STATE OF WISCONSIN
BEFORE THE INTEREST ARBITRATOR

In the Matter of the Petition of Teamsters Union Local 200 to initiate arbitration between said petitioner and City of New Berlin (Highway Department)	Case #66 No. 43497 INT/ARB-5566 Decision No. 26306-A

APPEARANCES

For the Union: Marianne G. Robbins, Attorney
Lee Wenker, Business Representative
Don Ullman, Union Steward

For the Employer: Roger E. Walsh, Attorney
Connie Champnoise, Personnel Manager

PROCEEDINGS

On February 21, 1990 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to 111.70 (4)(cm) 6 of the Municipal Employment Relations Act, to resolve an impasse existing between General Local 200 of the International Brotherhood of Teamsters, hereinafter referred to as the Union, and the City of New Berlin Highway Department, hereinafter referred to as the Employer. The hearing was held on April 6, 1990 in New Berlin, Wisconsin. The parties did not request mediation services and the hearing proceeded. At this hearing the parties were afforded an opportunity to present oral and

written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs and reply briefs were filed in this case and the record was closed on June 4, 1990 subsequent to receiving the final briefs.

ISSUES

Both the Employer and the Union submitted identical final offers with respect to wages and, therefore, the Interest Arbitrator is left with a single issue in dispute and that is health insurance. The respective offers are as follows:

The Employer offer:

A. The Employer proposes to maintain the status quo regarding payment towards health insurance premium, and that is the Employer would pay 107% of the highest HMO premium.

B. The Employer proposes the following changes to its current standard plan (WPS-HIP).

   1. Managed health care provisions (Compare) to be added with benefit reductions for non-certification

of 20% of the policy's hospital benefits to a maximum of $300 out-of-pocket per confinement.

2. Increase the deductible from $100 per person with two per family to $200 per person maintaining two per family.

The Union offer:

A. The Union proposes the Employer pay the full monthly premium for regular full-time employees of the City towards any HMO program offered by the City and the standard health insurance program offered by the City.

B. The Union rejects the managed health care proposal (COMPARE) and benefit level changes as proposed by the City.

UNION POSITION

The Union contended the Employer has asked for substantial changes in the health care provisions of the Collective Bargaining Agreement. In addition to pre-certification the Employer has asked for substantially higher deductibles. With respect to pre-certification the Union noted that only 5% of the savings results from this

pre-certification proposal and that pre-authorization and certain exclusions already exist in the health care contract of the standard plan. The higher deductibles result in 95% of the proposed savings.

With respect to internal comparables the Union stated the two other bargaining units have accepted pre-certification and the deductibles but were given full cost payment towards the standard plan. The Employer responded that this was the result of the bargaining history between the Highway Department and the Employer, however, the Union stated that bargaining history is not a statutory factor. In any case wage increases during the 85-86 contract year were not a quid pro quo for the Union accepting a cap on the cost of the standard insurance plan. The Union stated that wages in New Berlin are substantially lower than comparable communities and the '85-'86 wage increases can be fully justified based on these comparables. The Union contended that during 1989 the employees contributed only up to a maximum of $14 per month towards the cost of the standard plan; however, effective January 1, 1990 that increased to $97 per month. This was not anticipated, and even if a quid pro quo existed, this more than exceeded any additional wages the employees may have bargained. The Union noted all but six employees were forced out of the standard plan and into one of the HMO offerings.

External comparisons also favor the Union. The five communities that are adjacent to New Berlin with similar populations were cited. The Union argued that the Employer comparables are not only not proximate but vary greatly in terms of populations. Of the five communities cited by the Union, four pay the full cost premium and all five have lower deductibles. The New Berlin health benefit levels, it is noted, are substantially in the middle of the pack. When you compare wages and benefits, New Berlin comes in substantially lower than all comparable communities, and the Union argued that the claim by the Employer that all of New Berlin's units are low pay is not true and based on out-of-date awards. In fact the Union stated that the Employer used evidence in one interest arbitration that the Highway Department was behind in wages and benefits of other comparable communities, and the Union argued the Highway Department is still behind. The Union has been sympathetic to the Employer's financial situation but is not prepared to make the kind of substantial sacrifices the Employer is demanding.

