

STATE OF WISCONSIN
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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

CITY OF OAK CREEK

and
LOCAL 133, AFSCME, AFL-CIO
(DPW EMPLOYEES)

Case 77
No. 44274
INT/ARB-1715
Decision No. 25852-A

APPEARANCES:

FOR THE CITY OF OAK CREEK:
Davis & Kuelthau, S.C.
By Robert H. Buikema, Esq.

FOR THE UNION:
Podell, Ugent & Cross, S.C.
By Monica M. Murphy, Esq.

The undersigned was duly selected by the procedures of the Wisconsin Employment Relations Commission to decide an interest arbitration between the parties. A hearing was held at Oak Creek, Wisconsin, on June 25, 1991. Evidence and arguments were presented and a transcript was made of the proceedings. Thereafter, the parties filed post-hearing briefs and the City filed a reply brief, August 26, 1991. After reviewing the entire record the undersigned has prepared the following opinion and award.

The dispute involves some 50 workers of a blue collar unit which includes highway, engineering, clerical, parks and recreation employees. The City also bargains with police and

fire units and with a recently certified unit of 16 sewer and water works employees. At the time of the interest arbitration hearing, the parties had reached tentative agreements on most of the issues. However, two major issues remained. The City is seeking a change in the subcontracting language in the current agreement. In exchange for this grant, the City is offering an additional .75% increase in hourly wages effective on 7/1/91. This is the equivalent of about 6¢ per hour.

The second major issue is the City's desire to limit the health insurance options available to unit members. Currently unit members can choose between WPS, WHO, Family Health Plan, Samaritan Health Plan, and Compcare. Under the City's final offer, the City would have the right to eliminate all of the HMO options except for Family Health Plan which it agreed to maintain as an option through 1992. It is the Union's position to maintain the status quo. The City also alleges that there is a dispute regarding the coverage of retirees under the medical plan. However, the Union's position is that the City has a right to do whatever it seeks to do with respect to retirees and does not regard this as an issue. The relevant current contract language and final offers are as follows:

Article 1, Section 3 Recognition

Section 3 No employee shall be displaced, laid off, reduced or deprived of any of the benefits of this Agreement because of any future Agreement entered into between the City and another governmental agency or industrial firm.

Union's proposal: Maintain Status Quo

City's proposal:

b. Article 3 - Management-Employees Rights 2-3)

Add new paragraph "J" - Effective July 1, 1991, to subcontract or contract for goods or services as long as no bargaining unit employee is laid-off.

c. On the same date the subcontracting language is effective (July 1, 1991), all wages rates shall be increased by .75% in addition to the across-the-board increase contained in Article 10.

Article 17 - Insurance

Section 1: Hospital Insurance. Effective January 1, 1989, City agrees to provide and pay the full premium for hospital and surgical insurance, including major medical. The carrier shall be Wisconsin Physicians Service (WPS) Health Incentive Program, or such other carrier that provides duplicate or better coverage and service as that in effect on July 1, 1988 under the Wisconsin Physicians Service (WPS) Health Incentive Program (HIP).

Section 2: Health Maintenance Organization. The Municipality shall offer membership in any Health Maintenance Organization which has been certified by the United States Department of Health, Education, and Welfare, or agreed upon by the Union. The Municipality shall pay for an employee electing this coverage an amount of this premium not to exceed City's contribution to the then existing medical insurance. The following health maintenance organizations are currently offered by the City: Wisconsin Health Organization (WHO), Family Health Plan (FHP), Samaritan Health Plan and Compcare. The City Reserves the right to add HMOs which are federally certified.

Union's Proposal: Maintain Status Quo

City's Proposal:

The City may withdraw the HMOs (except that for 1990-1992, Family Health Plan would remain as an HMO alternative) as health care providers, as long as it gives the Union thirty (30) days notice at the end of the calendar year.

With respect to wages, the parties are in basic agreement.

The first year of the contract from 7/1/90 to 6/30/91 a 2.00%

increase effective on 7/1/90 and another 2.00% increase effective 1/1/91. Effective on 7/1/91 the City and the Union have agreed also on a 2.25% wage increase to be effective and another increase of 2.00% to be effective on 1/1/91. In addition, the City would propose an additional .75% per hour effective 7/1/91 provided the arbitrator adopts the City's proposed language regarding subcontracting.

POSITION OF THE PARTIES

The City asserts there is a compelling need to change the subcontracting language based on the bargaining history and changes in the City's operation. Of immediate concern is the City's need to comply with state mandated recycling. The City introduced three arbitration awards to demonstrate its contention that there is a need for a change. The first involved a grievance over the City's attempt to subcontract the work of mounting tires on rims and the balancing of tires. The arbitrator in that case concluded, that since the mounting and balancing of tires often resulted in overtime for bargaining employees, such overtime was a "benefit" under the contract language and the grievance was upheld; meaning that no employees could be deprived of a benefit as a result of the subcontracting.

