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EDWARD B. KRINSKY, ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
MILWAUKEE DISTRICT COUNCIL 48,	:	Case 339
AFSCME, AFL-CIO	:	No. 42072
	:	INT/ARB-5227
To Initiate Arbitration	:	Decision No. 26196-A
Between Said Petitioner and	:	
	:	
CITY OF MILWAUKEE	:	
	:	
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Appearances:

Mr. Grant F. Langley, City Attorney, by Mr. Thomas C. Goeldner, Assistant City Attorney, for the City.
 Podell, Ugent & Cross, Attorneys at Law, by Ms. Nola J. Hitchcock Cross, for the Union.

On November 27, 1989, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator "to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act, to resolve said impasse by selecting either the total final offer of . . ." the Union or the City.

At the request of the parties, the arbitrator held a preliminary meeting with them on January 10, 1990, at Milwaukee, Wisconsin, to discuss ground rules for the arbitration. A five day arbitration hearing was then held at Milwaukee from March 26 through March 31, 1990. A transcript of the proceedings was made. At the hearing both parties had the opportunity to present testimony, evidence and arguments. The record was completed with the exchange by the arbitrator of the parties' post-hearing briefs on June 6, 1990.

The final offers evidence differences between the parties on two issues, base salary and health and dental insurance, but the focus of their dispute is clearly the health and dental insurance issue.

With respect to wages, the Union's final offer is a 3% increase for 1989 over the 1988 year-end rates, and a 3% increase for 1990 over 1989 year-end rates. The City's final offer is a 2% increase for 1989 over the 1988 year-end rates, an increase of 2% in pay period 1, 1990 over the 1989 year-end rates, and an increase of 2% in pay period 14, 1990 over the pay period 13, 1990 rates.

With respect to health insurance, the Union offers no change in existing benefits, with one exception. It proposes that in 1990 the City contribute \$10 per month for dental coverage for single enrollment, and \$32 for family enrollment. For limited benefit employees, it proposes amounts of \$5 and \$16.

The City's final offer contains numerous changes effective in 1990:

- Increase the major medical deductible to \$100 per person and \$300 per family maximum on the basic plan.
- For employees enrolled in the basic plan, an employee shall contribute \$7.50 per month for single enrollment and \$15.00 per month for family enrollment.
- For employees enrolled in HMOs, the City will contribute an amount towards meeting the subscriber cost in the HMO Plan elected, of up to 105% of the calendar year monthly subscriber cost of the HMO offered by the City having the lowest enrollment subscriber cost to the City.
- For dental coverage, the City shall contribute an amount up to \$10 per month for single enrollment and up to \$30 per month for family enrollment towards meeting the subscriber cost of the dental plan elected.

In addition, the City's certified final offer contained certain "transplant benefits." At the hearing the parties agreed that this was not an area of disagreement, and such benefits should be considered as part of the parties' stipulations.

The result of the City's offer in 1990 with respect to the HMOs offered is that two of them will cost single employees nothing. The two others will cost \$3.38 and \$7.79 per month. For families, three HMOs will cost employees nothing. The other HMO will cost \$13.92 per month.

The arbitrator is required by statute to weigh certain factors in making his decisions. There is no dispute with respect to several of these: (a) lawful authority of the employer; (b) stipulations of the parties; (c) interests and welfare of the public and the financial ability of the City to meet the costs of the proposed settlement; (i) changes in circumstances during the pendency of the arbitration proceeding.

The remaining factors are considered below:

The arbitrator has combined his discussion of factors (d), (e) and (f). These are comparisons of the wages, hours and conditions of employment of the employees involved in the arbitration with those of:

(d) - other employees generally in public employment in the same community and in comparable communities;

(e) - other employees generally in public employment in the same community and in comparable communities;

(f) - other employees in private employment in the same community and in comparable communities.

Internal Comparables

The City bargains with 19 bargaining units. As of the close of the record for receipt of evidence in this proceeding (March 31, 1990), 7 units, comprised of 2,576 employees (34% of total) had voluntarily accepted the City's health and dental insurance proposal. An 8th unit, comprised of 25 employees, had accepted the City's health and dental offer, but was in arbitration over other items. Eleven units, including the unit in this proceeding, comprised of 4,979 employees (66%) had not accepted the City's offer. The bargaining unit in this proceeding is the largest one, having approximately 2,600 employees.

Except for uniformed services, the settled units have been given the same contractual-wage increase which has been offered by the City to the Union in this proceeding: 2% in 1989 and 2% in January, 1990, and an additional 2% in July, 1990. The fire-fighters' unit and the police supervisors' unit each received an additional 2% mid-year increase in 1989. The wages of the Building and Construction Trades unit are tied by formula to outside wage rates.

The Union established, through cross-examination of City witnesses, that some of the settled units have received economic improvements beyond those which have been offered to the Union. Thus, the police supervisors received an increase in variable shift assignment pay, uniform allowance, interpreter pay, and life insurance. Firefighters received a pension escalator, additional pay for EMTs and a drug rehabilitation benefit. Local #61 received protection against contracting out of recycling work.

The nurses represented by the Staff Nurses Council received a reallocation from the City Council during negotiations. The total of the contractual wage increase and the reallocation was in excess of 19%. In its exhibits the City introduced data about turnover of nurses. Staff Nurses Council President Rietl testified as a Union witness that during the negotiations the City did not cite turnover of personnel as a problem.

The Union cites these additional benefits in arguing, in its brief: "Thus, the Unions of any size at all which accepted the employee premium sharing proposal clearly received a high price in return which put them in a considerably different position than AFSCME in this proceeding . . ."

The City presented testimony by City Labor Negotiator Davis Gordon that one of its major bargaining goals was to attain health insurance cost containment measures. It offered to all bargaining units that which it implemented unilaterally in January, 1989, for management and non-represented employees. In its brief, the City underscores the fact that each of the units which has settled voluntarily has accepted the City health and dental offer.

