA. A hearing was held at Menasha, Wisconsin on November 1, 1989, at which time the parties presented their evidence. Pursuant to arrangements made at the conclusion of the hearing, the parties thereafter submitted certain corrections and modifications and additions to their exhibits. Initial briefs were filed and exchanged on December 27, 1989. Reply briefs were filed and exchanged on January 18, 1990. Full consideration has been given to the evidence and arguments presented in rendering the award which follows.

## ISSUES IN DISPUTE

There are essentially three issues in dispute: the timing and size of wage increases to be granted during the two-years of the agreement; a proposed change in the procedure for exercising vacation preferences; and a proposed change in the contribution to be made by the Commission toward the cost of hospital and surgical insurance.

### WAGE INCREASES

There are a total of 45 employees in the bargaining unit. They work in a variety of classifications, at wage rates reflected in appendix A, which sets forth the hourly wage rates for 1988.

Most of the employees are at or near the top step of the wage rates for their classification and the average wage rate for employees in the bargaining unit on September 1, 1989 (based upon the 1988 wage schedule) was a little over $13.00 per hour. The lowest paid employee, a clerk at the second step, earned $8.87 per hour and the highest paid employee, a line foreman at the fifth step, earned $15.91 per hour.

Union's Final Offer

In its final offer, the Union proposes to increase all wage rates by 2%, effective July 1, 1989; 1.5%, effective December 1, 1989; and 3.5%, effective January 1, 1990. Utilizing data found in the Employer's exhibits, which was not seriously challenged by the Union, the Union's final offer would have a first year cost of approximately 1.13% of the 1988 wage base, or approximately $13,288.25. According to those same figures, this would represent the equivalent of approximately 15 cents per hour.

The second year cost of the Union's final offer would be 3.5% over the ending first year rates, or approximately $41,620.18, which is the equivalent of 46 cents per hour. When the cost of various fringe benefits are rolled up into the calculation, the first year cost of the Union's proposal would be 3.04% or $53,139.16, or the equivalent of 59 cents per hour. The second year cost would be 7.08% or $127,483.07, or the equivalent of $1.42 per hour. As will be discussed more fully below, substantial increases in the cost of hospital and surgical insurance coverage in both years of the agreement are responsible for the substantial

difference between the wages only cost and total cost figures.

The "lift" provided by the Union's final offer is roughly the same over the two-year period as that which would be provided in the Employer's final offer. It would provide a 7.15% compounded lift, while the Employer's final offer would provide a 7.12% compounded lift.

Commission's Final Offer

Under the Commission's final offer, existing wage rates would be increased by 3.5%, effective January 1, 1989, and 3.5%, effective January 1, 1990. The wages only cost of the Employer's final offer for the first year would be 3.5% or approximately $41,155.10. This is the equivalent of 46 cents per hour, according to the Employer's exhibits. The second year wages only cost would be 3.5% or approximately $42,595.52, which is the equivalent of 47 cents per hour. When the cost of fringe benefits is included, the first year cost of the Employer's final offer is 5.23% or approximately $91,401.76, which is the equivalent of $1.02 per hour. The second year cost is 4.27% or approximately $78,465.85, which is the equivalent of 87 cents per hour. As noted above, the lift provided under the Employer's final offer over the two years would be 7.12%.

VACATION SELECTION PROCEDURE

The expired agreement contained the following two provisions dealing with vacation selection procedures:

"ARTICLE XI - VACATIONS

"Regular employees of the Utility shall be entitled to the following vacation leave, subject to conditions

stated:

. . .

"10. Vacations will be arranged as nearly as possible to the wishes and conveniences of the individual, and department rules prevail with regard to the number of men allowed on vacation at any given time. When a conflict exists between the vacation requests of two or more employees in a given department, the oldest employee in seniority will be given preference.

"11. Vacations should be scheduled in advance as much as possible, and not less than twenty-four (24) hours before beginning the vacation period. In case of employee emergency, the twenty-four (24) hours period may be waived with the consent of the Department Superintendent."

In the implementation of section 10 of this procedure in the past, senior employees have been permitted to "bump" junior employees out of previously arranged vacation selections. While the record fails to establish how frequently this has occurred in the past, two Union witnesses testified concerning the circumstances surrounding their having been "bumped" in this manner.

Union's Final Offer

In its final offer, the Union proposes to modify the existing vacation selection procedure by adding the following sentence, presumably at the end of section 10:

"Effective January 1, 1990, vacation scheduled prior to April 1 shall be determined by seniority. Vacation scheduled on or after April 1 shall be granted on a first-come, first-served basis."

Commission's Final Offer

The Commission proposes no change in the existing language

dealing with the scheduling of vacations.

HOSPITAL AND SURGICAL INSURANCE

Both parties agree that this issue is by far the most important issue in dispute. Under the terms of the expired agreement, and for approximately 11 years prior to its expiration, the Employer agreed to pay 100% of the cost of hospital and surgical insurance. Under the terms of the 1976-1977 agreement, the Employer was only obligated to pay 85% of that cost. The parties reached a voluntary settlement for the 1978-1979 agreement (with a wage reopener for 1979) which increased the Employer's contribution to 100%. It has remained at that level ever since.

