FREDERICK P. KESSLER
ARBITRATOR

THE CITY OF ONALASKA

and

Case 26, No. 044079
INT/ARB-5687
Decision No. 26652-A

SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO, Local 150

A. INTRODUCTION

On November 6, 1990, this arbitrator was advised that he was chosen to decide the dispute involving the final offers of the City of Onalaska, (hereafter "the City") and Service Employees International Union Local 150, (hereafter "the Union") representing the city workers and secretaries. A hearing was scheduled for December 20, 1990, at 4:00 pm at the Onalaska City Hall. Efforts were made to mediate the dispute but they were not successful. The hearing commenced and witnesses testified. The hearing was adjourned at 8:09.

The parties agreed that briefs would be submitted by January 20, 1991. On January 22 and 31, 1991, the City and Union Briefs were received by the arbitrator. A post brief was received on February 18th. Because a portion was inadvertently deleted from one of the Briefs, a corrected copy was received dated March 26, 1991.

B. APPEARANCES

The City was represented by City Attorney Janet A. Jenkins, a member of the law firm of Johns & Flaherty, S.C. of LaCrosse. She called as a witness Rickert Duerst, Administrator for the City of Onalaska. Also present were Alderman Dennis Nachreiner, Clay Pollert, and Sherleigh Van Riper.

The Union appeared by Marianne Goldstein Robbins of the law firm of Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C. of Milwaukee. She was assisted by John Wittenberg, Business Representative for Service Employees International Union, Local 150. Also present were Joe Zanoni, Research and Legislative Coordinator for the Local Union, and John Heitman, a member of the bargaining committee.

C. STATUTORY CONSIDERATIONS

Section 111.70 (4)(cm) 7 Wis. Stats. sets the criteria an arbitrator must consider in the evaluation of the final offers in an interest arbitration disputes.

7. Factors Considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulation of the parties.

c. The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of wages, hours and conditions of employment of the municipal employees 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.

f. 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 with other employes in private employment in the same community and comparable communities.

g. The average consumer prices for goods and services commonly known as the cost of living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

D. FINAL OFFER OF PARTIES

1. The Union. The Union final offer proposed the following contract changes:

   a. Article XVIII Overtime. (to be applied to the Utility Department only)

      "The on call employee will be asked first for overtime. If more utility employees are needed, the next on call employee will be asked, if more employees are needed, this will be done by seniority starting with the most senior employee."

   b. Article XXVI Health Insurance. (No change from the current agreement)

   c. Article XXVIII Wages.

      Effective 1-1-90
      .40 an hour across the board for all bargaining unit employees.

      Effective 1-1-91
      .40 an hour across the board for all bargaining unit employees.

2. The City. The City has made a final offer which includes the following changes in the contract:

   a. Article XXVI Health Insurance. The provisions remain the same as the 1988-89 contract until the first month following a 30 day period when it would be changed to read:

      "All eligible employees under this agreement shall be covered under the State of Wisconsin Employees Health Plan, either Employers Health Care Plan or Q-Care Policies. The City shall pay up to one hundred seventy-five dollars ($175.00) of the monthly premium (Single or Family) for health insurance, but the City's share of health insurance shall not exceed a maximum of 105% of the lowest premium cost of the State Plan for Employers Health Care or Q-Care. For those that are covered under the single policy, the cost paid by the City shall not exceed 105% of the lowest single premium cost of either State Plan for Employers Health Care Plan or Q-Care. Furthermore the city agrees to pay eighty percent (80%) of any premium cost in excess of the one-hundred-seventy-five dollars ($175.00), up to a maximum of 105% lowest premium cost of either State Plan for Employers Health Care Plan or Q-Care. The remain-

ing amount of the premium not paid by the city shall be paid by the employee through payroll deduction."

b. Article XXVII Wages.

Retroactive to January 1, 1990, there be a .64 per hour increase across the board for all bargaining unit employees and effective January 1, 1991, that there be a .50 per hour increase across the board for all bargaining unit employees.