It is clear that the City has made progress towards its goal of securing further health insurance cost containment by getting agreement from eight bargaining units on higher major medical deductibles, a contribution by employees to the cost of the basic medical plan, and the requirement that employees pay the cost of HMOs above 105% of the lowest rate charged by any HMO offered (the so-called State model). These units include the firefighters (1,030 employees) and Local #61 (400). Nonetheless, as the Union points out, it is still a minority of the bargaining units, and a minority of the unionized employees who have accepted this arrangement. The other one of the largest units, the police (1,660), had not accepted the City's offer and was in arbitration as of the date when the record in this proceeding was closed.

It is clear that a pattern has begun of acceptance by the City's unions of the City's plan, but it has only just begun. This is not the case of the Union being a single hold-out, or one of only a small number of unions which has rejected the City's position. This being the case, the arbitrator is not persuaded that there is sufficient reason at this time based on the internal comparables to compel acceptance of these arrangements by the Union. Certainly, the City's goal of uniform health benefits for its employees is a reasonable one, but the arbitrator does not view it as something that should be achieved through arbitration rather than bargaining at this time.

In its brief the City cites statements from decisions of other arbitrators who have underscored the importance of supporting internal pattern of settlements in municipalities in which there is a multiplicity of bargaining units. This arbitrator agrees with those statements. However, in his view the pattern is still being formed, and it is premature to compel the largest bargaining unit to accept the pattern.

External Comparables

Both parties cite what has been done by other jurisdictions in support of their final offers. They do not agree on which jurisdictions should be used. Neither side has presented evidence of agreement in the past, or in the parties' current bargaining, about which comparisons are most appropriate.

The City presents data on other midwestern cities whose population exceeds 350,000. It asserts, without contradiction, that in their only other arbitration in 1982, the parties used data from these cities (except the Missouri cities). There was no rebuttal to the testimony of Union Executive Director Parr that since that time the parties have not used these comparisons in their negotiations.

With regard to basic plan single coverage, four of the cities (Chicago, Cleveland, St. Louis and Toledo), require no contribution by employees. A fifth, Cincinnati, requires no contribution by employees hired prior to September, 1983. The remaining cities require employee contributions in varying amounts. The City's final offer requires less contribution by employees than is required in several cities, including Minneapolis, Detroit and those employees in Indianapolis who are not part of a "wellness" program.

With regard to basic family coverage, two cities require no contribution by employees (Cleveland, Toledo). A third, Cincinnati, requires no contribution by employees hired before September, 1983. In two cities, the amount required of employees is less than the \$15 per month in the City's final offer: (Chicago, \$4; Columbus, \$10 for employees before April, 1987, and \$15 for those hired after that date). In four cities, the contribution required of employees far exceeds the City's final offer (Detroit, \$97.59; Indianapolis, \$45.92 - \$96.92; Minneapolis, \$174.29; St. Louis, \$183.89). Kansas City does not provide a basic plan.

The arbitrator views these comparisons as quite polar, with roughly half providing support for each party's position. Certainly, there is no clear picture in support of one or the other insofar as employee contributions to basic coverage are concerned.

With respect to employee contribution to HMO single plans, employees pay nothing towards the cost in three cities (Chicago, St. Louis and Toledo). In a fourth city, Cincinnati, employees hired prior to September, 1983, pay nothing. Those employed later pay \$12.66. In a fifth city, Detroit, employees pay nothing for five HMOs, but pay \$51.26 towards a PPO plan.

Employees in the remaining cities with HMOs pay monthly contributions in varying amounts (Indianapolis \$4.40 wellness, \$24.40 non-wellness; the respective PPO rates are \$36.36 and \$56.36; Kansas City, \$10.36 - \$13.29; Minneapolis, \$16.24 - \$47.90).

With respect to employee contribution to HMO family plans, employees pay nothing towards the cost in one city (Toledo). In Detroit there is no contribution to five HMOs. One PPO requires a \$106.86 contribution. In two cities, the amounts required of employees are less than what is proposed by the City where contributions are required by its final offer: (Chicago, \$3; Cincinnati, up to \$2.77 for employees hired prior to September, 1983). In the remaining six cities, the contribution rates are considerably higher than what the City proposes (Cincinnati, for hires after September, 1983, \$33.90 - \$36.67; Indianapolis, \$72.96 - \$92.96 for HMOs, higher for PPOs; Kansas City, \$62.18 - \$79.38; Minneapolis, \$62.72 - \$134.40; St. Louis, \$183.89).

It appears that with respect to single contributions to HMOs, the comparisons slightly favor the Union's final offer. With respect to family contributions to HMOs, there appears to be considerably greater support for the City's final offer.

With respect to the major medical deductible in 1990 required of single employees, five cities (Cleveland, Columbus, Minneapolis, St. Louis and Toledo) have deductibles at or above the \$100 proposed by the City. Two others (Chicago and Indianapolis) have higher deductibles for employees not in PPOs. Three have lower deductibles (Cincinnati, \$50; Detroit, \$50; Kansas City, \$0) and two cities have lower deductibles for PPO employees (Chicago, \$50 and Indianapolis, \$0).

With respect to the major medical maximum deductible in 1990 required of families, one city has rates above the City's \$300 offer (Minneapolis, \$1,500). Three others have rates at or above the City's offer for non-PPO employees (Chicago, \$300; St. Louis, \$350; Indianapolis, \$1,250). Toledo has no maximum. Two cities have rates at or below the \$100 proposed by the Union (Detroit, \$100, Kansas City, \$0). Indianapolis has a \$0 maximum deductible for PPO employees. The other cities have maxima which fall between the parties' final offers (Chicago, \$150 for PPO employees; Cincinnati, \$150; Cleveland, \$200; Columbus, \$200; St. Louis \$175 for PPO employees).

In the arbitrator's opinion, these comparisons do not clearly favor either party's final offer with respect to major medical deductions.

The City makes comparisons also with the State of Wisconsin. It notes that almost four thousand State employees work in Milwaukee County, and more than two thousand more work in

adjacent counties. Parr acknowledged that the City has made comparisons with the State in negotiations, but the Union has objected to them.

With respect to basic plans, the City's offer of a \$7.50 single employee contribution is below that required under the two State basic plans (\$9.16 and \$66.92). With respect to basic family plan, the City's proposed employee contribution of \$15 is below the contribution required under the State's two basic plans (\$30.18 and \$151.64).

