Interest Arbitration

of

VILLAGE OF JACKSON
(Police Department)

and

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION

ARBITRATION AWARD

re

WERC Case 12, No. 59449
MIA - 2357

[Decision No. 30181-A]

INTRODUCTION

On December 6, 2000 the Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, hereinafter called the Union, petitioned the Wisconsin Employment Relations Division (WERC) to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act (MERA) with regard to wages, hours and conditions of employment of the Law Enforcement Personnel in the employ of the Village of Jackson, hereinafter called the Employer. A WERC staff member conducted an informal investigation and found that the parties were at impasse.

On July 9, 2001, the WERC staff investigator, having found that an impasse existed, transmitted the final offers to the WERC which on July 12, 2001 issued an order for arbitration. The parties were sent a panel of arbitrators from which they selected the undersigned who, on August 6, 2001, was appointed arbitrator by the WERC to select

either the final offer of the Employer or the final offer of the Union. The arbitration hearing was held on September 27, 2001. Briefs were filed on November 7, 2001 and rebuttal briefs were filed on November 14, 2001.

FINAL OFFERS

The Union proposed a wage increase to all rates and classifications in the amount of 3.5% effective January 1, 2001 and an increase of 3.5% effective January 1, 2002 and that all terms and conditions of the 1999-2000 collective bargaining agreement not otherwise modified by the parties stipulations sha ll be incorporated in the 2001-2002 collective bargaining agreement for the term effective January 1, 2001 through December 31, 2002.

The Employer proposes the same wage increase and contract duration as the Union. In addition, the Employer proposes:

> Add Section 24.05 - No Smoking Department Vehicles or Buildings. All employees/members of the Department shall not smoke cigarettes, pipes, cigars, or use other smoking or tobacco products in Department vehicles or buildings.
>
> Delete Section 13.04[1] - Effective January 1, 1998, the Village will implement a full medical reimbursement program which is qualified under Section 125 of the Internal Revenue Code. The Village agrees to contribute into the Section 125 Plan on behalf of each employee covered by this Agreement as follows:
>
> > A. One Hundred and Fifty Dollars ($150.00) per month for those employees eligible for and/or electing family coverage.
> >
> > B. Seventy-Five Dollars ($75.00) per month for those employees eligible for and/or electing single coverage.

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[1] The actual final offer refers to Section 130.01B and the language of that clause. The arbitrator assumes that this is a clerical error. In any event, as the briefs of both parties make clear, the intent of the Employer is to delete the Medical Reimbursement Plan as set forth in the 1998-2000 Collective Bargaining Agreement and to discontinue the plan effective upon the arbitrator s award.

B. Seventy-Five Dollars ($75.00) per month for those employees eligible for and/or electing single coverage.

BACKGROUND

It was made clear at the hearing and in their briefs that the addition of the no-smoking clause in the contract was not the key issue in this dispute. There is currently a departmental policy that prohibits exactly what s identified in the Employer s proposal (See Tr. p. 11). The only question is whether that policy should be incorporated in the collective bargaining agreement. The Employer wishes to do so; the Union prefers that it remains an Employer work rule outside of the Agreement.

The major issue is whether to terminate the program under which employees on a family plan would receive a credit of $150/month to pay for medical and other Section 125 type benefits and employees on a single plan would receive a $75 monthly credit. This program was initiated as a result of bargaining for the 1998-2000 collective bargaining agreement. In those negotiations the Union agreed to abandon an age related Blue Cross plan and substitute for it a less expensive plan which was referred to as the Wisconsin State Plan. In return, the Employer agreed to provide the credit of $150(family) and $75 (single) monthly credit for medical benefits under a Section 125 plan.

According the to the testimony of Del Beaver, Village Administrator, the credit of $150 per family plan and $75 per single plan represented one-half of the savings generated by the shift from the age related Blue Cross Plan to Wisconsin State Plan. Beaver explained at the arbitration hearing that the former plan was about the same as the

State Standard Blue Cross Plan (Tr.33).

The Employer now argues that the savings generated by the shift in plans has been exhausted and therefore there is no justification for continuing this benefit. The Employer argues further that it is offering a quid pro quo of a 1/2% greater wage increase (3.5% instead of 3%) than is warranted by cost of living changes or wage increases granted to internal and external comparables.

The Union argues that the Employer has submitted no evidence to support its claim that the savings are exhausted. Therefore, the arbitrator should reject this claim. The Union agrees that a 3.5% increase exceeds the 2.7% increase in the cost of living but maintains that this factor is less important than the wage increase granted to comparable law enforcement officers. It maintains that the 3.5% increase contains no quid-pro-quo because it does not exceed the increases received by the external comparables that it cites.

The parties lists of comparables differ. The Employer chose four villages as comparables, two of which had populations of about four thousand (Saukville and Slinger) and two which had populations of about 3300 (Kewaskum and Thiensville). Jackson had about 5000. The Union chose ten comparables including the four chosen by the Employer. Four of the additional comparables had populations between eight and ten thousand (Cedarburg, Hartford, Port Washington and Grafton) The other two comparables were Mayville and Horican with populations of about 4000. The Union argued that the Employer list was not broad enough. The Employer argued that four of the Union s comparables were too large to be included in the comparisons.

