

RECEIVED
MAR - 4 1993

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

* * * * *
In the Matter of an Arbitration
between
CITY OF OSHKOSH
and
OSHKOSH CITY EMPLOYEES ASSOCIATION
* * * * *

Case 154 No. 45448
INT/ARB-5985
Decision No. 26923-D

Appearances:

Mr. Bruce Patterson, representing the City.

Attorney Frederick J. Mohr, representing the Association.

Before: Mr. Neil M. Gundermann, Arbitrator.

Date of Award: March 3, 1993.

ARBITRATION AWARD

The City of Oshkosh, Oshkosh, Wisconsin, hereinafter referred to as the City, and Oshkosh City Employees Association, hereinafter referred to as the Association, were unable to agree to the terms of a collective bargaining agreement covering calendar years 1991 and 1992. The parties selected the undersigned through the appointment procedures of the Wisconsin Employment Relations Commission to hear and determine the matter in dispute. A hearing was held at the Oshkosh City Hall, Oshkosh, Wisconsin on December 8, 1992. The parties filed post hearing briefs.

CITY'S FINAL OFFER:

1. Term of Agreement: two years
2. Salary Adjustments:
 - P. P. # 1, 1991 3%
 - P. P. #14, 1991 3%
 - P. P. # 1, 1992 3%
 - P. P. #14, 1992 2%

3. Health Insurance

Increase employee contributions to 25% of 1991 increase for a total of \$30/mo. towards family plan for 1991 and \$10/mo. toward single plan for 1991.

1992 increase employee contributions to equal 25% of the cost increase from 1991 to 1992, but in any event not to exceed an additional \$20 per month. 1992 employee contribution towards family plan health insurance will be a maximum of \$50/mo. and for single coverage will be a maximum of \$30/mo.

4. Reclassifications: Adopt the following reclassifications:

- A. Claudia Hurlbut from Range 3 to Range 5.
- B. Debra Daubert from Range 3 to Range 5, Step C and change title to Curator.
- C. Dale Schumacher and Gene Shew from Range 7 to Range 6.
- D. Bruce Paulick from Range 9 to Range 10.
- E. William Ziebell from Range 6 to Range 8.

ASSOCIATION'S FINAL OFFER:

1. Term of Agreement: two years

2. Salary Adjustments:

P. P. # 1, 1991	3%
P. P. #14, 1991	3%
P. P. # 1, 1992	3%
P. P. #14, 1992	2%

3. Health Insurance

Convert the present employee contribution of \$10 per month toward the family plan to a percentage of 5 per cent per month for the family and single plan with the employer paying 95% of the premium.

4. Reclassifications: Adopt the following reclassifications:

- A. Claudia Hurlbut from Range 3 to Range 5.
- B. Debra Daubert from Range 3 to Range 5, Step C and change title to Curator.
- C. Dale Schumacher and Gene Shew from Range 7 to Range 6.
- D. Bruce Paulick from Range 9 to Range 10.
- E. William Ziebell from Range 6 to Range 8.

CITY'S POSITION:

The City argues that the dominant element for the arbitrator to consider is the pattern of internal settlements with reference

to both wages and health insurance. Of the statutory criteria, the City believes that the primary criterion applicable in this dispute is paragraph (e) which states:

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

The City believes it is also appropriate for the arbitrator to consider subparagraph (g), relating to the Consumer Price Index.

The evidence demonstrates the historical relationship regarding issues relating to health insurance. The evidence shows a pattern of voluntary settlements with collective bargaining units of employes of the City. The City's final offer relative to wages mirrors that internal pattern.

The City's final offer is generous as it relates to the comparables providing for an 11% salary lift over two years. This offer also meets the concept of "quid pro quo" in exchange for the modification of the health insurance provisions. The City's final offer is consistent with the insurance program modification negotiated in the City of Appleton. In both instances, the employer's offer relates to an 11% salary lift over two years.

The Consumer Price Index for 1991 was at a level of 3.1%. This level of increase is clearly exceeded by the City's final offer.

The City has experienced an increase in health insurance premiums for the family plan in excess of 105% in a period of four years. The City believes that such an increase, while not uncommon among health insurance cost increases, demonstrates a

need for increased employe participation in the provision of health coverage. Therefore, the City believes that based on the internal pattern of voluntary settlements and what is happening in the "real world" of health insurance, its final offer which provides a salary lift over two years in excess of 11% is the more reasonable before the arbitrator. The City respectfully requests that its position be awarded.