EMPLOYER POSITION

The Employer stated it has endured premium increases during 1989 of approximately 13% for the HMO's and 16.2% for

its WPS standard plan. During 1990 the HMO increases averaged 13.8% while WPS went up 47.4%. This is the highest percentage increase in any comparable community, and monthly dollar cost is higher than all but two comparable communities.

In order to ease the burden, the Employer gave each of its bargaining units four options; (1) take the additional insurance costs out of wages, (2) employee pay the additional costs directly, (3) the bargaining units agree to pre-certification and higher deductibles with proportionately larger wage increases, and (4) pre-certification and co-payment provisions with cost savings being paid directly to the employees in the form of wage increases. The other two bargaining units picked option #3 with two changes, that the implementation of the pre-certification and higher deductibles be delayed to the second year of the contract and that instead of breaking the wage increases into two amounts six months apart, that they be paid at the beginning of the year. The Employer agreed to the changes and they have been implemented in the other labor agreements. The Employer also noted that all non-bargaining unit employees were given the pre-certification and higher deductibles without any corresponding increase in wages.

The Employer argued pre-certification is reasonable. It will not lower the quality of health care to bargaining members. It will only stop abuses. The increase in deductible is also in line with comparable communities. The Employer stated that internal comparables should be given great weight. The Employer stated it has established a pattern and this pattern should be honored. The Teamster's Union wants the higher wages and better health and welfare benefits than either of the other bargaining units have received. The Employer stated that the Teamster's received higher wages in '85-'86 in exchange for cap at 107% of the highest HMO on health and welfare costs. There was no evidence presented in the hearing that this was a catch-up situation. It was merely a quid pro quo. Other bargaining units in New Berlin received lower wages but no cap on their health insurance premiums to be paid by the Employer. It is the Employers's position that the highway department employees want the best of both worlds, and even though bargaining history is not specifically mentioned as a statutory factor, the Employer argued that point J, which states in pertinent part: "Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determinations of wages, hours and conditions of employments..." includes bargaining history.

The Employer further argued the contribution required of the employees is not excessive and stated that it would amount to $6.14 for single coverage and $25.82 for family coverage, not the $97 that the Union has stated. The Employer has negotiated changes in the plan in order to lower the costs to the employees and that in many comparable communities the employees pay a higher contribution. In any event the Employer stated that its comparable should be used since they were used in other arbitrations and found to be appropriate by those arbitrators.

Finally, the Employer stated all of the New Berlin bargaining units are lower paid based on comparables and the other two units accepted those insurance changes as noted above. The Employer contended employees can avoid paying any premium by opting for one of the two HMO's offered. These are good plans and the Employer noted there were no objections raised by the Union during negotiations or in the interest arbitration as to the quality of the HMO's offered and the quality of the medical care under those plans.

DISCUSSION AND OPINION

There is no question the problems associated with the cost of health and welfare programs have become the #1 priority for negotiators of collective bargaining agreements

in the country. This Arbitrator has been involved in only a few interest cases in the past five years where a major issue separating the parties has not been the costs associated with health insurance. It seems to this Arbitrator that both sides have a vested interest in coming to an amicable solution of this very difficult problem. Unfortunately, they were unable to do so in this case, and it is left to the Arbitrator to choose which side's position is more reasonable in light of the evidence presented at the hearing.

Internal and external comparables are generally accorded substantial weight in interest arbitration, and this case is no different. The Employer has two other bargaining units with which it deals and the Arbitrator finds that the weight of evidence favors the Employer's position. The other two units, a clerical and a police unit, did settle for substantially similar health and welfare provisions as were offered to the Highway Department employees. With respect to the Union argument that the other two units have full premium costs included in their health and welfare provisions, the Arbitrator is satisfied that there was a previous agreement between the Highway Department employees and the Employer to trade a higher wage increase for a cap on the cost of insurance. Despite the Union's arguments that bargaining history is not a statutory factor, the Arbitrator finds that provision J of the statute which has been reproduced in

pertinent part above, does allow the Arbitrator to take into account previous settlements between the parties that might be applicable to the current case. In any event, the Arbitrator finds that the internal comparables favor the Employers's position.