E. ISSUES IN DISPUTE

There are three areas in which the final offers differ. The "on call" provision that relates to overtime, the wage offer (in which the City is offering more money than the Union's final demand), and the changes in the health and dental insurance provisions.

Two of the issues are clearly interrelated. The question presented is whether the increase in wages proposed by the City is sufficient to offset the probable increase in insurance costs. Secondly is the arbitration process the appropriate vehicle for such a policy determination?

F. POSITION OF THE UNION

The proposal in the final offer of the City makes a major change in health insurance coverage for the City employees. It substantially reduces their coverage and benefits. This is not the type of change that ought to be imposed by an arbitrator as part of an employer "buy out" attempt through the mediation/ arbitration law. Other arbitrators, have rejected proposals that make such drastic changes in a bargaining relationship as has been proposed by the City in this case. Changes of such magnitude ought to be the result of bargaining between the parties and produced in a voluntary agreement.

The limit on employer contributions in the City proposal will require employes who have single coverage to contribute to their insurance cost for the first time. Probably, as costs rise, employees will have to disturb their already existing doctor/patient relationships, or else forego certain benefits. These changes are unnecessary. They should not be mandated without employee agreement.

Benefits can be withdrawn at any time, under the city proposal. The recent decision of the state Q-Care policy to withdraw coverage for most transplant procedures is an example of the real threat of that withdrawal. It is expensive procedures such as a transplant which make comprehensive medical insurance a necessity.

The City's proposal for a cap 105% of the lowest state cost is different from any of the cost sharing provisions in the contracts in comparable communities. All have 100% employer payments or a percentage sharing formula between the employees and

the unit of government. None place the entire burden, above a certain figure on the employees.

The City's proposal also will reduce the protection employees will receive. Changes in the specific items to be covered will be allowed. These can occur without necessitating a change in carriers. Changes are permitted, thus creating the potential for a drastic reduction of coverage, without either the City or the Union being able to effect the decision.

The City urges that the arbitrator consider the agreements that it has entered with the employees working for other departments within the City. These internal comparisons have little value since in some of the units the health insurance plan was imposed on employees who were not represented by a union. In the one City bargaining unit in which the health insurance revisions were agreed to by a union, the police department, no record exists as to what concessions were made by the City in order for the union to acquiesce.

The Union also has offered a change in the overtime practice for employees. Presently certain employees are "on call" to provide emergency service. They carry a beeper and have scheduled their time to accommodate this uncertainty. The Union prefers to change this system to one which allows the employees to plan around potential emergencies. It is fairer to employees for overtime work to be assigned to the "on call" worker, who has made accommodations, rather than the most senior employee who did not adjust his work schedule to accommodate such uncertainties.

G. POSITION OF THE CITY

The City is seeks to "buy out" the Union's interest in maintaining it's current health plan. It is offering the workers more real dollars, in the form of wages and benefits than is being sought by the Union. The City wishes to replace the current health insurance carrier with the State of Wisconsin Employees Health Plan.

The current health insurance option allows the employees of the City to chose between two plans, either Employers Health Insurance or WPS Q-Care plan. The choice determines whether city workers will be treated at the Gunderson Clinic-LaCrosse Lutheran Hospital, or at the Skemp Clinic- St. Francis Medical Center. Because the work force is so small, a serious injury or illness regarding just one worker could substantially raise future premiums.

The actual premium increases under the State plan have been less than those under the current plan. The City concedes that coverage is not identical, but the areas of substantial difference only affect such highly unusual areas as heart, liver, lung and pancreas transplants. No employee is presently suffering from problems in these areas or reasonably foresees the likelihood of such surgery. The concern expressed by the Union is at best remote. LaCrosse County, and the Cities of Sparta and Menominee, which the Unions consider comparable communities do

not provide for broad coverage.

The Union's fear of accepting s the City's proposed health insurance changes is not based on a rational reason, but merely on fear of the unknown. It is essential to distribute the risk of potential increased costs among all the parties.