During the years 1981 through 1986, the Employer purchased coverage from Blue Cross/Blue Shield United of Wisconsin. Because of a large projected increase in premium for 1987, the Employer proposed, and the Union agreed, to switch coverage to an HMP program offered by WPS. Previously the WPS-HMP program was an option which employees could elect, at their own expense. There was only an insignificant increase in the cost of insurance for 1987 as a result of that agreement. The language of the 1987-1988 agreement, which is now expired, was modified to reflect the exclusion of the WPS-HMP option language and read as follows:

> ARTICLE XXII - INSURANCE
>
> It is agreed that all employees of the Utilities shall be entitled to hospital and surgical insurance, provided that each employee qualified and 100% of the premium for insurance incurred by each employee shall be paid by the Commission. No employee shall make any claim against the Utilities for additional compensation in lieu of or in

> addition to the cost of their coverage because they did not qualify for the insurance plan as determined by the carrier and/or this agreement. Employees retired under the Wisconsin Retirement System upon reaching the age of sixty-two (62) or having twenty (20) or more years of service with the Utilities shall be eligible to continue with hospital and surgical insurance with the insurance carrier, *provided that the retired employee shall pay the* full premium assessed for the insurance, and shall be responsible for the full payment direct to the insurance carrier. Unless otherwise provided herein, the Utilities shall not be responsible for insurance premiums upon an employee leaving the Utilities. However, the employee will not be required to reimburse the Utilities for any premium paid on said employee's behalf prior to his or her termination of employment. The Commission may from time to time change the insurance carrier or method of funding benefits if it elects to do so, so long as coverage is comparable to or better than the plan in existence has provided. The Union shall have at least thirty (30) days advance notice of any change in carrier or the method of funding benefits. [Emphasis added.]

During collective bargaining and prior to the WERC investigation, the Employer learned that WPS was increasing its HMP premiums for both family and single coverage by 27% for 1989. Those increases resulted in a new family premium of $363.61 for the 43 employees having family coverage and $140.28 for the two employees having single coverage. On the day before the hearing herein, which was more than three months after the close of the investigation by the WERC investigator and the finalization of final offers, the parties learned that there would be an additional 36% increase in the WPS-HMP premiums for 1990. That increase has resulted in monthly premiums of $494.51 for the family plan and $190.78 for the single plan.

Union's Final Offer

Under the Union's final offer, the above quoted provision dealing with hospital and surgical insurance would remain

unchanged. As a consequence, under the Union's final offer, the Employer will be required to pick up the entire cost of the second year increase in premiums. According to the Employer's costing data, will amount to $68,756.40 or the equivalent of approximately 75 cents per hour. Because the Union's first year proposal has a cost which is $38,262.60 less than the Employer's first year proposal, the overall two year cost difference between the two proposals is in the neighborhood of $30,000.00. Thus, if the percentage cost increases in each of the two years are added and compared under the two final offers, the Union's proposal has a cost of 10.12% compared to the Employer's cost of 9.5%, for a total difference of .62%.

Commission's Final Offer

In its final offer, which, like the Union's, was finalized before the parties learned the magnitude of the 1990 increase in insurance premiums, the Commission proposes to include dollar cap limits on its contribution to the payment of those premiums. Under its proposal, the dollar cap limits would be equal to the actual premiums for 1989. Thus, there is no cost difference between its first year proposal on insurance and the Union's first year proposal on insurance. In the second year of the agreement, the Commission would impose dollar cap limits of $400.00 for the family plan and $154.31 for the single plan. This represents a 10% increase over the premiums for 1989. Because the premiums for 1990 actually increased by 36%, employees would be required to pick up approximately 19% of the total premium (or $94.51 per month for

family plan participants and $50.50 per month for single plan participants) for 1990. The total difference in cost to the employees would be equal to $49,642.44 and would exceed the value of wage increases granted in the second year ($42,595.52) by more than $7,000.00.

In addition to replacing the provision calling for a 100% contribution with dollar caps, the Employer would create a joint committee to review ways to contain health insurance costs in the future. Under its proposal, the first sentence of the old provision would be replaced by the following four paragraphs:

> "It is agreed that all employees of the Utilities shall be entitled to hospital and surgical insurance provided that each employee is qualified.
>
> "Effective January 1, 1989, the Employer agrees to pay up to $140.28 per month for single coverage for hospital and surgical insurance; and up to $363.61 per month for family coverage for hospital and surgical insurance.
>
> "Effective January 1, 1990, the Employer agrees to pay the premium amount up to $154.31 per month for single coverage for hospital and surgical insurance; and up to $400.00 per month for family coverage for hospital and surgical insurance.
>
> "The parties agree to establish a joint insurance study committee to review ways to contain health insurance costs through utilization of other health care provider options, HMO's, PPO's and such other options which have been developed or are being developed in the health care industry. Composition of the committee will be as follows: two employees from the bargaining unit, two members from management and a fifth member who shall be appointed by the other four members. The committee shall meet in 1990 for the purposes of investigating other available options and presenting an advisory report to the two negotiating committees."

