STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2150 To Initiate Arbitration Between Said Petitioner and CITY OF KAUKAUNA	Case 48 No. 41829 INT/ARB-5193 Decision No. 26092-A

APPEARANCES

On Behalf of The Employer: Bruce K. Patterson, Employee Relations Consultant

On Behalf of the Union: Richard C. Darling, Business Manager, I.B.E.W.

I. BACKGROUND AND ISSUE

On November 30, 1988, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the Agreement which expired on December 31, 1988. Thereafter the Parties met on three occasions in efforts to reach an accord on a new collective bargaining agreement. On February 24, 1989, the Union filed the instant petition requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On April 17, 1989, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by July 12, 1989, the Parties submitted to the Investigator their final offers and written positions regarding authorization of inclusion of

nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission. Subsequently, the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remained at impasse.

On July 21, 1989, the Commission ordered the Parties to select an Arbitrator. Subsequently, the Parties selected the undersigned as Arbitrator. A hearing was scheduled for November 8, 1989. Just prior to the hearing, the Parties advised the Arbitrator that an agreement was reached on all but one issue in their respective final offers. They agreed to increase wage rates by 4% January 1, 1989 and 4% January 1, 1990. They also agreed that the Employer would pay $146.95 and $379.65 monthly for the single and family health insurance premiums respectively.

The only issue which was not resolved was health insurance for retirees. It should be noted that prior to the instant negotiations the issue had never been addressed in bargaining. Instead of the issue being addressed in the collective bargaining agreement, it was, instead covered by a unilaterally promulgated policy. On June 7, 1972, the Utilities Commission adopted the following policy:

> "...that group hospital and surgical coverage be provided to retired employees, and their surviving spouses, until age 65 or until eligible for medicare or until remarriage with such retired employee or surviving spouse continue to pay 20% of the premium for such coverage."

The above quoted policy remained in effect until September 14, 1988 when the Commission adopted the following policy:

"The Utility will pay toward the Group Health Insurance

premium for retirees and surviving spouses who meet the following criteria:

1. Non Disability Retirement
Employees shall meet all of the following criteria:

   A. Employee retires at age 62 and prior to age 65;
   B. Employee has 20 years of service;
   C. Employee is not eligible for medicare.

2. Surviving Spouse

   A surviving spouse of an employee who retired under (1) above who has not remarried and is not eligible for medicare.

3. Disability Retirement

   A. Employee is deemed permanently disabled and unable to hold gainful employment in accordance with rules and regulations governing such disability of the Social Security Administration and the Wisconsin Retirement System.

   B. Employee has 20 consecutive years of service with the Utility prior to such disability being determined.

   C. Employee is not eligible for medicare.

The Employer's final offer is identical to its September 14, 1988 policy statement with the addition of the following "grandfather provision":

"4. Grandfather Provision

   A. Employees of record as of 12-31-88 shall not be required to meet the 20 year service requirement set forth above."

The Union's final offer with respect to health insurance for retirees is as follows:

"5. The City has a past practice of paying 80% of the health insurance premiums for all retirees. The Union proposed no change in that practice but for the purpose of reaching a settlement can agree to the following modifications:

"Any employee with a minimum of 20 years of service and reaching age 60 shall continue to have 80% of the health insurance premium paid by the City. It is understood that the City will also continue its practice of paying for the Medicare Supplement premium after age 65."

II. ARGUMENTS OF THE PARTIES

A. The Union

As background the Union draws attention to changes in other health insurance language that they agreed to during the course of negotiations. These changes, they argue, resulted in savings to the Employer. Because of significant increases in insurance premiums, the Union agreed to modify the coverage in its health insurance plan whereby the employee would pick up a $100 per person, $300 per family deductible and agreed to lesser benefits under the terms of the new policy. The Union also agreed at the bargaining table to allow the Employer to implement the new benefit package with the modified premiums effective April 1, 1989 so as to allow the Employer, who was paying the full premium, to experience a considerable savings in costs. This resulted in a savings of $51.95 per month per family coverage and $20.67 per month for single coverage.

It must be considered, to their benefit, the Union argues, that they agreed to implement the health insurance modifications during negotiations, and prior to settlement, as a goodwill gesture to allow the Commission to experience a savings in premium. It should also be recognized, in their estimation, that the tentative agreed-to items of the Kaukauna contract gives up considerable monetary value when comparisons are made to other contracts in the comparable group. For instance, they note that

(1) the Employer's offer in Oconomowoc does not indicate any increase or any modification of the health insurance plan or any additional deductible or premium passed on to the employee, (2) the Jefferson Water and Electric Company agreement provides that the City shall pay for the full premium for the year 1990 with the only reference being made to the premium for 1989 of $228.10 for the family coverage and $95.04 for single coverage, (3) that in Kiel the contract provides only for $100/$200 deductibles per family for the insurance and no other modification was made to the plan, and (4) in Stevens Point there is a provision that the employee's accumulated sick leave can be converted into cash for the payment of hospital and surgical insurance premiums. They also note that the 4% wage settlement in Kaukauna is consistent with wage settlements in the comparables.