ASSOCIATION'S POSITION:

Generally, the cost-of-living increase considered in arbitration matters is that for the preceding contract period. This occurs because future cost-of-living projections are speculative, and when contracts are settled it is generally prior to or at the beginning of a new contract. This case presents a unique situation insofar as three prior arbitration hearings were cancelled due to illness by the arbitrator originally selected. Therefore, a reasonable application of the cost-of-living standard in this case would require us to look at the years 1989-90. The City's evidence indicates the cost of living for 1989 was 4.6%, and for 1990 was 6.1%, using December through December calculations. An Association exhibit discloses similar information indicating a 5.2% increase for 1989 and a 5.7% increase for 1990 using a January to January approach.

The wage increase agreed upon by the parties represents a cost to the City of 4.5% in 1991 and 4% in 1992. This total cost of 8.5% falls far below the Consumer Price Index for the relevant period. Although the C.P.I. factor on its face appears to be neutral, when considering the devastating impact to employes of

the health insurance cost increase, under either the City's or Association's offer, employes will lose purchasing power.

Of the other six units, three have settled their contracts as they relate to health insurance. Significantly, all three of these units, Police, Fire and City Hall Professionals, are the highest paid employe groups. This is particularly significant when considering the impact the City's proposed health care increase has on individual employes. The lower paid employes, Public Works and Library, have submitted final offers maintaining the status quo in their health insurance costs. These costs would be \$10 per month for a single plan and \$30 per month for a family plan.

The reason internal comparables for the high paying units must be discounted is succinctly supported by the Association's exhibits. The total two-year dollar increase for a Clerk Typist I position is \$2,230.02. A Patrol Officer during the same period would receive \$4,239.45. A Patrol Officer will pay 17% of his/her pre-tax raise toward health insurance increases. However, under the City's offer, the Clerk Typist would pay 32% of his/her pre-tax increase in health care costs. Since health care costs are paid with after-tax dollars, a more significant impact occurs.

The Association acknowledges the substantial cost increase of insurance. The Association in its offer attempted to share the burden equally by suggesting a percentage contribution. Under the Association's offer, the City would experience a 1991 cost increase of 18.7% and a 1992 increase of 20.5%. The employe would see his/her cost increase 134% and 20.5% respectively.

The bargaining history of the parties discloses that the City has assumed all of the health care costs for single employes in the past. It has only been two years since family plan participants were required to pay any costs. The City offer shows that it intends to attempt to shift a substantially greater burden for health care cost increases onto the employes. The Association, in recognition of the substantial increases experienced, has come up with a more reasonable approach in dealing with the problem. In relation to the internal comparables, the Association believes that only the Public Works and Library offer a realistic comparison. These two units are asking to maintain the status quo for 1992.

The parties agree that Green Bay, Appleton, Sheboygan and Fond du Lac are appropriate external comparables. The City has proffered two much smaller communities as additional comparables, Neenah and Menasha. Comparability is traditionally measured using two criteria, size and location. Although Neenah and Menasha meet the location criteria, they are lacking regarding the size criteria.

The evidence establishes that for each of the years of 1990 and 1991 health care costs have uniformly risen among the comparable communities. The total cost of health care over this two-year period rose in the comparable communities from a low of 17% in Fond du Lac to a high of 52% in Green Bay. The City experienced the second greatest increase among these communities.

Under the single plan, none of the comparables charge an employe for health insurance. Under the family plan, only Green

Bay charges its employes a portion of the premium cost, that portion being the same percentage as the Association's offer.

The employes of the City would experience an increase in their health insurance costs of 182% even under the Association's offer. Under the City's offer, it becomes an outrageous 400% increase. It is anticipated that the City will argue that it is subsidizing the health care cost increase by the wage increase it offered over each of these two years. However, the evidence discloses the actual top wage rates for a number of the comparables. The City falls under the comparable averages even after the wage increase is offered.

Because of the split raise, the actual cost of the increases offered was 4.5% in 1991 and 4% in 1992. These numbers fall well within the range of the comparables. Nevertheless, none of the comparables have sought the enormous health care cost increases sought by the City.

The external comparables all maintain the status quo in terms of insurance coverage and contribution except for Appleton. In 1991, Appleton introduced a deductible and co-pay. The deductible was \$100 per individual, \$300 per family plan. Individuals were responsible for co-payment of 20% up to the first \$1,000 and an aggregate of 20% of \$3,000 on family plans. Appleton gave its employes an 8% increase for 1991.