In the second grievance, the City contracted out paving work in the summer of 1985. The arbitrator in that case viewed the phrase "benefits of this agreement" as something more than fringe benefits. Since the employees would have received overtime and

out of classification pay, the arbitrator viewed those as benefits. However, the arbitrator also upheld the City's right to subcontract in certain instances based on past practice, but in general the Union's grievance was upheld.

The last grievance involved the contracting out of survey crew work in September of 1986. In that grievance the Union argued that employees had lost the benefits of overtime as a result of the subcontracting. However, in that decision the arbitrator concluded that there was no loss of benefits and the grievance was denied. Nevertheless the City concluded that, because of the uncertain definition afforded by arbitrators to the phrase "any benefits", that clearly a change was called for. The City pointing out that in two of the decisions overtime was included in "any benefit", but in the one case overtime was not considered to be "any benefit". The City's argues that it has attempted to change the language by bargaining; but has been unsuccessful and therefore, seeks arbitration as a remedy.

The City has also alleged that while it has no intention to subcontract out snow plowing, which is a substantial source of overtime benefits, it is interested in discussing the problems associated with recycling. At present the City does not see how keeping recycling in house would be a cost benefit and believes that it would be more cost effective to subcontract such work. While the Union has suggested that it is willing to discuss the recycling issue, no agreement has been reached.

The City also introduced copies of the subcontracting language in the six area south shore municipalities, namely, Cudahy, Franklin, Greendale, Greenfield, St. Francis and South Milwaukee. The City asserts that none of those south shore municipalities have sub-contract language which is as restrictive as that of Oak Creek. The City also suggests that the language in the other six communities more closely resembles that proposed by the City, namely, that the municipality may subcontract as long as no employees are laid off.

With respect to wages, the City emphasizes that its offer is reasonable and in conformity with that offered by the other six municipalities and that that offer would be increased in the event the City's subcontracting proposal is accepted.

With respect to health insurance, the City introduced as an expert witness its health consultant, William J. Martin, to demonstrate the City's dilemma of being unable to obtain reasonable bids as an alternative to its present costs. The City could not obtain reasonable bids because it did not have 80% of its employees in HMOs and because it did not have a two-year record of the claims experience of the employees under the present plans. Furthermore, the mixing of retirees with current employees also discouraged competitive bidders. Thus, in the absence of claims experience for a minimum of two years and because of the current percentage of retirees of 30% in the City's plan, the City was unable to attract bidders. The City's current rate of participation in HMOs is approximately 28%, while

Martin testified the industry standard is 80% participation in the standard plan.

The City also emphasized that the other units, police, fire and the sewer and water workers, had accepted the City's health modifications. As an extreme example of the skyrocketing health insurance costs, the City points out that its monthly premium per family coverage for one of the plans is now \$520.00 per month or nearly \$200.00 higher than the other plans. Thus, the City argues that it has submitted substantial evidence in support of its two requested changes.

It is the Union's position that the City has failed to meet its burden in seeking a change in the status quo. The Union submitted a number of arbitration citations to show (1) that the party seeking a proposed change must demonstrate a need for the change; (2) if there has been a demonstration of a need for a change, then the party proposing the change must demonstrate that it has provided quid pro quo for the proposed change; and (3) that arbitrators require that there must be clear and convincing evidence of the need for those changes. The Union points out that it did agree in bargaining to certain changes suggested by the City with respect to health insurance, but that for its right to discontinue the HMOs, the City has not offered any quid pro quo whatsoever.

With respect to subcontracting, the Union asserts the City has not demonstrated a sufficient need for the proposed change. The only work which the City claims it wishes to subcontract is

recycling, which is an issue that the Union has been prepared to discuss, and that it is willing to discuss subcontracting issues on a case by case basis. The City also has not shown any economic necessity for the proposed changes in subcontracting language; that its proposal is entirely vague; and that its proposal of .75% or 6¢ per hour is not adequate to compensate the Union members for possible substantial losses of overtime earnings.