UNION'S POSITION

According to the Union, its final offer should be viewed as

more reasonable than the Employer's final offer, based upon a review of all three issues in dispute in light of the statutory criteria and arbitral precedent. In support of this position, it first reviews the two final offers in relation to criterion j, found in Section 111.70(4)(cm)7. and certain arbitration awards dealing with proposals to change the "status quo."

At the outset, the Union acknowledges that it has the burden of showing that its proposal to change the procedure for vacation selection is needed to remedy an existing problem; that it will remedy the existing problem; and that it will not impose an unreasonable burden on the Commission. According to the Union, the testimony of two Union officers, concerning problems they experienced with having been "bumped" out of their scheduled vacation selections at the last minute, demonstrates that there is a problem with the existing language that requires a change. Based upon those examples, the Union argues that its proposal would remedy the problems as described by its two witnesses. Further, it argues, the proposed change would not place an unreasonable burden on the Employer.

In fact, according to the Union, the Employer failed to identify any substantial basis for objecting to the proposal. Its claim that the Union has not offered a "quid pro quo" is without merit, according to the Union, since the Union's proposal costs the Employer nothing in terms of money or inconvenience. In this way, the Employer's position on this issue stands in marked contrast to its position on health insurance contributions, where the evidence

discloses that the Employer has offered no quid pro quo for that proposal, which will impose a very significant financial burden on employees.

On the other hand, the Union argues, the Employer has failed to meet its burden of justifying its proposed changes in the health insurance provision of the agreement. Those changes would create a joint committee to study insurance costs and make recommendations; place dollar cap limits on the Employer's contribution; and increase the employee contribution from zero to 19%.

While the joint committee might appear to be a good idea, on the surface, it was proposed for the first time as part of the Employer's final offer, without any prior discussion during negotiations or mediation, the Union notes. If the Employer had been serious about dealing with the insurance problem in that fashion, it should have made the proposal long before it did so. Instead, it has sought to force the proposal on the Union through arbitration, even though it is much less likely that a joint committee approach will work under such circumstances. In the Union's view, this aspect of the Employer's proposal is intended to "mask" its real objective, i.e., to shift a portion of the cost of health insurance to the employees.

The other two aspects of the proposal, which would shift the cost, have not been justified by the Employer, according to the Union. While the evidence discloses that health insurance costs have been escalating, the Employer's stated reason for making the

proposal was to comply with a "trend" which it believes exists, and not because of an inability to pay for the increased costs. However, according to the testimony of its expert witness, cost sharing is not part of the "trend" in the unionized public sector. While he stated that HMP's are not a very prevalent benefit at this time, he acknowledged that they continue to exist in the public sector. Importantly, he was unable to testify to any direct connection between the existing contract language and the large premium increases experienced by the Employer.

According to the Union, the Employer's proposal will not solve the problem of escalating health care costs, because the culprit is the health care system and not the agreement. Those costs will continue to escalate under a deductible system, a co-pay system, or the Employer's proposal, according to the Union.

However, the Employer's proposal would impose an unreasonable burden on employees, according to the Union. The wage increase for employees in the second year of the agreement would be more than wiped out by the increase in health insurance costs, it notes. Further, the Union asserts that those costs would have to be paid with "after tax dollars." According to the Union, numerous arbitrators have concluded that it is not reasonable to expect employees to accept a lower standard of living in order to pay for escalating insurance costs. Further, the Union asserts, a careful review of the parties' initial proposals and their stipulations and final offers demonstrates that the Employer has offered no quid pro quo for this substantial change in existing benefits.

Finally, turning to the wage increase issue, the Union notes that the Employer's offer is more generous than the Union's offer. However, that difference does not represent a quid pro quo, according to the Union. Instead, it reflects a rather generous proposal by the Union to save the Employer approximately $29,325.00 in wages alone for the first year. Additional savings accrue to the Employer through "roll-up" costs as well. This approach is similar to the approach taken by other unions representing City of Menasha employees in 1987, when their health insurance costs rose by $136.38 per month for the family plan, in 1987.

Turning to the other statutory criteria, the Union argues that its final offer is more reasonable in the following ways:

A. The Employer has offered no evidence or argument to support a finding that the Union's final offer is beyond the Employer's ability to pay or contrary to the interests and welfare of the public.

B. The cost of living increased by 4.4% in the year prior to the effective date of the agreement (1988) increased by 4.4% and increased by 5.2% for the 12-month period ending June 30, 1989. Since the Union's proposal would only lift wages by 7% over a two-year period, it should be favored under this criterion. While the Employer's offer would also raise wages by 7% over that same period, it would also cause employees to suffer a reduction in real wages in 1990, because of the Employer's insurance proposal.

C. Both internal and external comparisons favor the Union's proposal. All four unions representing City of Menasha employees

have two-year agreements calling for nearly identical wage increases in most cases and providing for 100% pick-up (or dollar caps equal to 100% in the case of the police unit) of the cost of the identical health insurance plan. The City also experienced substantial increases in the premiums for that plan (up to $447.41 in 1990) and the City will pick up the full cost of that increase, along with a 3.5% wage increase for most employees. School district employees, who received larger percentage increases in wages, will likewise continue to enjoy having the Employer pick up 100% of the cost of their health insurance coverage.