Although the Union's final offer continues in effect a sliding scale of contributions for employees hired after April, 1983, the City's final offer is supported by the comparisons with the State more so than is the Union's final offer.

With respect to HMOs, the State plan is identical to the City's final offer; that is, the State pays 105% of the lowest HMO rate. The result is that for single State employees, there are only three of eight HMOs for which an employee contribution is required, and two of those rates are below the rates which would be charged to City employees in HMOs. The same is true for HMO family rates. Thus, comparisons with the State clearly favor the City's final offer.

Both parties make comparisons with the largest municipalities in the State, although their exhibits differ slightly. The arbitrator has combined the exhibits to utilize each of the cities cited (Appleton, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, LaCrosse, Madison, Racine, Sheboygan, West Allis and Waukesha).

There are eight cities which require no contribution to the basic single plan (Appleton, Eau Claire, Fond du Lac, Green Bay, Kenosha, Racine, Sheboygan, Waukesha). The basic contribution by employees in one city (Janesville, \$5) is lower than the City's proposed \$7.50 contribution, and in one city (Madison, \$16.09) it is higher.

With respect to required employee contributions to the basic family plan, there are five cities which require no contribution (Appleton, Fond du Lac, Kenosha, Racine and Sheboygan). There are two cities in which the required contribution is less than the City's final offer (Green Bay, \$7.90; Janesville, \$10).

These comparisons favor the Union's final offer more than the City's final offer.

With respect to required single employee contributions to HMOs, four cities require no contribution (Eau Claire, LaCrosse, Oshkosh, Sheboygan). One city (Madison) has HMO contribution

rates lower than those in the City's offer, where a contribution is required, for three HMOs and higher for two. Green Bay has a higher contribution (\$31) than in the City's final offer.

With respect to required family contributions to HMOs, one city (Sheboygan) requires no contribution. Two cities require HMO contributions which are below those in the City's final offer where a contribution is required (LaCrosse, Oshkosh). Eau Claire has a higher contribution rate than the City's final offer in one HMO, and lower in two HMOs. Madison has contribution rates higher than the City's final offer in two of its HMOs and lower in one. Green Bay and Janesville have contribution rates higher than in the City's offer.

These comparisons present a mixed picture which favors the Union's final offer with respect to single employee contribution, but does not clearly favor either final offer with respect to family contribution.

With respect to major medical deductibles, the cities are almost evenly divided between those with \$50/100 or \$50/150 and \$100/300. Thus, there is no clear support for either final offer using these comparisons.

Both parties make comparisons with other municipalities in Milwaukee County. Those which are common to their exhibits are: Brown Deer, Cudahy, Franklin, Glendale, Greendale, Greenfield, Oak Creek, Shorewood, South Milwaukee, Wauwatosa, West Allis and Whitefish Bay.

With respect to required contribution by single employees to the basic health insurance plan, six municipalities require no contribution (Cudahy, Franklin, Greenfield, Oak Creek, Shorewood, Wauwatosa). A seventh, West Allis requires no contribution for employees hired prior to January, 1985, and for employees with ten years of service. Two other municipalities require lesser contributions than the City is proposing in its final offer (Brown Deer \$5 for employees hired prior to 1990; Whitefish Bay \$3.51 for employees hired prior to 1983). Two municipalities require greater contributions than under the City's final offer (Glendale, \$35.23; South Milwaukee, \$34.41). In other municipalities, Brown Deer requires a greater payment by first (\$20.02) and second (\$15.40) year employees, West Allis requires payment of \$39.21 for employees hired after 1984 with less than ten years of service, and Whitefish Bay requires payment of \$19.62 for first year employees, and \$15.09 for second year employees.

With respect to required contributions by employees to the family plan for basic health insurance, five municipalities require no contribution (Cudahy, Franklin, Greenfield, Oak Creek,

Wauwatosa). West Allis requires no payment for those hired before 1985 or with 10 years of service. Two municipalities require less than the \$15 in the City's final offer (Brown Deer, \$10 for employees hired before 1990; Shorewood, \$5). Three municipalities require contributions greater than \$15 (Glendale, \$84.08; South Milwaukee, \$296.31; West Allis, \$98.08 for employees hired after 1984 with less than ten years of service).

These comparisons favor the Union's final offer more than the City's final offer with respect to employee contributions to the basic plan.

With respect to required single employee contribution to HMOs, eight municipalities require no employee contribution (Cudahy, Franklin, Greendale, Greenfield, Oak Creek, Shorewood, Wauwatosa, West Allis). Glendale offers three HMOs without any required contribution, two which require lower rates than required under the City's final offer (\$1.20 and \$2.85), two which are in the same range as in the City's offer (\$4.76, \$6.47) and one which is above the City's proposed rates (\$17.91). South Milwaukee offers three HMOs without cost, two which are less expensive than under the City's final offer (\$0.38 and \$2.03), two which are in the same range as in the City's offer (\$3.94, \$5.65) and one which is above the City's proposed rates (\$17.09). Whitefish Bay requires contributions during the first four years of employment for employees hired after 1982, and the rates are above the rates offered by the City.

With respect to required family contributions to HMOs, eight municipalities require no employee contribution (Cudahy, Franklin, Greendale, Greenfield, Oak Creek, Shorewood, Wauwatosa, West Allis). Whitefish Bay requires no payment by employees hired before 1983. Brown Deer requires a lesser contribution than the City (\$10) for employees hired before 1990, and more for those hired thereafter during their first four years (\$17.04 to \$55.38); Glendale offers one HMO at no cost and two which costs employees less than the rates under the City's proposal, and five HMOs which are more expensive. South Milwaukee offers three HMOs at no cost, three which are less expensive than those offered by the City, and two which are more expensive. Whitefish Bay has two HMOs which require greater contributions for employees during their first three years than the rates under the City's proposal.

These comparisons favor the Union's final offer more than the City's final offer with respect to employees' contributions to HMOs.