The City's offer on salary cannot be considered an adequate premium to constitute a buy-out. At the end of 1992 the City ranked last in five of the eight representative positions. Overall, the City ranked last.

Historically, during negotiations the City has argued that it should not be required to pay an amount equal to the average wage of the acknowledged external comparables. The City premised its argument on the generous health care benefits received versus those received by external comparables. Under either party's offer a City employe's contribution toward his/her medical premium is the highest among the comparables. However, a City employe will experience one of the lowest salaries among the comparables.

Four of the statutory criteria have relevance in the present arbitration. The first of these, cost of living, clearly supports the Association's final offer. The second criterion, internal comparables, is neutral. Although the City has reached settlements with its three highest paid units, these settlements did not set an internal pattern given the three unsettled contracts. The external comparables favor the Association's offer. Of the external comparables, only Green Bay requires an employe contribution toward the health care premium. The Association's offer mirrors Green Bay's employe contribution. Only one external comparable made significant changes in health care coverage. Appleton added a co-pay and deductible feature; however, Appleton granted an 8% wage increase in return for that concession.

The Association believes its offer is the more reasonable before the arbitrator.

DISCUSSION:

The threshold issue to be determined in this case is whether the internal comparables or the external comparables are

controlling. The Association asserts that only three of the six internal comparables have reached agreement concerning insurance, and therefore the internal comparables should not be controlling. The City takes a contrary position arguing that all of the internal comparables except this unit have accepted the concept of employe contribution, expressed in dollar amounts, for 1991, and three of the units have accepted the City's final offer for 1992.

The evidence establishes that for 1991 Public Works, Police, Fire, Library and City Hall Professionals bargaining units have agreed that employes will pay \$30 monthly toward family health insurance coverage and \$10 monthly toward single health insurance coverage. Only the Association has not agreed to this provision for 1991. Three of the bargaining units have agreed to the added employe contribution toward health insurance for 1992--Police, Fire and City Hall Professionals. Two of the units have not agreed to the added contribution for 1992.

As a general proposition, arbitrators are inclined to look toward internal comparables rather than external comparables where a clear pattern of voluntary settlements exists. The rationale most often given in support of using internal comparables is that internal settlements most accurately reflect what the parties would have agreed to if they had reached a voluntary settlement. It is also asserted that by using internal comparables there is added stability to the bargaining process and less opportunity for dissension arising out of one unit receiving preferential treatment over another unit.

The parties have agreed to a two-year contract covering calendar years 1991 and 1992. For 1991, there is a clear pattern regarding employe contributions toward health insurance. Despite this clear pattern (five of the six bargaining units have reached agreement), the Association is seeking a different manner of contribution toward health insurance--a percentage rather than a fixed dollar amount.

Where there is such a prevailing practice among the internal comparables as has been established in this case, the undersigned can find no basis for ignoring the established pattern.

If the Association were simply challenging the amount of the contribution for 1992, as are two of the other bargaining units, an argument could be made that the only issue is the amount of the contribution. However, in this case the Association is challenging the concept of a specific dollar contribution toward the cost of insurance, and instead is proposing a percentage contribution. Although there is some precedent for this approach among the external comparables, notably Green Bay, the internal comparables have accepted the concept of a dollar contribution.

Undoubtedly the Association is correct in its assertion that the additional cost of insurance will have greater financial impact on employes earning less money, as contrasted with employes earning more money, as a greater portion of their income will go toward insurance. Unfortunately the City must pay the same to insure those employes making less money as it pays to insure those making more money. Until insurance premiums have a means test this will continue to be the situation.

The City's final offer includes a wage increase which includes a lift of 11%. While the Association notes that it will not cost the City 11% to implement its wage offer as there are split increases in both 1991 and 1992, as of pay period Number 14 in 1992, the wages of employes will be 11% over where they were on December 31, 1990. More significantly, the 11% will continue into the foreseeable future. While the cost of living for 1989 and 1990 increased significantly, the cost of living has not continued at that pace and the City's final offer for 1992 far exceeds the cost of living for that year.

It is the opinion of the undersigned that under the facts of this case, the internal comparables are to be preferred over the external comparables, as a clear pattern of settlements providing for a dollar contribution toward health insurance has been established among the comparables.

After giving due consideration to the applicable statutory criteria and the evidence introduced, the undersigned renders the following

AWARD

That the City's final offer be incorporated into the 1991-1992 collective bargaining agreement along with any and all other agreements reached between the parties.


Neil M. Gundermann, Arbitrator

Dated this 3rd day
of March, 1993 at
Madison, Wisconsin