While external comparables ought not be deemed particularly relevant in this case, those relied upon by the Employer reflect that the Union's wage proposal is in line with increases being received by other public employees performing similar services. They do not support a finding that the Union has been offered an increase which would justify a "buy out" of the existing health insurance provision. Further, those same comparisons demonstrate that, while there is no consistent pattern with regard to Employer contributions, no comparable employer requires its employees to pay 20% of the cost of insurance. Those which pay a percentage often pay 100% and those with dollar caps may do so as well.

D. In addition to those arguments set forth above in relation to the "other factors" criterion, it is important to note that numerous arbitrators have expressed the view that changes in health insurance should be brought about through voluntary collective bargaining, whenever possible. Here, the parties have only been

to interest arbitration once, in 1989 over a wage reopener. Otherwise, all changes in health insurance have been agreed to in negotiations. The cases requiring a quid pro quo in exchange for proposals to change the status quo in such an important benefit, cannot be overemphasized, in the Union's view.

In reply to Employer arguments, the Union makes the following points:

1. Employer arguments ignore the fact that it is the Employer which seeks to change the status quo with regard to health insurance contributions.

2. The Employer's claim that its comparables have been used historically in negotiations is not supported by the record. To the extent the Employer relies upon similarities in population, geographic proximity and economic base to support its comparables, the City of Menasha is the most comparable comparison because those factors are identical. Further, arbitrators have recognized that internal comparisons have greater weight with regard to issues such as health insurance and, contrary to certain arguments advanced by the Employer, city employees enjoy the identical health insurance coverage, without deductibles.

3. While it is true that the Commission's offer of 3.5% each year is in line with wage increases received by the comparables it relies upon, that fact supports the Union's position to the effect that the Employer has offered no quid pro quo to buy out the health insurance provision and ignores the fact that the delayed increases included in the Union's final offer would help mitigate the cost

of maintaining the status quo.

4. The Employer's cost of living arguments are distorted because they inappropriately rely upon an historical analysis, thereby attempting to challenge the reasonableness of past voluntary agreements and because they include the value of step increases, based upon an invalid assumption that the average employee was new in 1980. It is more appropriate to look at increases in the cost of living in the one-year period immediately prior to the effective date of the agreement. In addition, there are a number of mathematical errors in the Employer's calculations for particular positions.

5. While the Employer argues that the establishment of dollar caps will cause employees to become more sensitive to increases in insurance costs and educated consumers, that argument assumes that such sensitivity and consciousness will somehow bring about lower premium costs. This is contrary to the testimony of the Employer's own expert, who acknowledged that experience will have no impact on premiums for the Employer because it is "pool rated," rather than experience rated, like the city.

6. While the Employer attempts to shift the blame for its reckless final offer to the Union, the fact is the Employer made a bad final offer which became worse when the extent of the increases for 1990 became known. It should not be permitted to shift the blame to the Union. If the Employer wanted to impose a 10% cost on employees, or impose deductibles or co-pay requirements, it should have put those features in its final offer.

It did not do so, even though it knew the Union was proposing a settlement based upon the 1990 settlement with City of Menasha employees.

7. While the Employer alleges that its offer contains a "generous quid pro quo" in the form of "outstanding benefits" and "exorbitant wages," the facts will not support that position. The Employer's exhibits show that several comparables have additional insurance coverages and related benefits, which the employees in this unit do not have. Instead, they show that employees do enjoy good wages and good health insurance, but no more. On the other hand, the Employer's arguments ignore the impact of its offer on net wages.

EMPLOYER'S POSITION

According to the Employer, comparisons drawn in this case should be to employees of other public sector utilities of similar size and geographic proximity, i.e., in the Fox River Valley and Wisconsin River Valley. Those utilities are found in Appleton, Fond du Lac, Kaukauna, Manitowoc, Marshfield, Oshkosh, Plymouth, Sheboygan, Stevens Point, Two Rivers, and Wisconsin Rapids. They have been used historically in negotiations and are supported by economic data supplied by the Employer in its exhibits, it argues.

By avoiding the selection of a comparable pool, the Union has avoided its responsibility to provide the arbitrator with important data in connection with the comparability criterion, according to the Employer. Instead of relying upon the wages and benefits paid other public employees of water and electric utilities, the Union

would have the arbitrator rely upon comparisons to teachers, custodians, secretaries, cooks, police officers, firefighters, and public works employees. This is simply inappropriate, according to the Employer.

According to the Commission, its wages and wage increases are in line with the wages and wage increases being received by other comparable public sector employees. In fact, they are well above the average relative to those comparables, it argues. Going through the data relative to a number of comparable classifications, the Employer notes that, in almost all cases, the Commission pays wages which are above average.

When consideration is given to increases in the cost of living, the Employer's offer is also preferable, it argues. According to its data, Commission employees have received increases in wages and health insurance premiums nearly double increases in the cost of living during the period between 1981 and 1988. Further, when the hourly cost of family health insurance is added into the wage rates, Commission employees receive compensation which ranges from more than $1.00 per hour to more than $3.50 per hour higher than average.