Regarding the external comparables, the Arbitrator finds that regardless of which communities are considered, either those brought forward by the Employer or those proposed by the Union, the overall effect of the external comparables favors the Union's position. It is common to interest arbitrations to consider not only those items in dispute but the total wage and benefit package in comparable communities, and when that is taken into account, it is the Union's position that has the greater validity.

When taking into account both sets of comparables (internal and external), the Arbitrator finds that each tends to offset one another. Pattern bargaining is an accepted principle not only in collective bargaining, but also in interest arbitration. However, comparability with external factors is also a significant consideration. In this case, however, the Arbitrator finds that the external and internal comparables tend to negate one another, leaving the Arbitrator to seek additional evidence on which to base his decision.

The Arbitrator is sensitive to the substantial increase in health care insurance premiums suffered by this Employer over the past few years. However, the Arbitrator notes that the Employer did not bring forward any evidence regarding its ability to pay these increases. Therefore, the Arbitrator can only assume that statutory criterion C is not involved in this case, nor are any of the other statutory criteria except for J.

When one side or another wishes to deviate from the status quo of the Collective Bargaining Agreement the proponent of that change must fully justify its position, provide strong reasons and a proven need. It is an extra burden of proof that is placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there was a quid pro quo or that other groups were able to achieve this provision without the quid pro quo. The problem in this case is that both sides wish to alter the status quo, and it is left to the Arbitrator to determine which position in its entirety is the most reasonable.

After a complete review of the evidence, the Arbitrator has concluded that in fact neither side's position is entirely reasonable. Both sides wish to make substantial

changes in their collective bargaining relationship. From the Employer's viewpoint pre-certification or managed health care is a reasonable request and $200/400 deductibles are not unheard of and in fact are becoming more common in today's bargaining arena--not to mention the fact that they have achieved similar settlements with their other bargaining units. From the Union's viewpoint those employees who choose to remain on the WPS plan will have to pay under the Employer's proposal a substantial contribution towards the health insurance premium in addition to, in their view, having an inferior benefit level.

All in all this is a very close and difficult decision, since the statutory criteria, except for J, either are negated or do not apply. Both sides presented excellent arguments on their behalf, and the Arbitrator after considering all the evidence presented will find that the Employer's position is the least unreasonable given all the facts of this case. The Arbitrator bases his decision on his strong feeling that if the Union's position were accepted and the Employer were to pay the full cost of the WPS plan, a substantial number of the current employees would switch to that WPS plan. This is borne out by statistics of the other two bargaining units wherein the overwhelming majority of employees are in the WPS plan as opposed to the current statistics from the Highway Department wherein the

overwhelming majority of employees are in one or other of the HMO plans. If this happens, the problems that the parties will face at the next negotiation will be overwhelming in that the costs will be almost certainly seen by the Employer to be intolerable. The other criterion on which the Arbitrator has based his decision is that if the Employer's position is upheld, the employees from the Highway Department have an option of minimizing their damages, by switching to one of the HMO plans. The Arbitrator understands that switching to an HMO plan may not be seen by the employees as a viable alternative, however, the Arbitrator notes that there was no evidence presented at the hearing which indicated that either of the HMO plans were posing any serious problems to their participants at this time. The Arbitrator has based his decision on the financial impact of each side's proposal on the other and their long term relationship. If the Union's offer were implemented, the city has no option to mitigate its additional costs. The Arbitrator has concluded that by accepting the Employer's offer, the impact on the Union members would be less in that they have the option to mitigate potential damages until the next negotiations.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria specified in Section 111.70 (4)(cm) 6, the undersigned has concluded that the final offer of the City of New Berlin is the more reasonable proposal before the Arbitrator, and directs that it, along with the predecessor agreement, as modified by the stipulations reached in bargaining, constitute the 1989-1990 agreement between the parties.

Signed at Oconomowoc, Wisconsin this 29th day of June, 1990.

Raymond E. McAlpin, Arbitrator