As for health insurance, and the City's desire to eliminate most of the HMOs, the City has not shown that such elimination will result in substantial reductions in the cost of health insurance. Under the City's proposal, the City would retain the most costly plan, the WPS, and eliminate the least inexpensive WHO plan. Twenty percent of its membership would come under the more expensive plan than the ones they are presently in because the less expensive plans would be eliminated. On top of that an additional 11% of the membership could switch to the more expensive WPS plan. For a family, this plan could amount to over \$200.00 per month to the City per family. Therefore, it is difficult to see the financial justification for the City's proposal. Furthermore, the City has not offered any quid pro quo for its health insurance proposal. The Union emphasizes also that it has already agreed to increase the prescription drug card deductible to a pre-certification requirement that could lead to out of pocket cost for Union members and a reduction in cash incentive for the WPS/HIP Plan.

The Union stresses that it was the City's insistence on employee participation in HMOs that put it in the position it is now in. A few years ago, the City wanted to increase a number of employees participating in the HMOs. As a result now 80% of its members have HMO coverage. Now the City is seeking to switch but does not give adequate reasons for such suggestions. The other external comparables show that the area employees have at least two HMO choices and one employer, South Milwaukee, offers six HMO plan. In sum, the Union asserts that the City has failed to demonstrate a sufficient need for its proposed changes.

DISCUSSION

This case presents the dilemma facing arbitrators in total package final offers which link both economic and non-economic issues. This case is also complicated because it involves significant merits on both sides. However, the arbitrator must chose one of the final offers regardless of the deficiencies in making such choice. This arbitrator believes that it would be far preferable to separate the economic issues from the non-economic issues, but he recognizes that is a legislative issue.

First with respect to the issue of subcontracting, this arbitrator has concluded that the City has made a persuasive case for change. The City illustrated its case with three grievance arbitration opinions which gave differing results essentially interpreting the same subcontracting clause and the meaning of "any benefits". The City had also attempted to negotiate a

change without success. In addition none of the comparable communities has a similar highly restrictive clause. Furthermore, the Union's own exhibits of clauses in nearby Franklin and Cudahy were not as restrictive as that now existing. In essence the cities of Franklin and Cudahy may subcontract as long as no layoffs occur. While the cited clauses are more restrictive in stating that subcontracting will not be used to undermine the Union, the central principle is that the City may subcontract as long as no layoffs occur. The City has asserted that it does not intend to subcontract snow plowing, but no such limitation is proposed.

In consideration of its subcontracting proposed, the City offers another .75% across the board wage increase. There is no way at present of showing that the amount is either adequate, inadequate or overly generous to compensate the employees who presumably will lose some overtime. There is simply no way telling at this point. However, the contract has less than nine months to run and the parties will have another opportunity to evaluate the subcontracting language and the experience thereunder.

With respect to the wage offer, the additional .75% increase is more than that offered to other Unions and to employees of comparable communities. Thus, the wage offer itself is very fair; but again that is without an accurate evaluation of the value of the subcontracting article.

With respect to the issue of health insurance, the City has also made a persuasive case. Again, however, the negotiations have been clouded by the cost of providing health insurance for retirees. The Union has made it clear that it is not bargaining for retirees and that the City is free to do whatever it wishes for them.

The strongest point in favor of the City is that the three other units, police, fire and sewer and water, have accepted the City's offer. While different conditions of work may affect the subcontracting issue as it relates to the police, fire and sewer and water units, the same cannot be said of health insurance. No reasonable distinction can be made as to why significantly different health plans should be made available to different units. The City currently pays the highest standard plan among the comparable communities. Again, the City pays the entire employee premium for the HMOs as well as providing four HMOs. In addition, the City has been hit with an intolerable \$200 per month increase for one of the plans. While the City has agreed to maintain the more expensive plan for this contract, it can seek to change that in the next agreement.

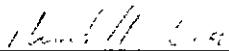
The City has assured that employees will not be forced to see new doctors because employees can elect coverage under the standard plan and thus may continue their current doctor-patient relationship. In addition the City has assured that there will be no waiting period or pre-existing condition clauses on the transfer to another carrier.

With respect to the City's right to withdraw from the HMOs (except for 1990-1992) the Family Health Plan would remain as a health care provider so long as it gives the Union thirty (30) days' notice at the end of that calendar year. As for the Unions's claim that there is no quid pro quo for the City's offer, this arbitrator concludes that the City's proposal is generous and does not require such separate consideration. Furthermore the three other units have accepted the plan with the same wage rate proposal, excluding the .75% per hour effective 7/1/91.

Thus on balance for the reasons stated above, the arbitrator has selected the City's final offer and so

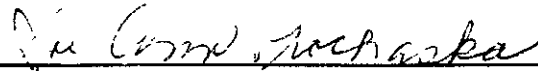
AWARDS

The City's final offer as set forth above.



Arvid Anderson

Subscribed and sworn to before me
this 12 day of September, 1991.



Joe Ann Prochaska, Notary Public
My Commission Expires: 6-5-94