Interest Arbitration	*	
	*	
of	*	
	*	
CITY OF WISCONSIN RAPIDS	*	
(WATER WORKS & LIGHTING COMMISSION)	*	
	*	
and	*	**ARBITRATION AWARD**
	*	
LOCAL NO. 1147, INTERNATIONAL BROTHERHOOD	*	
OF ELECTRICAL WORKERS, AFL-CIO	*	
	*	
re	*	
	*	
WERC Case 102, No. 46223	*	Decision No. 27287-A
INT/ARB - 6127	*	
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* *

Appearances:

Union	Employer
Roger Honeyager, President IBEW Local 1147 and Marianne Goldstein Robbins, Attorney Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman	Mr. Jeffrey T. Jones, Attorney Ruder, Ware & Michler

ISSUES

The three issues in dispute are: (1) Whether future increases in the monthly health care premium for active employees and for retired employees during the first three years of their retirement shall be shared on an 80/20 basis as proposed by the Employer or whether the Employer shall continue to pay the entire premium as proposed by the Union. (2) Whether the wages shall be increased by 3.5% on 1/1/91, 4.5% on 1/1/92 and 3.0% on 1/1/93 as proposed by the Employer or by 3.5% on 2/12/91, 4.0% on 1/1/92 and 3.0% on 1/1/93 as proposed by the Union. And, (3), Whether the Agreement should cover all employees within the classification of employees listed in Appendix A as proposed by the Employer or should include the additional phrase "and all work usually performed by such employees" as proposed by the Union.

INTRODUCTION

The International Brotherhood of Electrical Workers, Local 1147, hereinafter called the Union, submitted to the WERC a petition dated 11/30/90 for all the non-represented employees including clerical and engineering technicians of the Waterworks and Lighting Commission of the City of Wisconsin Rapids, hereinafter called the Employer (Ex.B.1). Voluntary recognition was granted by the Employer (See Ex. B.2) on 1/17/91 and negotiations for a collective bargaining agreement commenced. Failing to reach a settlement, a petition for arbitration was filed on September 5, 1991 and a member of the WERC staff was assigned to conduct an investigation. The WERC found that the parties were deadlocked and final offers were submitted by May 22, 1992. On June 4, 1992 the WERC issued an order initiating arbitration and furnished the Employer and Union with a panel of arbitrators from which the parties selected the undersigned arbitrator who was then appointed by the WERC in an order dated 6/24/92.

A hearing was conducted on August 12, 1992 in Wisconsin Rapids. Initial exhibits were exchanged at the hearing and amended and rebuttal exhibits were exchanged along with post-hearing briefs by September 25, 1992. Further corrections and reply briefs were postmarked by October 14, 1992.

DISCUSSION

The primary issue is the proposal of the Employer that the employee pay a portion of future increases in the monthly health insurance premium. After a careful examination of the many exhibits and lengthy briefs and rebuttals, the arbitrator concluded that this issue was of over riding importance and that his finding on this issue would determine which offer would be selected. Therefore, there is no need to issue findings on the other two issues. It should be noted also that the wage offers differ only very slightly and that the offer of the

Employer exceeds that of the Union.

Internal Comparables: The primary internal comparable is the "line unit" of the Power and Light Commission. The Employer did not challenge the Union claim that year in and year out the wage and benefit increases of the clerical employees and technicians involved in this dispute were tied to the wage and fringe benefit package negotiated by the line unit composed of line men, water works operators, meter readers and related apprentices. Union Exhibits 8-12 show that these non represented clerical and technical employees received the same wage increases as those negotiated by the line unit in 1970, 1982 and 1983.

Nor did the Employer challenge the Union claim that in 1985 the Employer gave the non represented employees the "option of settling first and receiving a higher wage increase in exchange for health insurance concessions or waiting until negotiations with the organized unit were resolved and receiving the same package." (Union Brief, p.2) And, when the non represented employees chose to stick with the blue collar unit, their request was honored. (Un. Brief, p.2). The arbitrator concludes therefore that the controlling internal comparable over the years has been the line unit.

The Employer argues that the other units of the City of Wisconsin Rapids are the appropriate internal comparables and cites the fact that the clerical, DPW, fire fighter and police units as well as the non-represented employees pay either five or ten percent of the monthly health insurance premium. The Employer notes that employees of the utility are covered by the same plan as these other units and that the premiums are the same --- with only the employee contribution differing.