With respect to major medical deductibles for single employees, two municipalities have deductibles lower than or equal to the \$50 proposed by the Union (Franklin, Wauwatosa). Eight municipalities have deductibles equal to or higher than the City's proposed \$100 deductible (Cudahy, Glendale, Greenfield, Oak Creek, Shorewood, South Milwaukee, West Allis, Whitefish Bay).

With respect to major medical deductibles for families, two municipalities have deductibles lower than or equal to the \$100 proposed by the Union (Franklin, Wauwatosa). Three additional municipalities have deductibles which are lower than the \$300 proposed by the City (Cudahy, \$200; Oak Creek, \$200; Whitefish Bay, \$200). Six municipalities have deductibles of \$300 or more (Brown Deer, Glendale, Greenfield, Shorewood, South Milwaukee, West Allis).

These comparisons favor the City's final offer more than the Union's final offer with respect to major medical deductibles.

The parties presented additional data for municipalities in Ozaukee, Washington and Waukesha Counties, which border on Milwaukee County.

With respect to single employee contributions to the basic health insurance plan, five municipalities required no employee contribution (Brookfield, Germantown, Menomonee Falls, New Berlin and Waukesha). In Mequon the required contribution is \$14.62.

With respect to family contribution to the basic health insurance plan, five municipalities require no employee contribution (Brookfield, Germantown, Menomonee Falls, New Berlin and Waukesha). In Mequon the required contribution is \$36.99.

These comparisons favor the Union's final offer more than the City's final offer.

With respect to required single payment for HMOs, three municipalities require no payment by employees (Brookfield, Menomonee Falls and New Berlin). In Muskego there is no required payment by AFSCME units. In non-AFSCME units there is no payment in one HMO, and the other two have payments of \$1.55 and \$1.56. In Mequon, which has the State plan, three HMOs have no required payment. The others cost: \$1.20, \$2.85, \$4.76, \$6.47 and \$17.91.

With respect to required family contributions for HMOs, three municipalities require no payment by employees (Brookfield, Menomonee Falls, New Berlin). In Mequon, which has the State plan, one HMO has no required payment. Two HMOs have payments of \$0.99 and \$8.55 while the other five range from \$19.15 to \$59.39. In Muskego, two of the HMOs offered to AFSCME have no cost, and one costs \$39.62. One of those offered to non-AFSCME units has no cost. The other two cost \$4.56 and \$44.18.

These comparisons favor the Union's final offer with respect to single contributions, but neither final offer is clearly supported by the comparisons with respect to family contributions to HMOs.

The Union presented comparison data for school districts in Milwaukee County in which AFSCME has bargaining units. The data shown are for those AFSCME units. With respect to single and family contributions by employees to the basic plan, eleven districts (Cudahy, Franklin, Greendale, Greenfield, Maple Dale/Indian Hills, Nicolet High School, Shorewood, South Milwaukee, Wauwatosa, Whitefish Bay and Whitnall) require no payments. Glendale-River Hills requires payments only for employees during their first three years of service, who pay 50% of the basic plan. West Allis-West Milwaukee requires no payment except for employees hired after July, 1983, who pay 5% for their first seven years of service. In Brown Deer there are fixed payments (\$2.08-single; \$4.17-family). In Oak Creek, employees pay the difference between the basic plan and the lowest rate plan.

These comparisons clearly favor the Union's final offer more than the City's final offer.

With respect to required payments by employees for HMOs, ten districts require no payments by employees (Brown Deer, Cudahy, Franklin, Greendale, Greenfield, Nicolet High School, Shorewood, South Milwaukee, Wauwatosa, Whitefish Bay). Two districts require payments. Oak Creek requires payment above the lowest HMO rate. West Allis-West Milwaukee requires 5% of the rates paid by employees hired after 1984 during their first seven years of service.

These comparisons clearly favor the Union's final offer more than the City's final offer.

Both parties presented data for the other major taxing districts in Milwaukee: Milwaukee County, Milwaukee Sewerage District, Milwaukee School Board and Milwaukee Area Technical College.

For Milwaukee County, single employees hired prior to August, 1989, pay nothing towards the basic plan or HMOs. Those hired after that date pay \$10. With respect to family contributions for the basic plan and HMOs, those hired before August, 1989, pay nothing. Those hired afterwards pay \$20. These comparisons appear to support the Union's final offer more than the City's final offer.

The major medical deductibles are \$100/300, and thus support the City's final offer.

At Milwaukee Sewerage District, employees are required to pay nothing towards the cost of the single or family basic plan, if they were hired prior to October, 1983. Those hired after that date pay 15% of the basic plan. This arrangement is supportive of the Union's final offer more so than the City's final offer.

With regard to payment for HMOs, Sewerage District employees pay the difference between the cost of HMOs and the basic plan. This arrangement is supportive of the City's final offer more than the Union's final offer, but only when the cost of an HMO exceeds the cost of the basic plan.

The major medical deductibles at the Sewerage District are \$100/300 and thus support the City's final offer.

At the Milwaukee School District, single employees hired prior to July, 1984, or January 1, 1985, pay nothing towards the basic health plan. For those hired after those dates, single employees pay \$15.50 for the first four years, \$7.75 for the next three years, and then nothing. With respect to family plan, those hired prior to July, 1985, or January 1, 1985, pay nothing. Those hired afterwards pay \$39.24 during the first four years, then \$19.61 during the next three years and then nothing. There is no cost to employees for either single or family coverage by HMOs. The School District's arrangements appear to be more supportive of the Union's final offer than the City's final offer. The major medical deductibles are \$50/150, which also support the Union's final offer.

At Milwaukee Area Technical College, employees pay nothing for either basic health insurance or HMOs. This comparison supports the Union's final offer more than the City's. The major medical deductibles are \$100/200, which supports the City's final offer more than the Union's.

The City introduced national data covering both public and private employees. It introduced the results of major national surveys of health care benefits. These data show the following with respect to deductibles:

Hewitt Associates, covering 227 major private employers, shows that more than 57% of plans surveyed required deductibles of greater than \$100 per person; BLS survey of 401 state governments and 24,244 local governments shows that 84% of plans had deductibles of \$100 or more; Foster-Higgins survey of 300 public employers shows that 79% of city plans and 70% of state plans had deductibles of \$100 or more; Foster-Higgins survey of 1,600 public and private employers shows that 91% had deductibles of \$100 or more; Hay/Huggins survey of 916 organizations shows that 57% have major medical deductions of more than \$100.

