STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition
from the
OSHKOSH PUBLIC LIBRARY EMPLOYEES
Local 796 A, AFSCME, AFL-CIO
To Initiate Final and Binding Arbitration
Between the Petitioner and,
CITY OF OSHKOSH

Case 170
No. 47045 INT/ARB 6382

Decision No. 27274-A

I APPEARANCES

For the Public Library Employees, Local 796A
Rebecca Srubal, Librarian
Jo Ann R. Brewer, Librarian
Thomas R. Zellner, Librarian
Greg Spring, Staff Rep., Wis. Council 40, AFSCME
Jeffrey M. Pickett, Employment Benefits Specialist

For the City of Oshkosh
Cindy Decker
Wayne P. Krol
Edward A. Nolen
Lynn A. Sorenson
Norbert Svatos, Director Administrative Services
Bruce Patterson, Counsel for the City of Oshkosh

II BACKGROUND

On February 20, 1992, Oshkosh Public Library Employees Local 796A, AFSCME, AFL-CIO, hereinafter called the Union, filed a petition with the Wisconsin Employment Relations Commission to initiate Arbitration pursuant to Section 111.70 (4)(cm) 6 of the Municipal Employment Relations Act. The petition was filed for the purpose of resolving an impasse between the Union and the City of Oshkosh, hereinafter called the Employer. A finding of fact conducted by the Commission concluded the Union was the exclusive collective bargaining agent for employees. Consisting of all regular full-time and regular part-time employees of the Oshkosh library. This Representation excludes Librarian I, II, III, IV, Supervisory, confidential and casual hourly employees. The parties exchanged initial proposals on a limited collective bargaining agreement

reopener on January 6, 1992, and thereafter meet on two occasions in efforts to reach accord on a successor agreement. An investigation into the impasse was conducted by the Commission on April 14, 1992, reflecting a continuing deadlock. The parties submitted their final offers on May 22, 1992. The Commission's investigator notified the parties and the Commission the investigation was closed and the parties remained at impasse. Subsequently, the Commission rendered a FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION OF RESULTS OF INVESTIGATION, and ORDER requiring arbitration.

The parties selected Donald G. Chatman as Arbitrator for this matter on July 10, 1992. A hearing in this matter was held on February 15, 1993 at the City Hall, City of Oshkosh, at 10:00 A.M.

III PROCEDURE

At this hearing all parties were given full opportunity to present their evidence, testimony and proofs, to present witnesses and to engage in their examination and cross-examination. After presentation of testimony, evidence and documentation the parties elected to summarize their final arguments in the form of written briefs, with no rebuttal briefs. The briefs were received and exchanged on April 12, 1993. The Hearing was closed on April 15, 1993 at 5:00 P.M.. Based on the evidence, testimony, arguments presented, and criteria set forth in Section 111.70(4)(cm) 6 through 7h, of the Municipal Employment Relations Act, The Arbitrator renders the following award.

IV STIPULATIONS AND ISSUES

The parties stipulate no other issues besides those presented are at impasse. The issues in dispute are as follows:

The sole issue in dispute, is the Amount of Health Insurance Premium Participation to be paid by employees represented by the Union.

The Employer seeks to change Article XVI of the Successor Agreement: Final Offer

Health and Hospital Insurance, Section 5, Effective pay period #1, 1992, employees shall contribute $50.00 per month toward the cost of the premium of the family plan and $17.75 per month toward the cost of the single plan. Said copayment shall be prorated for employees working under 3/4 time.

The Union wishes to continue Article XVI as in 1991-1992 Agreement:

1991-92 Article XVI, Section 5
Effective pay period , 1991, employees shall contribute $30.00 per month toward the cost of the premium of the family plan and 10.00 per month toward the premium of the single plan. Said amounts shall be prorated for employees working under 3/4 time.