While the Employer agrees with the Union that the health insurance issue in this case represents the heart of the dispute, it contends that the Union's position on health insurance throughout bargaining has been both selfish and irresponsible. It notes that the Commission has been faced with a 27% increase and a 36% increase on top of a 24.4% increase in 1988 and,

consequently, made a number of proposals to the Union during negotiations, in an effort to deal with those escalating costs. According to the Employer, the Union rejected all suggestions that the parties change programs (to Blue Cross/Blue Shield United of Wisconsin; Wisconsin's Physicians Service-Care Share Plan; State of Wisconsin Group Health Plan); adopt deductibles; adopt an 80/20 co-pay requirement; or adopt dollar caps. When the Union adamantly refused to deal with the issue, the Commission was left with no alternative, but to submit the dispute to arbitration. Relying on the testimony of its general manager, the Employer contends that the Union refused to consider any of the alternative carriers, because their provisions were not identical and refused to consider deductibles and co-pay features or premium sharing, under any circumstances.

Citing the testimony of its expert, who formerly worked for WPS and handled the Commission's account, the Employer argues that the WPS-HMP plan is an "extremely rich" plan, with first dollar coverage and coverage of routine examinations and other "well care" features. Thus, it is predictable that no less expensive plan would be found to be comparable, because you "get what you pay for." Even so, he noted that many employers were opting for less comprehensive plans and the adoption of deductibles and co-payment features, in order to hold costs down. He acknowledged that, if the Union would not agree to those features or premium sharing, there were no other alternatives for that purpose.

According to the Employer, cost sharing causes employees to

become more cost conscious and thereby helps hold insurance premiums down. With that in mind, the Employer proposed to shift a portion of the cost to employees, based upon the assumption that the total increase for 1990 would be in the range of 15 to 20%, because of the large increases experienced in the two prior years. It was not until the day before the hearing that it discovered that the increase would actually be 36%.

The Employer also cites the Union's position taken during mediation conducted by the arbitrator as evidence of its unyielding attitude and further justification for a finding that the Union's position in this case is both selfish and irresponsible. Those arguments will not be detailed, because of the arbitrator's belief that such an argument ought not be entertained.

On the other hand, the Employer argues that it has acted reasonably and responsibly, by incorporating the creation of a joint insurance committee in its final offer. Through that mechanism, the parties themselves can identify the most appropriate objectives; evaluate the options; review the potential cost savings through the appropriate time horizon; and implement any agreed to changes.

The Union's reaction to this aspect of the Employer's proposal, constitutes further evidence of its selfish and irresponsible attitude, according to the Employer. According to the Union's spokesperson, the Union is opposed to this aspect of the Employer's final offer, because it does not arise out of joint agreement and because participation would not be voluntary, with

both parties looking at the problem. This argument ignores the fact that the Union refused to discuss the issue and forced the Commission to take the issue to arbitration. Further, the Employer argues, such a joint committee will serve a useful purpose even if the Employer's offer is selected. It will force both parties to discuss the issue, consider alternatives, and search for a jointly acceptable solution for the future.

According to the Commission, it has offered a generous quid pro quo consisting of outstanding benefits, exorbitant wages, and a settlement offer of 3.5% in each of two years. It has done so, in spite of the fact that it has the highest premiums for health insurance among any of the 11 comparables. This is so even though 7 out of those 11 require their employees to pay a deductible and 8 out of the 11 require employees to participate in an 80/20 co-pay requirement, up to a fixed dollar amount.

Turning to comparisons in the "same community and in comparable communities" the Employer notes that its health insurance contributions are the highest relative to the City of Menasha, Winnebago County, and the Neenah-Menasha Sewage District. While arguing that comparisons to school district employees are inappropriate, the Employer also notes that the premiums it pays are higher than those paid by the Menasha Joint School District. It alleges that the first three employers also have deductibles and two have 80/20 co-pay requirements. To the extent that it is possible to draw comparisons with employees working for those employers, the total hourly cost of wages and health insurance

benefits is generally higher for Commission employees, it notes. Thus, Commission employees are not only compensated at a higher rate than the average among the Commission's comparables, but also the Union's comparables.

Citing a number of articles dealing with efforts to address escalating insurance costs, which it placed in evidence, the Employer argues that its proposal is supported by the weight of expert opinion on the best available methods to contain costs. Those articles reflect that, on a national scale, labor and management recognize the need to contain cost of health insurance benefits, in order to avoid cuts in real wages; employees must be informed of the realities of medical costs if there is to be effective control; and that employers are continuing to seek alternatives to first dollar coverage and looking to deductibles, co-payments, and premium contributions as a way to deal with increases which are outstripping the rate of inflation. Here, the Employer notes, it is not proposing deductibles or co-payments, but merely seeks to place a cap on the total amount of its contribution in order to inform employees of the actual cost of continuing health insurance coverage and involve employees, through their union, in an effort to contain those costs.

Finally, with regard to the Union's proposal to change the status quo regarding vacation scheduling, the Employer argues that the Union has failed to meet it burden of proof regarding that proposal. Under the current arrangement, when a conflict exists between the vacation requests of two or more employees in a given

department, the employee with seniority is given preference. While two Union witnesses testified that they were bumped out of their vacation preferences pursuant to this provision, they also acknowledged that they had bumped other employees themselves. This arrangement was agreed to voluntarily by the parties; is based upon seniority rights; and is effectively handled by the employees themselves, since management has never insisted on the strict application of seniority in the scheduling of vacations. By its proposal, the Union would involve the Employer in resolving such disputes, it notes.