These surveys do not identify specific employers, public or private, or geographical proximity to Milwaukee. However, they clearly show that nationally, a clear majority of benefit plans require deductibles of \$100 or more per person. These survey results support the City's final offer more than the Union's final offer with respect to deductibles.

These survey results presented by the City also show some data with respect to the amount of employee contribution required for health insurance. The BLS survey shows that 50% of plans require employee payment of less than \$15 for single plans, and 78% of plans require family contribution of greater than \$15; Foster-Higgins survey shows that the average premium percentage paid by employees is 22% for all employers, and the same percentage for government employers. A BLS survey of medium and large firms shows that the average employee-only contribution for health insurance is \$19, and for family coverage is \$60. The City also presented Hewitt Associates data for salaried employees in major metropolitan Milwaukee corporations. 19% of plans required no employee contribution.

These data support the City's final offer more than the Union's final offer.

Both parties submitted data showing comparisons with other jurisdictions with respect to the amount of employer contribution to dental insurance. The parties' final offers are identical with respect to the \$10 contribution for single employees. For family dental insurance, the City offers \$30 and the Union offers \$32. The arbitrator has not detailed those comparisons here, for sake of brevity, and because the difference between the final offers is so small as to not make it possible to make a clear choice between them based on the issue of dental contribution. Rather, the arbitrator will include dental insurance with other costs in weighing the respective costs of the final offers.

The arbitrator has decided that the most relevant external comparisons in this proceeding are the in-state comparisons with other large cities, the comparisons with other cities in the Milwaukee labor market, and the four other major metropolitan Milwaukee taxing units which utilize employees similar to those represented by the Union. To a somewhat lesser degree, the State government and Milwaukee area school districts are relevant. Least relevant are the benefits paid by other large cities outside of Wisconsin. Private sector data would be more relevant if it was from private employees in Milwaukee, or in the Milwaukee labor market, rather than national trend data.

The most relevant external comparisons clearly favor the Union's final offer with respect to employee contributions to basic plans and HMOs. With respect to major medical deductibles, they support the City's final offer.

Cost of Living

Factor (g) which the arbitrator must consider is the "cost-of-living."

The City prepared data showing cost increases of the respective final offers over the life of the 1989-90 agreement; the Union's final offer represents a cost increase of 8.95%. The City's final offer is a cost increase of 7.65%.

The City presented federal cost-of-living data for urban consumers in Milwaukee, from January, 1988 through January, 1990. This represents the change in cost of living during the year prior to the effective date of the new two-year Agreement, plus the change occurring during the first year of the Agreement. The change in the Consumer Price Index (CPI) during that period is 7.3%. This indicates that both final offers are in excess of the change in cost of living. The City's final offer, being closer to the change in the CPI than the Union's, is preferred. There is no persuasive argument offered by either party for there being an increase in costs in excess of the change in the CPI.

The Union prefers to use annual CPI data, that is, data which show the average change during the entire year, from one year to the next, rather than just comparing particular points (for example, January, or July) in particular years. The Union presented CPI annual average data for Milwaukee wage earners. The change from the average index during 1987 to the average index during 1989 was 8.2%. This is .55% above the City's final offer, and .75% below the Union's final offer. Use of this annual data suggests that there is only the slightest preference for the City's final offer based on the change in consumer prices.

Overall Compensation

The arbitrator must consider factor (h) which is the "overall compensation received by the municipal employees . . ." The parties have not presented comprehensive data about the overall compensation paid to the employees in this dispute, either in isolation or in comparison to other groups of employees within or outside of the City of Milwaukee. They have presented data about the total relative costs of their offers, including the major cost items of wages, local costs, pension and health and dental insurance. However, as noted above, it is clear from their presentation of testimony, evidence and arguments, that the parties view the essential item as health and dental insurance.

The parties are in agreement with respect to expenditures for pensions and local costs. The pension increase of greater than 2% was agreed to by the parties as a means of maintaining the "qualified" status of the pension plan, thereby avoiding adverse tax consequences for both parties which would have resulted from failure to adjust to federal law changes. With respect to wages, the City's wage offer is the same made to the

other bargaining units which have settled. The Union's offer is somewhat higher. The arbitrator does not have a basis for concluding that either final offer is unreasonable, or more reasonable than the other when viewed in the context of overall compensation.

The final factor to be considered by the arbitrator is (j), "such other factors . . . which are normally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining (or) . . . arbitration . . ." There are several things which the parties argue have relevance and should be considered.

(i) Costs of health insurance:

The parties both make arguments about the rising cost of health insurance, apart from their arguments about comparisons with other jurisdictions.

The City views its offer as a means of containing these costs, and asks the arbitrator to recognize this and rule in its favor. In making its bargaining calculations, the City estimated that the cost of health insurance would increase in 1990 by 15% and the cost of HMOs would increase by 11%. These figures were provided by the City's Benefits Department, although no information was provided during the arbitration about how these figures were derived.

City exhibits show that the per employee health costs for all City employees increased by 7% from 1988 to 1989. For employees represented by the Union, the per employee health costs increased by 4.8% during the same period. The City estimates that per employee health costs increased by 11.4% from 1989 to 1990 for all City employees, and 12.0% for employees represented by the Union. The City's data show also that in 1988 when the per employee costs for City employees was \$2,455, and \$2,410 for employees represented by the Union, the national per employee cost in the Foster-Higgins survey was \$2,076. Thus, the City argues, the high cost increases are on top of a cost level which is already considerably above national figures.

The Union presented data, furnished to it by the City, showing that for employees represented by the Union, administrative costs increased 4.62% in 1988 and 4.52% in 1989. It contrasted these figures with the 5.2% and 5.1% figures published by Foster-Higgins for the same period for self-insured plans.

The cost of the basic plan per enrollee for employees represented by the Union increased 4.4% from 1988-1989, according to the Union, in contrast to a 20.4% increase figure reported by Foster-Higgins.

