

STATE OF WISCONSIN

In the Matter of the Petition of

TEAMSTERS "GENERAL" LOCAL UNION NO. 200

Case 31 No. 55182 INT/ARB-8161 Decision No. 29223 -A

To Initiate Arbitration Between Said Petitioner and

CITY OF WEST BEND

Appearances

On Behalf of the City: Richard C. Yde, City Attorney

On Behalf of the Union: Andrea F. Hoeschen, Attorney - Previant, Goldberg, Uelmen, Gratz, Miller & Brueggman, S.C.

I. BACKGROUND

On October 24, 1996, the Parties exchanged their initial proposal on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on December 31, 1996. Thereafter, the Parties met on six occasions in efforts to reach an accord on a new collective bargaining agreement. On May 19, 1997, the Union filed a petition requesting that the Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On June 26, 1997, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by October 15, 1997, the Parties submitted to the Investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon. Thereupon, the Investigator notified the Parties that the investigation was closed and advised the commission that the Parties remain at impasse.

On November 10, 1997 the WERC ordered the Parties to select an arbitrator to resolve their dispute. The undersigned was selected from a list provided by the Commission. A hearing was scheduled for April 1, 1998. Post-hearing briefs and reply briefs were submitted, the final exchange of which was completed May 26, 1998.

II. FINAL OFFERS AND ISSUES

The Union's final offer reads as follows:

"ARTICLE 9. WAGES

Section 1. Add: Each employee covered under this Agreement shall receive, on the first payday in December, eight (8) hours of additional pay at 1X in 1997 and a total of sixteen (16) hours of pay at 1X in 1998.

ARTICLE 12. INSURANCE

Section 1. Group Health h. Paragraph Two. Eliminate second sentence which states: An employee in this situation may, at the time of his retirement, opt to convert all of his/her accumulated sick leave into paid up health insurance on the basis of 48 hours of sick leave per month of coverage instead of taking the pay-out provided for in Article 13, Section 2 of this Agreement.

ARTICLE 13. SICK LEAVE

Section 2. Add: Employees who retire between the ages of 55 and 62 and are immediately eligible for a retirement annuity from the Wisconsin Retirement System, which is not reduced for early retirement purposes, shall have the option to use one hundred percent (100%) of their accumulated sick leave to convert to paid up health insurance under the Employer's group health plan on a dollar for dollar basis. This option shall be in lieu of the cash payment referenced in this Section."

The District's final offer reads as follows:

"1 **Article 9, Section 4** - The City proposes to add the following language at line 38, page 7 of the current agreement: "Effective in 1998 and annually thereafter, each employee in the union who actually performs weekend duty (defined as a minimum of two weekend assignments) during the calendar year shall receive on the first payroll in December, eight (8) hours of additional pay at straight time (1X).

2. Article 12, Section 1, (h) - The City proposes no change in retiree health benefits language."

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

The Union first contends that the external comparables support their offer. They have submitted comparisons for all of the comparable communities identified by this arbitrator in prior arbitrations. They also acknowledge comparison of sick leave conversion benefits among the comparables is difficult because the comparables have many different configurations of maximum accumulations and conversion rates. Nonetheless, several comparables have benefits that result in as much or more retiree health insurance coverage than the Union's offer.

At the maximum of 120 days accumulation or 960 hours, an employee is entitled to 20 months of insurance coverage. At the present insurance rates this has a value of \$9,900 and is a fraction of the value of the 960 hours at present wage rates (960 x \$15.30 - \$14,688). This is the equivalent of 81 days. The Union's offer would allow the employee the full value of their sick leave accumulation and convert it into health insurance on a dollar for dollar basis. At present wage and insurance rates this would buy 29.7 months of family coverage.

The Union notes the 29.7 months of converted coverage is less than the 36 months.

The Union also contends that the internal comparables also support their offer. Under the City's offer the public works unit will have less of a wage increase than the other units and will have less favorable sick leave conversion benefits than two of the units. The police and fire units have a better sick leave conversion. Firefighters that retire at age 50 may convert all accrued sick leave into premium payments on a dollar for dollar basis. Police officers receive partial payment of accrued sick leave when they retire, even if they also receive City-paid retiree health insurance benefits. The value of these benefits is twice as much as the public units conversion benefits.