The arbitrator agrees that internal comparables are usually given more weight than external comparables when evaluating arguments about health insurance

benefits, deductibles and sharing of the premium. As the Employer points out in its reply brief, this arbitrator has given great weight to the internal comparables in his decisions in the Kenosha Unified School District Decision No. 26768-A (8/6/91) and the City of Janesville police Decision No. 269656-A (12/91). The question in this dispute, however, is whether the controlling internal comparable is the line unit, rather than the other units.

So far as the arbitrator is able to determine from the evidence submitted, the clerical/technical employees of the utility have followed the pattern set by the line unit, not a pattern set by the police, fire fighter or other units of the City. Therefore, the arbitrator finds that the controlling internal comparable is the line unit.

It can be argued that it is inequitable to treat the employees of the Utility differently from the other Wisconsin Rapids units but the Employer has agreed with this same union, IBEW Local 1147, that employees in the line unit do not pay a portion of the health insurance premium. If the Employer has not been successful in persuading the line unit to agree to an employee contribution and has not taken the matter to arbitration, why should it impose this obligation on the clerical and technical employees of the Utility?

In his decision in the Lake Geneva Joint #1 School District (WERC Case 15, No. 44382, **INT/ARB-5735**, dated 11/13/91) this arbitrator faced a similar situation in which the employer wish to pro-rate its health insurance premium contribution for part-time employees. The unit involved was the small custodial unit. Pro rating was more common among the external comparables than full payment of the contribution. However, there was no pro-rating in effect for the teachers, the primary unit of the employer. In that instance, this arbitrator did not favor the employer position, saying

> At this moment in time, this arbitrator faces the question of whether or not it is preferable under the statute to initiate a pro-rating plan for a small unit when the large unit does not have such a plan or to defer pro-rating within the small unit until such time as the dominant unit the pattern setter, negotiates pro-rating language. (P. 5).
> . . .
>
> If and when the teachers agree that the Board can pro-rate its contribution to health insurance of part time teachers, it would seem logical and appropriate to apply the same standard to the smaller units of the employer. (P.8).

Essentially, this arbitrator regarded the employer tactic in the Lake Geneva dispute as an "end run," attempting to use a pattern follower to set a pattern for the historic pattern setter. The arbitrator believes that the Employer in this dispute is acting in a similar fashion and that such a tactic should be rejected under Statutory criterion Section 111.70(4)(cm)(7)j. which states:

> 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 the private employment.

The arbitrator has given greater weight to this criteria than to the others more usually relied upon by him and other arbitrators because the use of the end run runs counter to traditionally acceptable collective bargaining procedures and in his opinion is repugnant to the philosophy of the statute which as stated in Wis. Stat. 111.70(6) encourages voluntary settlement through collective bargaining. Therefore, he will select the final offer of the Union.

In closing, the arbitrator should note that he specifically avoids the selection of an appropriate comparable pool to be used as the reference group for both the line unit and this unit although the Employer urges him to do so (See page 11 of Employer brief). The arbitrator recommends instead that the Employer

and the Union develop the appropriate set of comparables long before they or the possible comparables negotiate their 1994 contracts. Choice of comparables should be based on the criteria in the statute without regard to which side is helped by inclusion of specific comparables. Practically, this can not be done unless the parties select their comparables before the comparables have started their negotiations.

Also, the arbitrator recognizes that his decision -- reflecting the traditional view that the tail should not wag the dog -- postpones the resolution of the problem of whether employees should pay a share of the health insurance premium and other questions about the health plan until the negotiations for the 1994 contract of the line unit take place. However, the arbitrator encourages the Union and the Employer to start now to jointly examine all of the options for improving their health care plan while minimizing health care cost increases. The problems are difficult and require some study, suggesting that an early problem solving approach may be more successful than late night last minute negotiations.

AWARD

With full consideration of all of the statutory criteria enumerated in Section 111.70(4)(cm)(7) the arbitrator finds for the reasons explained above that the Union offer is preferable under the Statute. The arbitrator therefore selects the final offer of the Union and orders that it and the tentative agreements be placed into effect.

11/3/92
November 3, 1992

James L. Stern
James L. Stern
Arbitrator