The City seeks to buy out the Union objections with an attractive wage package. Employees would receive more than $15,000 under the City proposal. In addition, the language in the offer protects against arbitrary changes in coverage by the City. While the City may not be able to control the carriers decision, the City may not, under it's proposal, reduce coverage to save dollars.

The City feels that the "on call" provisions of the contract do not need to change. The present practice maximizes employee efficiency. It is not arbitrary. Sometimes overtime work, particularly in the summer, occurs because a project that began in the daytime can not be postponed to the next day. It would be inappropriate to have the "on call" employee, who works at night and on weekends to handle emergencies also do the overtime work, but the Union proposal would have that effect.

H. DETERMINATION OF COMPARABLE COMMUNITIES

Onalaska is a suburb of the City of LaCrosse, a city with nearly fives times Onalaska's population. Western Wisconsin lacks central cities that have their own suburbs. Eau Claire has Altoona, and Stevens Point has Plover, both communities similar to Onalaska. However, neither of the parties submitted those in their lists of proposed comparable communities. The decision is confined to the lists submitted by the parties. All of the proposed comparables are central cities, or major regional centers in an area. All but one is a county seat. All are the commercial hub in their immediate region.

Both parties proposed Tomah and Sparta, which are located in the county east of LaCrosse County, and which are nearly identical in population. Both are adjacent to Interstate Highway 90, a convenient transportation corridor that would allow an Onalaska employee to seek employment there if there were no residency barriers. Chippewa Falls was also on both lists.

The comparable cities the Union has offered include Menominee and Baraboo. Although they are geographically distant, they are close to Onalaska in population.

The City's' list of comparable communities is not unacceptable or unrepresentative. Prairie du Chien and Plattville, are slightly farther away, and are not in the same market area as LaCrosse. Both are likely to be more influenced by Dubuque, Iowa. Portage is similar to Baraboo. The preference for the Union's list is slight.

I. WAGES

The wage offers, examined without consideration of the health insurance proposals of City, appear to be reversed, with the City offering more and the Union asking for less. When translated into the job classifications of the City the following pay scales result:

	City		Union	
	1990	1991	1990	1991
Laborer	$9.91	$10.41	$9.67	$10.07
Water foreman	10.92	11.42	10.68	11.08
Street foreman	11.39	11.89	11.15	11.65
Secretary	7.50	8.00	7.26	7.60

Review of similar jobs in comparable cities reveals the following:

	Tomah		Sparta		Chip. Falls	
	1990	1991	1990	1991	1990	1991
Laborer	9.63		9.10	9.46	11.08	11.52
Foreman	10.33		10.30	10.71	11.19	11.75
Secretary	7.52				9.26	9.63

	Portage		Average	
Laborer	10.19	10.70	10.00	10.56
Foreman	11.19	11.75	10.77	11.40
Secretary			8.39	9.36

The City proposal appears to be closer to the wages paid to similar employees in the comparable cities. Standing alone, the City's generous wage offer appears to best meet the statutory standard. However that conclusion must be re-examined with health insurance considered as part of the total compensation package.

J. HEALTH INSURANCE

The City proposes major changes in the health insurance package. It places a cap on the amount of the premium the City must pay, at a time when such premiums are increasing. The cap, which is 105% above the state charge, will likely compel an employee contribution by the next contract period, a precedent that causes much concern among the members of the bargaining unit. It differs from plans in comparable communities because employees here are not paying a fixed percentage of the premium, but instead are being ask to absorb the total increase over the 105%. Rather than both parties sharing the risk of an increase, the risk alone, above 105%, falls on the employees in Onalaska. If it were a fixed percentage of the cost, it would at least resulted in an equal burden, not the massive burden shift contemplated here.