The internal comparables also support the Union's offer on lump sum wage adjustments. The firefighters, police officers, and dispatchers all received additional pay in the form of lump sum or shift differential payments above the actual wage settlements. The dispatchers received \$12.00 a month above the 3% wage settlement. The City's offer falls short of this.

The Union also addresses the "public interest" criteria in the statute. They argue their offer serves the public interest because it encourages good attendance, evenly distributes savings and cost between retirees and encourages economical use of health insurance benefits. For example, under the present offer if the premiums go up, the City will have to absorb the entire increase. If retirees could convert sick leave on a dollar for dollar basis, they would have more incentive to stretch their dollars by participating in the lower-cost PPO the City recently started offering.

It is also the Union's position that their final offer reflects what the Parties likely would have settled on in bargaining. They note that earlier in bargaining, the City proposed an additional eight hours of pay and 16 hours of pay for the respective contract terms in order to equalize the value of the settlements across the bargaining units. They note in this regard that many arbitrators have selected the final offer that was previously agreed to by the other Party in bargaining because it reflects the Party's own assessment of an appropriate settlement.

Last, the Union contends that they have agreed to a quid pro quo by making a concession on premium sharing. For the first time employees agreed to share in the cost of health insurance and did not receive a large pay increase or a new benefit in exchange for this concession. Thus, their proposal on health insurance conversion is a fair exchange.

B. The City

It is the position of the City that its offer is more reasonable as it is consistent with the relevant statutory criteria. First, they note that on the major issues of wages and health insurance, the City and the Union stipulated to settlements consistent with the settlements with other City bargaining units. The Parties also stipulated to an increase in the City's maximum payment of the employee's share of retirement contributions, additional funeral leave, and increases in tool and shoe allowances.

Next, they contend that the "interest and welfare" of the public requires adoption of the City's final offer. The City has no trouble hiring or retaining employees. Thus, their offer satisfies the needs of the public. As for the Union's retiree health insurance proposal, it is contrary to the public's interest because it increases the unknown, unfunded contingent liability of the City.

As for the external comparables, the City contends that its comparable group has historically been used by it and its Unions. Of these employers Washington County has traditionally been viewed as the most comparable unit by both the City and the Union. The City has caught up with Washington County and, in fact, the City's final offer would increase the base wages for employees who accept weekend duty to more than the Washington County base wage. Moreover, the City contends that the City's employees receive a far better overall compensation package.

As for retiree health insurance, only one of the comparables provides as much benefit as the City's existing program. For instance, neither provides employer paid health insurance from age 62 to 65 as does the City of West Bend and neither permits accumulation of as much sick leave as the City. And the Watertown conversion rate of \$37.50 per day of sick leave is less than half of the City's conversion rate of one month of coverage per forty-eight hours of sick leave.

The City also addresses the statutory factor that concerns the increases in the cost of living. They submit that the Union's final offer would increase the disparity between wage increases and CPI increases even more than the City's offer. Thus, consideration of the cost of living favors the City's offer.

The City also contends that the internal comparables support their offer. It is argued that there is no internal comparable that supports the additional early retirement benefit which the Union demands. While the fire contract permits a 100% conversion of sick leave to health insurance upon early retirement, it requires such conversion and does not provide the three years of employer paid health insurance provided to the Union for early retirees. As for wages, each internal Union received some minor additional pay in exchange for offsetting cost savings or other consideration. For example, the police and fire departments received additional pay for additional required qualifications offset by savings in contributions to the Wisconsin Retirement System. In this case, the additional

1998 pay in the City's offer amounts to 0.38% which is identical to the additional 1998 pay in the dispatchers contract. While the additional pay in the City's offer was tied to accepting weekend duty, the dispatchers did not receive the additional stipulated benefits which the Union will get such as additional tool and shoe allowances and a 0.2% increase in the City's maximum contribution to the retirement system.