The cost of HMOs per enrollee for employees represented by the Union increased 5.0% from 1988-1989, according to the Union, in contrast to a 16.5% increase figure reported by Foster-Higgins. Thus, the Union views the cost increases experienced by the parties as much lower than national figures, and it attributes these favorable figures in large measure to the parties' on-going cost containment efforts.

The Union's exhibits show that the per enrollee cost of medical services for employees represented by it rose 5.26% from 1988-1989, in contrast to an 8.0% increase reported in the medical services component of the Consumer Price Index for Milwaukee, and a 5.5% increase for that figure for all cities, nationally.

The Union's exhibits show also that for all employees of the City, on a per enrollee basis, the cost of medical services increased from 1987 to 1988 by 1.87%, and from 1988 to 1989 by 7.13%. It contrasts these increases with the 7.6% and 8.0% increases in the medical services component of the Milwaukee Consumer Price Index and with the 6.7% and 5.5% figures in the all cities medical services component of the Consumer Price Index.

The City called Brink as a witness. He is a consulting actuary with Milliman & Robertson (M & R) located in Milwaukee, and he is a specialist in health insurance. He testified, based on M & R client data and other data analyzed by M & R, that at the present time, the medical care component is increasing nationally by about 12%, hospital costs by 8% and other related medical costs by 14 - 16%. As a result, employers generally are instituting a variety of cost containment programs, as the City and Union have done in the past. Brink testified that as a result of the City's final offer to increase major medical deductibles from \$50 to \$100, he would expect to see a 12% reduction in major medical utilization, and thus a 12% reduction in major medical costs. He testified also that he would expect the City's proposed use of the 105% formula to significantly impact on the costs of HMOs because of the likely effects on the bidding process, with each HMO trying to have the lowest bid so that it will be among the four HMOs offered and so that there will be no cost to its subscribers who are employees of the City. Also, he testified, he would expect to see the \$7.50 and \$15.00 required contributions by employees to the basic plan offset the cost of that insurance to the City, and also provide greater cost awareness to employees and a reduction in unnecessary utilization of medical services.

The arbitrator has analyzed the data presented in Union Exhibits 42, 48, 54 and 57, using those jurisdictions for which 1989 and 1990 data was available, and also has added to it the data for the State of Wisconsin and the major Milwaukee taxing units.

	1990 Single Premium	1990 Family Premium	1989-1990 % Change	
			Single	Family
Municipalities in Milwaukee County (median figures for 12 municipalities)	\$157.06	\$348.37	16.8	6.9
School Districts in Milwaukee County (median figures for 13 districts)	163.90	419.96	27.7	26.0
Wisconsin Cities (median figures for 7 cities)	128.57	356.71	20.9	21.9
State of Wisconsin	197.76	471.76		
MATC	203.32	474.17	65.7	56.0
Milwaukee School Board	154.95	392.36	19.7	19.7
Milwaukee Sewerage Commission	113.74	310.46	11.8	10.5
Milwaukee County	200.69	401.38	42.6	14.1
City of Milwaukee	187.49	346.90	37.7	2.5

These data show that the cost of basic health insurance is rising rapidly for everyone. The figures must be viewed in perspective, however. The City is not claiming an inability to pay these costs. One must view the costs in a comparative context in order to reach any conclusion about the compellingness of arguments that the City's cost-cutting measures must be implemented now.

The City's cost per enrollee appears to be higher than national figures (Foster-Higgins). However, the cost for employees represented by the Union are not increasing more than the costs for other employees of the City, and the cost increases experienced by the City are not greater than cost increases nationally or increases in the Consumer Price Indices.

Based upon cost increase data comparisons in the record for basic plans (see table, above), the City's estimated cost increase for 1990 of 37.7% for single coverage is considerably higher than the increases in the median figures for basic plans

in other cities in Wisconsin and for school boards and municipalities in Milwaukee County. However, the 2.5% estimated increase in family rates is far below the increases in those jurisdictions. As for the dollar amounts paid by the City for single basic coverage, even with the large increases from 1989 to 1990, the premium is less than is paid by the State, Milwaukee County and MATC, although more than by Milwaukee School District or Milwaukee Sewerage District. For family coverage, the City pays less than any of these units except for Milwaukee Sewerage District.

In the arbitrator's opinion, there is good reason for the City to be attempting to control its health costs. However, the City is not in a position which is worse than in comparable jurisdictions, and in fact it is relatively better with respect to basic health insurance. Thus, the arbitrator does not view the current cost situation as something weighing in favor of the City's final offer. If anything, it is more supportive of the Union's final offer, since there is no showing of a compelling need to change these arrangements.

(ii) Cost containment efforts:

The Union argues that the parties have saved large amounts of money through joint cost containment efforts. It urges the arbitrator not to rule in favor of the City's final offer which it views as a unilateral change which emphasizes cost-shifting to employees more than cost savings.

Beginning in 1982, the City and the Union made mutual efforts to control health insurance costs. Since then, they have negotiated a variety of cost containment provisions. They initiated a labor-management Cost Containment Committee beginning in the 1983-84 Agreement. Other bargained provisions have related to outpatient surgery, audit of large claims, pre-admission review, medical case management and use of a health care hot line. Through 1988, according to City estimates, the City saved three million dollars using these programs for active city employees. These same programs saved an additional 1.2 million dollars in 1989 and are estimated to save almost 2.5 million dollars in 1990.

In addition, the City saved almost \$830,000 in 1989 using the 105% plan for bidding and selection of HMOs. It estimates that the savings from use of that arrangement will save an equal amount in 1990.

The Union does not dispute those figures. Rather, it contends, that given the joint efforts which the parties have made to generate cost containment since 1982, they should

continue to implement joint efforts, and the City should not be allowed through arbitration to unilaterally implement the 105% plan in its final offer which would require employees to pay any HMO premiums above 105% of the cost of the lowest HMO rate.