Against this background the Union contends that of the three primary issues - wages, health insurance premiums and retiree insurance -- two of them involve "take-aways". They are taking concessions on health insurance premiums and they have agreed to a modification in the past practice for retiree health insurance. In fact, they assert if the Employer settlement was implemented, it would provide for a much lesser "cost-of-package" than all of the comparables.

The Union also stresses the long standing practice of the Employer paying 80% of the cost of the health insurance for all of the retirees and surviving spouses over the age of 55 years. A similar practice exists with respect to elected and appointed officials of the City of Kaukauna. They argue that the practice

regarding this bargaining unit is mandated by Article XIV Section 2 which states

> "All rights and privileges presently enjoyed by the employees, covered by this agreement, shall remain in effect unless specifically changed herein."

Even so the Union agreed to the significant concession of raising the qualifying age from 55 to 60 years. The Union also believes it significant that the City reneged on its commitment made to employees during bargaining that the Commission's proposal would only affect future employees.

B. The Employer

At the outset the Employer wants the Arbitrator to recognize that health insurance for retirees has never been included in Local 2150 demands or in the content of the labor Agreement between the Parties. More importantly the original policy was established unilaterally in a time (1972) when the premium was one eighth of the 1990 rate ($48.43 vs $379.56 per month).

The Employer made its proposal in response to the significant increase in health insurance premiums. The insurance premiums have increased eightfold since 1972 and clearly outstripped a reasonable growth in wage rates by over two times in the same time period. Clearly the Commission was faced with the necessity to act to control its cost liability. The Commission acted prudently and equitably toward its employees by serving notice and meeting its duty to bargain on the issue. The Employer is simply attempting to place a very generous benefit into a framework that will permit a reasonable cost control structure. They also suggest that even their proposal is a generous benefit in a day when most retiring employees are just

seeking access merely for the right to continue participation in a group health plan for the years following retirement.

The Employer, as did the Union, looks at this issue in the context of other matters. For instance, regarding wages they contend Kaukauna favorably compares to rates paid employees of other municipally operated electric and water utilities. Not only does Kaukauna significantly rank above the average, but it also ranks very favorably when compared to all similar employers. A second item to be considered is the rate of wage increase for 1989-90. The evidence easily demonstrates that the employees in this unit are receiving a settlement at the high end of the pattern for 1989-90.

The Employer also draws attention to the fact the Commission proposal is clearly more generous than any of the external comparables. For instance, Utility Exhibits 12 and 13 clearly demonstrate that comparable unionized public employees in the community enjoy a benefit similar to that offered by the Commission. Moreover, the evidence is clear that the Commission is internally consistent and is far more generous than the external comparables in offering paid retiree insurance from age 62-65. Additionally, no employer is presently paying retiree premiums past age 65 and yet this well paid group of employees is demanding such a benefit.

The Employer also discusses the Union's reliance on the City Council to give health insurance to city officials. The Employer maintains that this argument falls on its face when Wis. Stat. 111.70 and its comparable standards are analyzed.

Arbitrators have traditionally ignored benefits granted to employees not subject to collective bargaining. Such response is consistent with the mandates included in Wis. Stat. 111.70 relative to comparability.

III. OPINION AND DISCUSSION

The Union views the retiree health insurance issue as a "take away." This implies that the burden is on the Employer to justify the diminuation of a long standing benefit. Ordinarily in interest arbitration the burden is on the party seeking a change in the status quo. This would be particularly true where an employer is seeking to eliminate or restrict a benefit that has been present in the collective bargaining agreement.

However, under the unique circumstances of this case, the City carries no such special burden. This is because the previous retiree health insurance policy was not the product of collective bargaining or part of the labor agreement. The collective bargaining agreement did not explicitly or implicitly address the issue of retiree health insurance. The Union argued that the agreement in the form of Article XIV Section 2 required that the practice be maintained. However, Section 2 is not a past practice or maintainance-of-standards clause. It simply says that rights "under this agreement" will be maintained. Since retiree health insurance benefits were not in the past provided by the "Agreement" Section 2 did not require the continuation of the policy.

The policy then has no "status quo" standing for arbitration purposes. The Arbitrator will not hold the Employer to an extra

burden, relative to the Union, to justify their move from full health insurance for retirees to a lesser benefit. Plainly the Employer has no legal obligation to continue a non-negotiated benefit. As the saying goes "bargaining starts from scratch." Nor is the Union being held to an extra burden to establish a "new benefit" as they would normally be. Instead it is apparent both Parties believe there is a need for health insurance for retirees in some form. Thus, the question is, relative to the statutory criteria, which proposal most reasonably addresses the need.