Such proposed involvement is not justified, according to the Employer, since 7 out of the 11 comparables do not contain a similar provision and, like the Commission, rely on employees themselves to resolve any conflicts in scheduling without interference by management.

Citing decisions dealing with proposed changes in the status quo, the Employer argues that the Union here must show that its proposal enjoys support among the comparables; that there is a compelling need for change; and that it has offered a quid pro quo. It has failed on all three counts, according to the Employer. The comparables do not support the proposal; there is no evidence of compelling need for change, since employees have it within their power to avoid conflicts or involvement of management; and the Union has offered no quid pro quo.

In reply to Union arguments, the Employer makes the following four points:

1. The Union's arguments offer further evidence that its position on health insurance is both selfish and shortsided. Its arguments in opposition to the joint committee stand in contrast to its conduct throughout negotiations and the inclusion of the proposal in the Employer's final offer was appropriate under the circumstances and under the statutory scheme. Contrary to the Union's contention, the Employer's proposal has met the "three-pronged test" advanced by the Union in its arguments. The present contract language has given rise to conditions that require amendment; the proposed language may well remedy the situation; and the change will not impose an unreasonable burden on the other party. The Union ignores the generous wages and wages plus health insurance premiums received by Commission employees, as detailed by the Employer in its arguments, and wrongly assumes that the employee's share of the insurance premium would have to be paid with "after tax dollars." Under section 125 of the Internal Revenue Code, flexible spending accounts could be set up, allowing employees to redirect a portion of their salary to pay the sums involved.

2. For the same reasons set out above, the Union has failed to establish that its vacation language proposal is necessary. Further, to the extent that the Union accuses the Employer of being unreasonable on this issue or failing to provide a quid pro quo for its proposal on health insurance, the Union is in no position to advance such arguments. It only participated in three negotiation sessions before filing the petition for arbitration and

consistently refused to seriously entertain changes in the health insurance provision and would not even voluntarily agree to the creation of a joint health insurance study committee.

3. While the Union notes that its split-year offer in 1989 will save $29,325.00, it fails to mention the fact that the Employer paid $190,989.48 for health insurance coverage in 1989 and there will be no similar savings in 1990 when the Union's final offer will cost the Employer $259,745.88 for health insurance coverage. Thus, the Union's refusal to discuss the health insurance issue will cost the Employer an addition $58,642.44 in 1990. The Union also makes unjustified assumptions in its cost of living arguments and ignores the consistent pattern of cost sharing among the other public sector comparables and the generous nature of the health insurance plan now in effect. Further, its suggestion that the arbitrator send the issue back to the parties without changing the status quo so that they can voluntarily resolve the matter, is ludicrous, in view of its attitude throughout negotiations. While this case no doubt involves a very difficult decision for the arbitrator, the award ought not reward the Union for its conduct. Thus, even though the health insurance issue will necessarily be discussed in future negotiations, regardless of which final offer is selected, numerous criteria support a finding that they should do so pursuant to implementation of the Employer's final offer.

4. The Employer's final offer seeks the participation of employees; allows the employees to be covered by a very rich health

care plan without paying deductibles or co-payments; avoids an unnecessary change in the vacation scheduling language; and continues to maintain a high standard of wages and health insurance coverage for employees.

## DISCUSSION

The final offers in this case present a difficult choice, made more difficult by the large increase in the insurance premium for 1990, which the parties did not learn about until after the certification of final offers and immediately prior to the hearing herein. Under criterion i of the statutory criteria, it is not appropriate to ignore that occurrence, even if it is assumed that it would be possible to do so.

However, as indicated above in connection with the Employer's arguments, the undersigned does not believe that it is appropriate to take into consideration the position taken by either party during the voluntary mediation which occurred prior to the arbitration hearing herein. To do so would be inappropriate. It would have a tendency to chill the parties' willingness to participate in such voluntary mediation, or, worse yet, it might encourage them to engage in sham participation.

Under the circumstances, it is incumbent upon the undersigned to make a choice between the two final offers, based upon a judgment as to which is the most reasonable under the statutory criteria, even though they both contain elements which are unreasonable, especially in the light of the increases which have occurred in insurance premiums since they were formulated. If this

were conventional arbitration and the timing of the award permitted, the undersigned would be inclined to select a new, lower cost hospital and surgical insurance plan, with benefits provided which are as close as possible to those provided in the WPS-HMP plan, and require a sharing of the savings achieved, possibly through the establishment of a fund to help pay for deductibles and co-payments in a tax advantaged way. Such an interim step, along with the establishment of a joint committee, such as that proposed by the Employer in its final offer, to study the impact of the new arrangement and make any recommendations deemed jointly appropriate, would be a far better alternative than either final offer. However, the "reality" with which the undersigned is faced is that the WPS-HMP plan has already been renewed for an additional year and a decision must now be made as to how the costs of that renewal should be allocated, within the two choices provided by the final offers.

Before discussing the elements deemed important for purposes of making that choice, it is first appropriate to discuss the parties' wage increase proposals. While those proposals are inseparable from the insurance issue, certain preliminary observations concerning their relative merit are possible.