The City also offers significant argument concerning the "other factors" criteria. In this regard they contend that the Union's retiree health and additional pay proposals are ambiguous and therefore are unreasonable. For instance, it is not clear whether that language is to be calculated based on the premiums at the time of retirement or on the premiums as they are incurred. The same or worse is true for the pay proposal. They ask rhetorically whether the language means that any person employed for one eight hour day during the term of the contract is entitled to be paid for an additional sixteen hours for a total twenty four hours of pay? Or alternatively, does it apply only to employees who otherwise receive pay on the first payday in December? Does one need to be an employee on the applicable payday?

They suggest the ambiguity and unreasonableness of the Union's proposals result from their not having been subject to the critical review and refinement which occurs during negotiations. No changes in retiree health insurance were included in initial proposals or included in either of the tentative agreements rejected by the Union membership. It is argued that imposing contract language which is manifestly unreasonable and which requires further negotiation or arbitration to clarify its meaning is contrary to the public interest and contrary to the interests of the Parties.

IV. DISCUSSION AND OPINION

Clearly, the most significant of the two issues in dispute is the early retirement sick leave/health insurance conversion proposal of the Union (ages 55 to 62). The value of the present benefit is approximately \$9,900. The Union's proposal would provide a maximum benefit worth approximately \$14,688. An increase of over \$4,700 for every employee who retires between age 55 and 62. The long-term impact of this proposal is much more significant than the difference in Parties' offers concerning the Article 9 bonus. Other than the eligibility factor

with respect to the bonus issue, the Parties are 16 hours or approximately \$244 apart per employee. The Union proposed an 8 hour bonus in 1997 and a sixteen hour bonus in 1998. The Employer proposes an 8 hour bonus. The retiree issue is viewed as controlling.

It is the Union who seeks to change the status quo on the retiree sick leave/health insurance conversion benefit. As a result in line with well-established arbitral precedent, it is the Union who bears the burden of justifying this change. It is the conclusion of the arbitrator that the Union has failed to present convincing evidence in the context of the statutory criteria, of a compelling need to change the status quo.

Neither the internal nor the external comparables clearly support the Union's proposal. First, with respect to the internal comparables, it is difficult to compare retirement benefits of police and fire employees because they have entirely different retirement systems as they relate to age and service eligibility. As far as dispatchers are concerned, they're concerned their conversion rate is also 48 hours for one month of coverage.

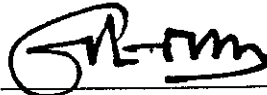
The more meaningful comparisons in this case are to similar employees with comparable employer's (external comparables). In doing these comparisons, the City combined the value of the age 55 to 62 benefit and the value of the age 62 to 65 employer paid health insurance. The Union focused only on the value of the age 55 to 62 accumulation conversion. While the Union is correct that the present age 55 to 62 benefit it is limited to 20 months or presently \$9,900, this value must be combined with the value of 36 months of paid health insurance between age 62 and 65 (approximately \$17,000). The total retiree (ages 55 to 62 and ages 62 to 65) benefit is well over \$25,000.

Arguably, at best, only one other comparable has a benefit that exceeds or approaches this. Whether it exceeds it depends on a favorable interpretation there of relatively complex language. The other comparables based on the evidence of this record do not provide for a combination of employer paid and sick leave conversion funded health insurance. The other comparables apparently rely only on employee funding from accumulated sick leave. It is true many allow more accumulation and/or better conversion rates (usually dollar for dollar) but this is only part of the story. When looking at the whole of this fringe benefit, the employees of the City fare quite well.

The other reason the Union hasn't demonstrated a need for this change relates to factor (j). Under the umbrella of this factor, arbitrators have given significant weight to previous tentative agreements of the Parties. In this case there were two tentative agreements of the Parties which were not ratified. Significantly, neither included a proposal to increase the sick leave accumulation/health insurance conversion benefit. In fact, it had never been part of any Union proposal during this round of bargaining. This at least speaks to the need or lack thereof for an increase in this benefit, if not the reasonableness of this proposal.

All the significant statutory criteria weigh against the Union's health insurance proposal. Even if their salary bonus language was viewed as more reasonable than the City's, the overall preference would still be with the City. This is because of the greater scope and long-term impact of the health insurance issue.

In view of the foregoing, the City's final offer is more consistent with the statutory criteria, and it is selected for inclusion into the Parties' contract.



Gil Vernon, Arbitrator

This 8th day of July, 1998