Arbitrators are reticent to incorporate provisions with new language in a contract as is being sought here. The impact of the new language was discussed in Rib Lake Education Association and the Rib Lake School District, Case 11, NO. 40803, INT/ARB 25799-A, where Arbitrator Robert Reynolds stated:

> "One of the objectives of interest bargaining is to arrive at a contract that can be administered and understood by the union and management easily and simply. Although the impact of wage schedules is substantial from a cost standpoint, it can be put in place and administered routinely.
>
> That is not true when language changes are proposed by one or the other party. If these changes alter the relationship between the parties to a substantive degree, conflicts may arise that will hamper the orderly administration of the contract. It is for this reason that arbitrators have been properly reluctant to impose important language changes through the interest arbitration process, preferring to have the parties arrive at agreement on a voluntary basis."

The rational that Reynolds used is equally important here. A "buy out" is not something that is involuntarily imposed. The Union may be willing to go along with it under some circumstances, but the price acceptance may not yet have been reached. This contract involves a continuing relationship, not a first time contract. The City's proposal might be acceptable if this was a first time contract, but it is not. An imposed "buy out" unduly alters the relationship between the parties and probably will have a negative impact on future negotiations. If one party can secure a major contract alteration in this fashion, the other party can return the compliment at the time of the next contract expiration. The process will then result in each side trying to gain advantage through arbitration, rather than "fine tuning" their relationship by continued good faith discussion and compromise.

Another reason for rejection of the health insurance proposal offered by the City involves the impact on effected workers. The employees in question are not those in the upper pay scale of a municipal workforce. This contract involves the non-professional workers, for whom health insurance premiums constitute a sizable percentage of their total compensation. To shift to them a future burden of all the premium increase above a certain amount, has a disparately larger impact on these workers than it would a high income professional. Fairness prohibits imposing such a result.

Arbitrator Reynolds recognized the requirement for fairness in Edgerton Education Support Staff and the EDgerton School District, Case 30, No. 40853, INT/ARB 4975. There he stated:

"In its brief, the Union touched upon what I believe is the controlling issue here. That is the nature of the benefit itself. This is a relatively low-paid employee group. Using the "Employee A" and "Employee B" table in the briefs, the health insurance benefit constituted 25.96% of the wages for the higher-paid employee A's annual compensation and 43.69% of Employee B's compensation. Thus it is possible to accept the Union's position that many of its members work for the benefit almost as much as for the wage."

Reynolds raised a third issue in Edgerton, one that is not controlling but still is important. The change of a carrier and it's impact on the selection of a Doctor with the possible severance of existing Doctor/Patient relations must be considered. Reynolds addressed the impact when he stated:

"Furthermore the District would disturb a doctor-patient relationship presently in existence by requiring the workers, in most cases, to chose between leaving a present provider or incurring a substantial financial burden to retain the provider. If weight is to be given to the freedom of choice now within the ability of the employee to obtain, the mere financial aspects of the offers must give way. I think this is true here and I must find that the District's higher wage offer is not sufficient reason to impose an increased cost and lost non monetary benefit on the EESS".

Reynolds reasoning is persuasive here. The proposal of the City would substantially alter the language of the contract. This is not something that should be unilaterally imposed from the outside but should be the result of negotiations. The impact of the change could be enormous. Imposing such change would not be conducive to healthy labor relations or the orderly administration of the contract.

H. OVERTIME

The Union final offer regarding overtime changes has the same flaws as the City's health insurance proposal. However this area has less of an impact on the parties. The language of the overtime provision ought to be negotiated between the parties, for some of the same reasons as stated in the previous section regarding health insurance.

Because it maintains previously negotiated contract language, the City's provision regarding the "on call" status is preferred over the language change that the Union seeks.

I. CONCLUSION

When the proposals in all three areas of dispute are evaluated together, it is clear the proposed insurance changes are the most significant. They out weigh the money offer made by the City, because of the long term impact of the language on the future direction of the relationship. The higher wage that the City has offered this contract term is likely to be quickly absorbed in the next set of inflationary increases in medical costs.

The impact of the health insurance is so much more substantial than all the other proposals that it controls the outcome here. The final offer of Union more accurately reflect the considerations mandated by the statute.

J. JUDGMENT

The final offer of the Union will be incorporated in the 1990-91 Contract

Dated this 5th day of May, 1991

FREDERICK P. KESSLER