V CONTENTIONS OF THE PARTIES

The Employer contends the primary elements of the statute related to this dispute are paragraphs (e) and (i) of the Act, and paragraph (g) relating to the Consumer Price Index. The first of these contentions is a "comparison of the 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 employees generally in public employment in the same community and comparable communities".

The Employer contends that a historic relationship exists between internal collective bargaining units in terms of insurance. and this relationship of voluntary settlements for employees of the City of Oshkosh reflects this relationship through wage settlements and employer final offers. In support of its position the Employer presented documentation, Employer Exhibits (3-2,-3-5) showing

comparability in health insurance and life insurance between all bargaining units through 1991. The Employer maintains that its 1992 final offer relative to wage increases mirrors that same consistent internal pattern. Further, that wage increase provides for a salary lift of 12.5% over the two year life of the agreement. The Employer maintains this more than a quid pro quo for the Employer's requested increase in insurance sharing levels.

The Employer contends that previous arbitrator's (Vernon, #24656-A) have maintained that internal comparability should be one of the controlling factors in decision-making when such comparisons do not result in moving the wage structure decidedly out of line with external comparables.

The Employer contends that the Consumer Price Index for the period in question was exceeded, by the Employer's final offer. Further, that the Consumer Price Index for the area was less than for other metropolitan areas of the State. The Employer maintains that these economic variables enhances the Employer offer. The Employer contends that according to their reading of the CPI in Employer Exhibits 4-5, 4-6, have increased at a rate in excess of two times the other listed components of the CPI (Employer's Final Argument, p. 5,). The Employer maintains this factor alone should justify the employer's position relative to additional premium sharing on the part of the employees.

The Employer contends that the statutory factor of Arbitrators considering "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings" is relevant in this issue. During the pendency of this proceeding Arbitrators presented

two awards allegedly related to the issue in this dispute. In decision No. 45899 (Gunderman, 1993) The Employer presents this award as support of its position on the health insurance premium sharing. The Employer purports that since the arbitrator favored the Employer's final offer and the insurance sharing proposal was part of the offer, the arbitrator award supports the Employer's position on this issue. The other decision No. 45448 (Gunderman, 1993) was not submitted as documentation, but argued that it was a dispute over the identical issue, and the arbitrator accepted the Employer's position on this issue.

In opposition to the Union's position the Employer maintains that the Union's expert witness never established any basis for allegations of improper handling of the self insured health insurance funds. The Employer also maintains the expert witness fail to establish any element of the health insurance question relative the requested significant change in participant sharing, and request the non-consideration of any testimony by this witness.

In summary the Employer argues that it has experienced health insurance premiums for the family plan in excess of 105% in a period of four years. The Employer argues that while such increases are not uncommon among health costs, these increases demonstrate a need for increased employee participation in payment for this coverage. This need combined with the salary lift, and the internal voluntary settlement makes its final offer more than reasonable. Further, the recent arbitration awards of other internal collective bargaining units in favor of the employer's position give predominate credence to the Employer's final offer in this instance.

The Union contends that a review of the statutory criteria will show the Union's final offer is more reasonable than the Employer's final offer. The Union contends the LAWFUL AUTHORITY OF THE MUNICIPAL EMPLOYER, STIPULATIONS OF THE PARTIES, INTEREST OF THE PUBLIC AND ABILITY TO PAY, are not issues of contention in this proceedings. However, the Union does contend that the comparison of wages, hours and conditions of employment of the employees in this bargaining unit with other public employees in the same or in comparable communities is relevant.

The Union contends the Employer's case rests solely on the argument that the internal comparables support the selection of the Employer's final offer. The Union opposes this contention. The Union maintains the internal comparables are six (6) groups, Public Works, Library, Police Officers, Fire Fighters, City Hall Employees, and City Hall Professional Employees. The Union opposes the use and inclusion of Fire Chiefs and Police Supervisors in these comparisons because of their lack of statutory collective bargaining rights. The Union maintains there is no master agreement covering the entire list of comparables. They maintain that of the six units covered by the Act, only two are affiliated with AFSCME. The other four are affiliated with totally separate organizations with totally different collective bargaining agreements in both style and substance. The Union contends that there are significant differences in wage and benefits among all the bargaining units. The Union maintains that each of the six (6) groups have its own interests and goals, and their individual collective bargaining agreements reflect that fact.