Two of the most important statutory criteria are criteria (d) and (e). The Arbitrator is directed to give weight to these and other criteria and in doing so Arbitrators have historically found the so called "comparable" criteria to be very useful and instructive. Criteria (d) and (e) read as follows:

> "d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
> e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities."

Both Parties have offered evidence on what other municipal utilities provide their retirees in terms of health insurance. The following, as can best be determined from this record, summarizes the evidence in this regard:

Table No. 1

No Benefit	Allows Continuation In Group At Employee's Expense	Sick Leave Conversion	100% Between Age 62 & 65
Clintonville	Appleton	Fond du Lac	Marshfield
Manitowoc	Oconomowoc	Stevens Point	Two Rivers
Oshkosh	Plymouth		Wisconsin Rapids
Jefferson	Menasha		
Kiel			

As can be seen from the summary, the overwhelming pattern is that employers do not provide any health insurance for their retirees. Six contracts don't even provide that the individual can participate in the group rates. There are four contracts which do provide for group participation but only at the employee's expense. This is not an insignificant benefit in and of itself given the cost of individual policies. Two other contracts (Fond du Lac and Stevens Point) provide that an employee can convert unused sick leave at the time of retirement for use to offset the payment of health insurance. This is somewhat of a hybrid and in a sense is a matter of the employee paying their own insurance.

Only three contracts provide that the employer contribute, in cash, toward the cost of the retiree's health insurance. None of these contracts require payment as early as age 60 as does the Union proposal. Nor do any of these contracts provide that the employer pay the cost of a medicare supplement plan after age 65. Although, it is noted the Union's request is for 80% of the premium whereas these three employers provide 100%. The Union also asks the Arbitrator that the City of Kaukauna provide health insurance to its elected and appointed officials when they retire and that

Wisconsin Power, a private utility, provides partial health insurance contributions for its retirees.

In spite of the Union's arguments, the evidence under criteria (d) and (e) show clearly that the Union's request is not supported by the comparables. They are truly asking for an extraordinary benefit, one which, as noted, in several respects goes way beyond the three comparables which have employer-paid inusrance for retirees. Such a significant benefit would have to be supported by the comparables or justified by some other extraordinary circumstance. The Union did point to the concession that they made when agreeing to move to a $100/$300 deductible plan. This was significant, however, the facts seem to suggest that to a large extent this move was justified in its own right. The Employer was faced with astronomical health insurance rate increases. In addition, the fact that retirees remain in the group policy shouldn't be lost sight of either. Rates are based on group experience and retirees being in the group -- given the fact they often require more medical care than younger people -- no doubt contribute to the relatively high cost of the premium. Thus, this too suggests it is not unreasonable to ask the employees to participate in controlling costs by agreeing to a deductible based on a more streamlined plan.

The wage settlement didn't contain any concession either. Nor is the wage level so low relatively speaking that inclusion of this benefit could be justified on a total package basis. The 4% and 4% settlement is above average for the comparables. In addition the wage rates in this bargaining unit are above average compared to other municipal utilities.

The Employer's offer relative to the statutory criteria is more reasonable. It by far exceeds most comparable contracts. There are three contracts that have a more liberal benefit in one respect. Three other employers pay 100% of the premium, whereas the Employer's proposal only pays 80%. However, the Employer historically has never paid more than 80% of the premium. In all other respects, the Employer's offer is consistent with the three comparables that offer the benefit. The three others offer the benefit at age 62 to age 65 as the Employer proposes. The Employer offer eliminates the medicine supplement but none of the others provide medicare supplement either.

Thus, given its general consistency with these other contracts the Arbitrator must conclude that the Employer's offer reasonably addresses the need for retiree health insurance. Its reasonableness is enhanced by the fact it clearly applies to disability retirements and waives the 20-year service requirement for all employees as of December 31, 1988.

One final issue must be addressed. The Union submitted documents and testimony regarding representations made to bargaining unit employees subsequent to the change in the Employer's policy. A number of employees were considering retiring prior to the effect of the change but were, to their understanding, informed the policy wouldn't adversely affect them. Subsequently, they found out under the change they couldn't get retiree insurance until age 62. The Arbitrator has considered this testimony and cannot find it a basis to award the Union's final offer. It seems that there was a most

unfortunate but legitimate misunderstanding. It seems that the Employer was saying that these changes would affect only future retirees not that it would affect only future employees. For example, the Employer indicated at the hearing that it had no intent, for instance, to discontinue medicare supplement insurance for those retirees who had, previous to the change, qualified for it.

In view of the foregoing, the Arbitrator believes that the Employer's final offer is more appropriate.

AWARD

The Employer's final offer is accepted.

Gil Vernon, Arbitrator

Dated this 5th day of February, 1990 at Eau Claire, Wisconsin.