Employer Exhibits 41 and 42 show the wage increases it proposes for 2000 and

2001 for Jackson and four comparables. Union Exhibits 34 and 35 show the wage increases for 2000 and 2001 for its ten comparables. The table below summarizes this information.

	Jan. 01	July 01	12/1/01	Jan. 02	July 02
Kewaskum	3.0%	2%		2%	2%
Saukville	3.5	0		3.5	0
Slinger	5.5	0		5.0	0
Thiensville	3.0	0		3.0	0
Cedarburg	3.5	0		4.0	0
Grafton	3.5	0		N/S (not settled)	
Port Washington	---	3.5		---	3.5
Mayville	3.0			N/S	
Hartford	N/S			N/S	
Horicon	1.5	1.5	2.0	1.5	3.4

DISCUSSION

The arbitrator believes that the key question to resolve in this dispute is whether the savings generated by the shift in health insurance plans are exhausted. In support of its claim, the Employer notes that the shift in plans dropped its family coverage premium from $705.98 in 1997 to $461.80 in 1998 but subsequently increased to $874.20 in 2002, an increase of approximately 24% over the 1997 premium. Although this is true, it simply reflects the increases in health insurance that have taken place in recent years and does not show the difference between what the Employer pays under the State Plan and what it would have paid if it stayed under the Blue Cross Age Rated Plan in effect in 1997.

Although no figures were supplied about premiums for the Blue Cross Age Related Plan since 1997, one can estimate what they would have been by looking at the

premiums for the Blue Cross Standard Plan. None of the exhibits show the Standard Plan premiums for 1998 or 1999 but Association Exhibits 39-41 show the Standard Plan premiums for 2000, 2001 and 2002.. Employer Exhibit 43A shows the premiums it paid and will pay in 2001 and 2002 for employees choosing the Humana option under the State Plan. If an employee chooses a higher cost plan, the employer will pay 105% of the premium charged by the lowest cost HMO. The following table shows the savings of the Employer, assuming that the Standard Plan is the same as the old Blue Cross Age Related Plan that it had in 1997.

Health Plan Monthly Costs

Plan	2001	2002
Standard Plan - Family	$ 799.50	$ 1,111.30
Humana -Family	$ 703.60	$ 874.20
Savings	$ 95.90	$ 237.10
Cost of Bargained Change	$ 150.00	$ 150.00
Standard Plan - Single	$ 322.10	$ 457.50
Humana Plan - Single	$ 282.40	$ 350.70
Savings	$ 39.70	$ 106.80
Cost	$ 75.00	$ 75.00
Employer Liability of 105% of lowest cost plan		
Family	$ 738.78	$ 917.91
Single	$ 296.52	$ 368.24

It appears to the arbitrator that if the Employer had not made the shift in plans it would be paying a family plan premium of $799.50 in 2001 and $1,111.30 in 2002. Its actual premium under the Humana option is $703.60 in 2001 and $ 874.20 in 2002. This represents a savings of $95.90 per month in 2001 and $237.10 per month in 2002.

Balanced against these savings are the $150 per family and $75 monthly cost of the bargained Section 125 benefit. In 2001, the savings were less than the Employer contribution to the Section 125 plan. premium. In 2002 the savings exceeded the Employer contribution to the Section 125 plan.

It appears to the arbitrator that the bargain the Employer made in 1998 was a good one and is still paying off. If the Employer were saddled with the total cost of the Standard Plan today it would be paying more for medical insurance in 2002 than it will pay for both the HMO and its contribution to the Section 125 plan. Therefore, the arbitrator rejects the Company claim that the health insurance savings have evaporated. They are still real and present.

The arbitrator turns next to the claim of the Employer that the 3&1/2% wage increase represents a quid pro quo. Although this increase exceeds the 3% increase offered to the Employer s AFSCME represented employees and exceeds the 2.7% increase in the cost of living index, this arbitrator adheres to the much quoted 1981 doctrine of the late Joseph Kerkman that the voluntary settlements [of comparable employers] creates a reasonable barometer as to the weight that cost of living increases should be given. (Union Brf. p12).

The table on page five of this award shows that six of the comparables cited by the Union gave a 3.5% or greater increase in 2001 while only three gave less. When the comparison is limited to the four comparables relied upon by the Employer, one gave 3% while the other three gave 3.5% or more. Of the seven 2002 settlements, it appears that five are giving 3.5% or more and two are giving less. In the arbitrator s opinion, the 3.5%

increases offered by the employer are about the same as those offered by the comparables and as such do not represent a sufficiently large quid pro quo to offset the proposed loss of the Employer contribution to the Section 125 plan.

Finally, the arbitrator notes that in his opinion this dispute differs from the usual one. in that the controlling statutory factor is 111.70(6)(h) Such other factors . . . which are normally or traditionally taken into consideration in . . . voluntary collective bargaining . . . Employer contributions to Section 125 plans are not the prevailing pattern. Arbitrators are reluctant to choose offers which contain such a plan when most of the comparables have no such plan even though these plans are touted by the experts because of certain tax advantages. And, just as arbitrators are reluctant to force such plans on the parties, arbitrators are also equally reluctant to take away such plans by arbitration when they have been voluntarily agreed to through collective bargaining.

AWARD

For the reasons explained above, the arbitrator hereby selects the final offer of the Union and orders that it be implemented.

December 18, 2001

James L. Stern
Arbitrator