The undersigned is reluctant to endorse the external comparables advanced by the Employer as appropriate. This reluctance is not simply the result of the Union's failure to advance its own proposed set of external comparables. It is important for the parties' long term relationship that they attempt

to come to some joint understanding as to appropriate external comparables, in order to encourage stability in their bargaining relationship. However, the undersigned is satisfied that the selection of external comparables for purposes of the wage issue will not have a significant impact on the outcome. Further, as the Union points out, even though the parties have a long history of voluntary settlements since 1979, there is no evidence confirming the Employer's claim that the parties have actually utilized the comparables it advances in its arguments. In fact, the only evidence of record concerning the appropriate wage comparables consists of the 1979 award of Arbitrator Gordon Haferbecker[1], and that award reflects that the parties were not in agreement "as to which utilities, communities, and positions should be used in their comparisons." As both parties argue, the wage rates paid by the Employer are generally above average among the Employer's external comparables. However, in the long run, both offers would provide the same lift, which is also comparable to the percentage increases granted employees by the external comparables. In fact, if the Menasha School District is disregarded, as it probably should be, the wage increases granted under both final offers is, in most cases, identical to the "internal" comparisons relied upon by the Union. All of this merely serves to confirm the fact that were it not for the dispute on insurance, there probably would be no dispute in this case over wages. Any doubt in that regard is confirmed by the fact that the cost of the Union's wage offer is

[1]Decision No. 16861-A, dated July 10, 1979.

less than the cost of the Employer's wage offer, even though the lift is nearly identical.

Turning to the health insurance issue, the undersigned is moved at the outset to note that, even though the Employer's final offer would produce an unreasonably harsh outcome, the Union's position can hardly be endorsed as reasonable. In the view of the undersigned, who has the benefit of retrospect, the Union's offer tenaciously holds on to a very desirable health insurance program under circumstances where continued efforts to do so are unrealistic. However, like the Employer, the Union had no reason to know that an even larger (36%) increase would be heaped on top of the two large increases in 1988 and 1989. Also, the Union should be given credit for the fact that it did offer to help pay for the cost of the 1989 increase and any 1990 increase by delaying the implementation of the first year increases and wages. Further, as the Union points out, the Employer could have proposed to adopt dollar caps for the second year which were equal to a higher percentage of the 1990 premiums. The Union's position, which was apparently grounded in a desire to maintain parity with wage increases and the health insurance benefits of city employees, was no secret to the Employer.

Given the realities of the collective bargaining law, it was probably not practical for the Employer to propose a change of carriers, since there was no guarantee that the award would be rendered in time to accomplish that purpose. If the Union's final offer is adopted, these same realities mean that a lot of money is

going to be paid to WPS for the duration of this agreement, without improving the standard of living for employees and without dealing with the underlying problem. In effect, the question that remains is who should bear the burden of that continuing cost, under the circumstances.

As the Employer's offer is structured, employees will be required to pay WPS a very large sum of money ($1,134.12 in most cases) in after tax dollars. As the Union notes in its arguments, that payment will exceed the value of the second year increase in wages. Assuming that a tax sheltered arrangement could be set up, even though the Employer's offer does not specifically provide for it, it is reasonable to assume that it could not be done without some further delay.

On the other hand, under the Union's final offer, it has agreed to pick up a significant part of the cost of the two-year package. By doing so, the total cost of its offer has been held down to the point where it is only slightly higher than the cost of the Employer's offer. Based upon the actual inflation rate for 1988 and the available data for 1989 and 1990, the Union's offer is generally in line with the rate of inflation. Further, as the Union notes, there is no claim of an inability to pay the cost of its offer. While it could be argued that neither offer serves the interests and welfare of the public very well, the Union's offer succeeds in "buying time," while maintaining relative parity with city employees as to wage increases and health insurance benefits.

For all of these reasons, the undersigned concludes that

overall, the Union's offer on health insurance, which is tied into its offer on wages, should be selected under the statutory criteria. However, the undersigned would like to emphasize his belief that the Union's offer merely "buys time" so that the parties can have yet another opportunity to deal seriously with the health insurance issue. In doing so, a study committee mechanism, like that suggested by the Employer in its final offer, or perhaps one including city units, might be helpful. Perhaps it is possible for the Employer to make arrangements to be included in the city group and/or achieve some form of longer term stability in premiums through joint negotiations with WPS.

While certainly not controlling, the Union's position on the one remaining issue is likewise deemed to be the more reasonable and that conclusion contributes to the decision to select the Union's final offer. While the undersigned agrees that the proponent of a change in the status quo generally has the burden of proof to justify the need for the change and to demonstrate the reasonableness of its proposal for that purpose, this issue, like the health insurance issue, does not really raise a question concerning the need for or sufficiency of a so-called "quid pro quo." Just as it is in the mutual interest of both parties to deal with the health insurance issue, it is in the mutual interest of both parties to deal with problems of the type addressed by the Union's offer in connection with vacation scheduling.

Thus, there would appear to be no question that the current provision, as administered, is a source of avoidable and

unnecessary employee friction. It is quite common for employers to require that employees make their vacation selections by a certain date, so that the employees and their families can make firm commitments with regard to vacation plans. In fact, the Employer's own survey of comparables demonstrates this to be the case. Even in those cases where the requirement is not set out in the agreement, it is possible that a requirement exists in practice.