Union Executive Director Parr testified that in 1983-84 negotiations, the City wanted employees to pay part of the health insurance premium. The Union objected. The result was an agreement that preserved no-cost insurance for current employees (hired before April, 1983) who would get their base plan fully paid by the City. Those hired afterwards would be subject to a 3-step program over ten years with the City paying 85% of the cost at first, with the percentage increasing over the years until the City paid the full cost for employees with 10 years of service. Since the 85% figure covered the costs of HMOs offered at that time, the result was that new employees signed up for HMOs rather than the basic plan, something the parties wanted to happen. Thereafter, in subsequent negotiations, until the present dispute, there was no demand by the City that employees pay for part of the premium.

Parr testified that during 1985-86 the Union studied the possibility of a "wellness" program to generate further cost containment, and Parr had informal talks with then-Labor Relations Director Geisner about it. Parr testified that there was then a change in City administration, and the new administration was not supportive of continuing to explore these efforts. There was some discussion of cost containment in subsequent negotiations leading up to the present proceeding, but City representatives indicated very early in negotiations that the City was only interested in implementing the State's 105% model.

Current City Negotiator Davis Gordon testified that the Union did not propose a wellness program or any other health insurance cost containment program during the negotiations which led to the present proceeding. Parr acknowledged on cross-examination that Davis Gordon asked the Union for its proposals, but she made it clear that her boss was not interested in anything other than the 105% plan, and thus the Union gave no written health insurance proposals.

When the new City administration was elected in April, 1988, there were then four HMOs offered. Mayor Norquist then initiated the 105% plan for bidding and selection of HMOs to be offered. As a result, after new bids were received, two of the HMOs were maintained, but two new ones were substituted for the other two. The Union grieved. The grievance was settled with acceptance by the Union of the four HMOs which were offered under the new arrangement. However, the parties agreed that in the future there would only be a change in the HMOs offered, if any new HMO had at least a 90% doctor match with the old one and if it provided the same level of benefits as the old one.

Dental insurance has been in the parties' Agreements since 1982 when it was implemented pursuant to an interest arbitration award. In 1985 the parties negotiated a pre-paid dental program. The City agreed to pay dollars which were the equivalent of the cost of the pre-paid plans. Employees wanting to have the basic plan had to pay the additional cost. The parties thus provided financial incentives to enroll in the pre-paid dental plans. The parties have continued to negotiate dollar contributions by the City which cover the full cost of the pre-paid dental plans.

The City emphasizes in its arguments that in contract negotiations leading to this proceeding, the Union made no cost containment proposals. It argues:

The Union has totally failed to address the rising health care cost issue in its final offer. Such a position by the Union supports a conclusion that the Union's offer is unreasonable based upon its lack of constructive responsiveness to the City's legitimate concerns.

The City notes also, Parr's testimony that the labor-management committee, referred to earlier, did not meet during the 1987-88 negotiations and has not met subsequently. "Thus, any argument that this Union is aggressively pursuing solutions to the health care problem is not persuasive."

The Union views the present cost containment system as continuing to work, and sees no basis for abandoning it. It views the City as having ". . . turned its back on cost containment," under the new administration.

In the arbitrator's opinion, there has been a history of joint efforts at successful cost containment, and there is merit to the argument that it should continue. The City offered a form of cost containment and cost sharing by offering the 105% State model for HMOs. The Union has not accepted that plan, or the City's proposal to further contain costs by cost sharing of basic premiums and higher major medical deductibles.

The Union argues that there is room for more cost containment, but it did not propose anything to the City during negotiations or in its final offer. The fact that the City indicated its lack of interest in new forms of cost containment other than the 105% plan should not have prevented the Union from making its own cost containment proposals which might persuade the City otherwise. The arbitrator is not persuaded by the Union's arguments that the City should not now be allowed to make further efforts at cost containment simply because these have not been the result of joint labor-management efforts. The Union did not like what the City offered, but it did not propose any alternative cost containment arrangements.

The Union argues that to allow the City to implement its final offer would be to allow it to unilaterally change the status quo. It argues, ". . . shifting the cost of health insurance premiums to the employee rather than working together with the Union toward cost containment, represents a radical departure from the status quo."

The City views its final offer as a non-radical change from the past. It argues:

Premium cost sharing will only apply to those employees who elect the most expensive health plans. They will still have cost-free options from which to choose.

The concept of cost sharing is not foreign to this Union. The Union agreed to cost sharing on the part of some employees as far back as 1983; the City merely wants to extend it to the rest of the bargaining unit. It is important to note that the Union accepted the cost-sharing provisions proposed by the City in the Tentative Agreement reached between the parties and it seems to have no problem with dental premium cost sharing for all of its members regardless of when they were hired.

This same Union has shown that it is willing to negotiate permanent cost sharing and higher deductibles for its employees at the County and at the Metropolitan Sewerage District. It has also shown its willingness to alter the status quo by proposing to increase the contractually-specified dollar amount that the City contributes toward employee dental coverage.

The arbitrator is not persuaded by arguments about the status quo with respect to some of the changes that the City seeks to make. For example, even though the major medical deductible is \$50 and has been so since 1973, it is a figure expressed in dollars with no additional language indicating any intent of the parties to keep it at that level. Changes in it can be bargained, just as wage rate changes can be bargained, and they can be changed through arbitration if the application of the statutory criteria shows that such changes are warranted. The same analysis holds for the parties' final offers with respect to increasing the amount that the City will pay for dental insurance.

The rest of the City's proposed changes are more troublesome. The parties in the past have not simply agreed upon a dollar figure for payment of basic health plan and HMOs. Rather,

they agreed upon a concept. For employees hired prior to April, 1983, they agreed in their Agreement that ". . . the City will provide an amount equal to the subscriber cost for family or single enrollment in the Basic Plan . . ." towards the cost of the basic plan or an HMO selected by the employee. Their agreement, since at least 1983, has been that the City will pay the entire cost of the basic plan. Similarly, the parties bargained a sliding percentage scale to be applied to employees hired after 1983 ending in no cost to the employees after ten years. The City now seeks to eliminate this arrangement through arbitration.