The Union contends that when an external comparisons are made with other para-professions in the agreed upon comparable communities of Appleton, Fond Du Lac, Green Bay, Menasha, Neenah, and Sheboygan, that the employees pay more than any other external comparable employees. The Union maintains that while it has good health insurance benefits, it has not been able to acquire further benefits such as dental insurance They contend that this is already a benefit surrendered through bargaining. The Union argued that in light of the data submitted in Union exhibits 20-30 the Union's offer of status quo for the successor agreement was the most reasonable.

The Union contends the Employer reached voluntary agreement with only two of its six statutory bargaining units. The total employees covered by these voluntary settlements number 158 employees of the 452 employees covered by collective bargaining agreements or 35.0% (Union Exhibit, 12). The Union maintains the Employer is attempting to impose this voluntary settlement on the remaining 294 employees or 65.0% covered by a collective bargaining agreements. Further, the Union maintains the wage settlement offers were not equal, with different dollar amounts going to different bargaining units at different times during the life of the collective bargaining agreements. The Union contends that there is no internal consistency regarding the health benefit itself. That there are actually three monthly cost levels for health insurance (Union Exhibit, 36). The Union maintains this health insurance benefit difference may well be a reflection of differing bargaining goals in the past. The Union argues that arbitrators have rejected

arguments to change the status quo in the past when internal comparables were similar. These Arbitrators (Weisberger, 83; Rice, 87) have held that when general inconsistency exist between collective bargaining agreements of internal bargaining units, then the language of an issue should be derived through collective bargaining.

The Union contends that the Employer had total control of the Health Insurance Funding and reaped premium saving benefits for a number of years. The Union contends the employer intentionally underfunded the health insurance in both the single and family plan. This has resulted in a shortfall of funding, that the Employer wishes the Union to assist in the repayment. The Union argues that the Employer received the benefits alone and should pay the costs of underfunding alone.

The Union contends that for the surrender of a held benefit there should be some valuable asset received in return. The Union maintains that in this instance the Employer is offering none. They maintain that the surrender of this benefit by two other Employer bargaining units, does not constitute a quid pro quo for this bargaining unit.

VI DISCUSSION

The issue in dispute between the parties is not whether this bargaining unit should pay a part of the health insurance premium costs, this facet has been resolved. The employees currently pay ten dollars per month toward single coverage, and thirty dollars per month toward group coverage. The dispute is whether the

employees should pay and increased cost of seventy-seven percent or $17.75 per month for single coverage, and sixty-six percent or $50.00 per month for family coverage.

There is no dispute that the issue is within the context of the statutory parameters of the Employment Relations Act.

The Employer's contention that a historic relationship exists in terms of health and life insurance, whereby comparability between all bargaining units was essentially the same until 1991, is a valid point. The Employer's argument that other bargaining units had either settled with the Employer's health insurance premium proposal or had a recent (Gunderman, 93) arbitrator's award in support of their position is also valid. The Union's contention that the internal comparables should not include employee groups who do not have the option of bargaining collectively is valid. This Arbitrator shall exclude all consideration of any uncovered supervisory personnel (Police Supervisors, Fire Chiefs) in the resolution of this dispute. The Union's contention that there is no master agreement between Employer and Union groups is also valid. The facts present in this dispute are, that of the six units with the right to bargain collectively only this group and one other are in contention about the Employer's position on health insurance payments. Two of the collective bargaining groups resolved the issue in mutual negotiation. The arbitrator presumes these parties were knowledgeable in their bargaining and arrived at an acceptable result for the terms and conditions of their successor agreement. Two other collective bargaining groups had arbitrator's decisions resolving the amount of employee health insurance premium payment.