This is not a case where one party is attempting to eliminate an existing benefit or procedure which is primarily to the advantage of the other party. The Union's proposal constitutes a problem solving approach to a demonstrated problem that can adversely impact on both parties. By making the proposal, the Union has effectively taken the Employer "off the hook." Thus, if a "quid" is needed to pay for the "quo" sought by the Union, the proposal itself offers one.

Further, as the Union points out, the Employer has pointed to no real adverse consequence, from its point of view. Administration of the new provision ought not impose much of an burden, since there are only 45 employees in the bargaining unit and they work in numerous classifications. On the other hand, the new deadline should contribute to stability in scheduling. While it may require more administrative work at one point in the calendar year, it should avoid the need for duplicating that work later in the year, because some senior employee wants to change his or her schedule. The continuation of the other provisions in the

agreement protect those interests which are most important to the Employer, including the right to insist on sufficient staffing.

For all of these reasons, the undersigned concludes that the Union's final offer should be favored under the statutory criteria and renders the following

AWARD

The Union's final offer shall be incorporated into the parties' 1989-1990 collective bargaining agreement, along with the stipulated changes agreed to by the parties and those provisions from the prior agreement which are to remain unchanged.

Dated at Madison, Wisconsin, this 5th day of March, 1990.

George R. Fleischli
Arbitrator

# MENASHA UTILITIES

## 1988 HOURLY WAGE

## EFFECTIVE 1/1/88* THROUGH 12/31/88

| Job Classification | Step I | Step II | Step III | Step IV | Step V |
|---|---|---|---|---|---|
| **Clerical & Central Office** | | | | | |
| Clerk | 8.46 | 8.87 | 9.30 | 9.76 | 10.28 |
| Data Process Clerk | 9.76 | 10.28 | 10.78 | 11.33 | 11.90 |
| Accounting Clerk | 10.28 | 10.78 | 11.33 | 11.90 | 12.49 |
| Meter Reader | 9.76 | 10.28 | 10.78 | 11.33 | 11.90 |
| **Electric Distribution** | | | | | |
| Clerk | 8.46 | 8.87 | 9.30 | 9.76 | 10.28 |
| Engineering Tech | 10.78 | 11.33 | 11.90 | 12.49 | 13.10 |
| Elec. Distr. Tech | 10.78 | 11.33 | 11.90 | 12.49 | 13.10 |
| Lineman | 11.33 | 11.90 | 12.49 | 13.10 | 13.76 |
| Line Foreman | 13.10 | 13.76 | 14.43 | 15.18 | 15.91 |
| Lineman Trainee | 9.76 | 10.15 | 10.52 | 10.90 | --- |
| Chief Meter Technician | 11.90 | 12.49 | 13.10 | 13.76 | 14.43 |
| **Water Distribution** | | | | | |
| Meter Utility Specialist | 10.78 | 11.33 | 11.90 | 12.49 | 13.10 |
| Automotive Mechanic | 11.33 | 11.90 | 12.49 | 13.10 | 13.76 |
| Storekeeper | 10.28 | 10.78 | 11.33 | 11.90 | 12.49 |
| Utility Worker | 9.30 | 9.76 | 10.28 | 10.78 | 11.33 |
| Water Mntnce Workers | 10.28 | 10.78 | 11.33 | 11.90 | 12.49 |
| Water Mntnce Foreman | 11.90 | 12.49 | 13.10 | 13.76 | 14.43 |
| **Power Plant** | | | | | |
| Clerk | 8.46 | 8.87 | 9.30 | 9.76 | 10.28 |
| Custodial Worker | 9.30 | 9.76 | 10.28 | 10.78 | 11.33 |
| Coal & Ash Worker | 9.76 | 10.28 | 10.78 | 11.33 | 11.90 |
| Mntnce Wkr - Relief Frmn | 10.28 | 10.78 | 11.33 | 11.90 | 12.49 |
| Power Plant Mntnce Mech | 11.33 | 11.90 | 12.49 | 13.10 | 13.76 |
| Power Plant Tech | 11.90 | 12.49 | 13.10 | 13.76 | 14.43 |
| Stationary Fireman | 11.33 | 11.90 | 12.49 | 13.10 | 13.76 |
| Power Plant Operator | 11.90 | 12.49 | 13.10 | 13.76 | 14.43 |
| **Water Treatment Plant** | | | | | |
| Water Mntnce Mech/Rel Oper | 10.28 | 10.47 | 11.33 | 11.90 | 12.49 |
| Water Plant Operator | 10.78 | 11.33 | 11.90 | 12.49 | 13.10 |
| Chief Water Plant Oper | 11.90 | 12.49 | 13.10 | 13.76 | 14.43 |
| Water Plant Wkr/Rel Oper | 9.76 | 10.28 | 10.78 | 11.33 | 11.90 |
| Water Plant Technician | 11.33 | 11.90 | 12.49 | 13.10 | 13.76 |

*Effective on January 1, 1988, each employee within this wage schedule receives a one-time bonus of $100.00 which is not to be folded into the wage schedule.

APPENDIX "A"