In the bargaining leading to this proceeding there has not been simply bargaining over what the insurance dollars will be. The City is seeking to change previously-bargained concepts, in place for many years, through arbitration, after being unsuccessful in this round of bargaining in persuading the Union of the merits of the changes. This is the first round of bargaining with the Union in which the City has sought to make these changes. This is not a situation in which year after year the Union has resisted changes which have been widely accepted by other employees of the City and/or by comparable groups of employees. The arbitrator believes that where possible such changes should be made through bargaining, rather than being imposed through arbitration, unless there are compelling reasons to do otherwise.

(iii) Tentative agreement:

In the negotiations which led to this proceeding there was a tentative agreement reached which the City views as highly relevant. The Union argues that no weight should be given to a rejected tentative agreement. In the City's view, the tentative agreement is a good indication of what the bargainers for each side viewed as a reasonable resolution of their differences.

The parties reached a tentative agreement for 1989 and another one for 1990-1992. Both of these tentative agreements were then rejected by the Union's membership. There is nothing in the record indicating why there was rejection. The health and dental provisions of the 1990-1992 tentative agreement, to be effective with the beginning of calendar 1990, were identical to the City's final offer in this proceeding for 1990.

In the arbitrator's opinion, a tentative agreement is evidence of what the negotiators considered to be a reasonable outcome of their negotiations. However, he does not view the fact that the Union's negotiators tentatively agreed to what the City is now offering in its final offer as reason in and of itself to make an Award in favor of the City's final offer, since

the rights of Union membership to accept or reject a proposed agreement must be respected, and because it would reduce the likelihood of achieving future tentative agreements if arbitrators ruled that the actions of the bargainers could not be effectively rejected by the members. Also, as already noted the arbitrator knows nothing about what caused the Union's negotiators to tentatively accept the Agreement and the members to then reject it.

The existence of a tentative agreement containing the City's proposals now in dispute does suggest, however, that the arguments that the Union now advances about the radicalness of the City's proposed changes and their marked departure from the status quo, should be given less weight than they might otherwise be given. Had the proposals truly been viewed by the Union in that manner, it is difficult to see why the negotiators would have tentatively agreed to them.

In the arbitrator's opinion, the existence of the tentative agreement weighs in favor of the City's final offer, although it is not decisive.

Conclusions

As noted above, the arbitrator is compelled by statute to select one party's final offer in its entirety. Such a choice is always difficult, but it is extremely difficult in this case.

The cost difference between the parties' final offers on health and dental insurance is small in relationship to overall costs, about \$200,000, more or less, depending upon which cost figures are used, or slightly above 1/3 of a percent of payroll. The cost impact of the City's final offer on those enrolled in HMOs is minimal, since two HMOs would still be free for single employees, and three would be free for families. The main impact of the City's final offer is on pre-1983 employees who elect to remain in the basic plan, since they would now have to pay \$15 per month for family coverage. Of course, this would be added incentive for them to switch to HMOs, a goal favored by both parties, in order to keep no-cost health coverage. The other impact is on employees who have major medical expenses, since their deductibles would increase. The total cost increases of both final offers exceed the increase in the cost of living. The City's final offer, as the lower of the two, is preferred using that criterion. Thus, viewed strictly from the point of view of cost, the City's final offer is preferred. It costs the taxpayers less than does the Union's final offer, and still allows most employees to have no-cost health coverage. All of the employees could have no-cost health coverage, except for major medical deductibles, if they chose the HMOs which are offered without cost to employees.

The health and dental insurance offer made by the City is reasonable also as evidenced by the fact that the bargaining units within the City which have settled voluntarily to date (that is, as of March 31, 1990) have accepted it, as did the Union's bargaining committee in the tentative agreement that was then rejected by the membership. The fact remains, however, that despite its reasonableness, the City's proposal is a departure from existing bargained health coverage arrangements in that it requires premium contributions for the first time by pre-1983 employees in the basic plan, and results in costs to employees for some of the HMOs. Moreover, at the time the record was closed in this proceeding, these arrangements contained in the City's final offer were in place for a minority of the City's employees in a minority of bargaining units. For these reasons, both the bargaining history and the internal comparisons favor the Union's final offer and do not provide sufficient reasons for the arbitrator to compel the Union to accept the City's changes at this time, even though the result will be that during 1990 there will not be uniform health insurance benefits for City employees. Surely that goal can and will be addressed by the parties in future bargaining.

The most relevant external comparables clearly support the Union's final offer more than the City's with respect to employee contributions to basic and HMO plans. The State's 105% model has been adopted by only a few of the comparison jurisdictions. While the City's offer is supported by the external comparables with respect to raising the major medical deductibles, the arbitrator views the premium contribution arrangements for the basic plan and HMOs as a more important issue.

The City is rightfully concerned with escalating health insurance costs. The arbitrator hopes that the parties will continue to work closely together, as they have in the past, with the goal of containing those costs. While the City's final offer would result in further additional cost savings, if adopted, the City asks the arbitrator to order these changes in previously bargained arrangements without providing sufficient justification at this time. The City's costs, and the cost increases it must pay, are not out of line with those paid by comparable jurisdictions.

In its brief the City argues that an award in favor of the Union will have a disruptive effect because of the greater wage increases in the Union's offer compared with the increases given to other City employees in bargaining units which have settled voluntarily. However, the evidence adduced by the Union makes clear that the economic packages provided to the units which settled voluntarily have varied in size and scope. The arbitrator does not know to what extent, if any, the Union's total package increase will exceed the packages negotiated with

other bargaining units if the Union's final offer is adopted. The arbitrator's focus in this dispute has been on the health insurance issue, something clearly desired by the parties. If the result of an award in favor of the Union is the creation of tensions with other bargaining units, that is indeed unfortunate, but such problems can be addressed in subsequent bargains.

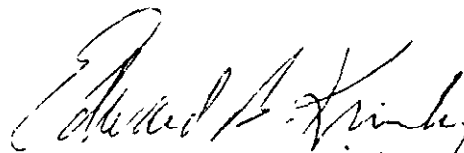
The arbitrator has considered the statutory factors and has concluded that there is more merit to the Union's final offer than the City's final offer at this time.

Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD

The Union's final offer is selected.

Dated at Madison, Wisconsin, this 10th day of July, 1990.



Edward B. Krinsky
Arbitrator