In one of these instances (Gunderman, 45899) the health insurance premium payment was not an issue in contention. Both Employer and Union had identical language in their final offers. In the other instance resolution of the issue appeared to turn on the validity of the wage requests as determinative factors. This arbitrator does not find either of these awards solely determinative in this dispute, where the amount of employee health insurance premium payment is the sole disputed issue.

While employers seek to have uniformity in certain terms and conditions of employment for all employees, for economies of scale, effectiveness of coverage and, efficiency of management, this is not a mandate that all unions must comply. When an employee group deems its self interest to be opposed to the general consensus, then its position must be singularly examined for validity and not aggregated because it happens to be in the same place. Particularly when there is no master agreement. To do so provides a chilling effect on the ability to bargain. There are six bargaining units because there was a perceived need for six separate groupings of employee needs. Thus, internal comparability is not sufficient criteria for determination of an issue when the wage structure is not in disparity.

The Union contention that when external comparables are examined the data indicates that this bargaining unit is paying far more than other comparable external communities. The Union acknowledges that its health insurance program is considered to be far superior to these other comparables. They maintain that they have fewer additional benefits, such as dental insurance. This

argument fails in that it does not present corollary data for value and coverage of insurance with the dollar amounts paid by all parties However, it is noted that these collective bargaining groups pay more of the cost of medical insurance than external comparable groups.

The Employer raised the contention that its wage offer over the life of the Agreement raised wages over 12%. They maintained this wage increase over and above the CPI for the period, is a more than equitable quid pro quo for their increased health premium payment request. The data indicates that the CPI (Non Metro) increased totally 4.5% for 1991, and 3.2% for 1992 (Employer Exhibit 4-5, 4-6). This indicates a total general increase of 7.7%. The Medical care cost for 1991 was 10.7%, and 8.0% adjusted, for 1992 (Employer Exhibit 4-5, 4-6). This indicates a general increase for total medical costs of 18.7% for the period. The Employer's contention is valid as far as it goes, but it discloses more than it covers.

Using the highest CPI (National U. S. City Average) total medical care costs increased on average of 10.6% for 1991, and 11.5% for 1992, or a total increase of 22.1% for the period. Placed in juxtaposition along with the health care costs related to the bargaining group's economic region of 18.7%, the Employer's requested employee health premium increases of 77.5% and 66.7% require strong substantiation.

The Union has contended that the Employer had total control of the health insurance program as a self insurer. The Union introduced as evidence documentation (Union Exhibits 3,4) that the Employer

underfunded the health insurance program. The Employer objects to the introduction and consideration of this data as not pertinent to the issue, nor relevant under the statutory requirements of 111.70(4)(cm) (7). The objection is overruled. The arbitrator deems the data to be relevant under Sec.111.70(4)(cm)(7h). When employees are a contributing part of a process, (Pension Plan, Employer Loan, Stock Purchases, Health insurance Premium, Life Insurance) of an employer self regulated program they are entitled to factual knowledge of the program's operation. The data derived from such knowledge may be utilized in the employee groups self interest. The arbitrator deems that there are questions of sufficient gravity about the health insurance funding management, to weigh heavily against the Employer's requested 77% and 66% increase in employee participation.

Under the statutory criteria utilized in Section 111.70, the internal comparables, the Consumer Price Index, (North Central States), changes during the arbitrations pendency, and other factors in public service and private employment. The Union's final offer is deemed most favorable.

VII AWARD

The Union's final offer along with all other agreements and issues not in contention between the parties be incorporated into the 1991-1992 limited reopener agreement.

Dated this 8th day of June, 1993, at Menomonie, Wisconsin.

Donald G. Chatman

Donald G. Chatman, Arbitrator